

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

<i>In re K-Dur Antitrust Litigation</i> This document relates to: All Direct Purchaser Actions	Civil Action No. 01-cv-1652(SRC)(CLW) MDL Docket No. 1419
--	--

[PROPOSED] ORDER

AND NOW, upon consideration of Class Counsel’s Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Incentive Award to the Class Representative (Dkt. No. 1046), it is hereby ORDERED that said motion is GRANTED:

1. This order incorporates by reference the definitions in the Settlement Agreement among Defendants, Named Plaintiff, and the Direct Purchaser Class (Dkt. No. 1044-3). This order also incorporates by reference the definitions and findings in the order granting Direct Purchaser Class Plaintiffs’ Motion for Final Approval of the Settlement (“Final Judgment and Order”). All capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreement and the Final Judgment and Order.

2. Class Counsel for the Direct Purchaser Class have moved for an award of attorneys’ fees, reimbursement of expenses and incentive awards for the class representatives. Class Counsel request an award of attorneys’ fees of 33½% of the Settlement (including the interest accrued thereon), reimbursement of the reasonable costs and expenses incurred in the prosecution of this action in the amount of \$3,067,099.67, and an incentive award of \$100,000.00 for Named Plaintiff Louisiana Wholesale Drug Co., and such motion has been on the docket and otherwise publicly available since July 17, 2017.

3. In awarding attorneys' fees, reimbursement of expenses and incentive awards for the Named Plaintiff, the Court makes the following findings of fact and conclusions of law.

4. The "percentage of the fund" method is the proper method for calculating attorneys' fees in common fund class actions in this Circuit. *See, e.g., In re Rite Aid Sec. Litig.*, 396 F. 3d 294, 305 (3d Cir. 2005).

5. The Court has fully considered the *Gunter* factors and the *Prudential* factors and finds that, considered together, the factors overwhelmingly favor granting Class Counsel's requested attorneys' fee, reimbursement of expenses and incentive awards for the class representatives. *See Gunter v. Ridgewood Energy Corp.*, 223 F. 2d 193 (2d Cir. 2000); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F. 3d 283 (3d Cir. 1998).

6. No class members have objected to any part of Class Counsel's requested 33⅓% fee award, and class members who will be collectively entitled to a large share of the monetary recovery here have submitted letters to the Court explicitly and affirmatively supporting Class Counsel's requested fee. These class members are business entities which have participated in other, similar cases and possess the incentive and knowledge to object to Class Counsel's requested fee. The overwhelmingly positive reaction of the class, which is a *Gunter* factor, strongly supports the Court's conclusion to grant Class Counsel's requested fee.

7. As noted above, the Settlement has conferred a monetary benefit on the Direct Purchaser Class that is substantial.

8. The Settlement here is directly attributable to the skill and efforts of Class Counsel, who are highly experienced in prosecuting these types of cases.

9. In prosecuting this action, Class Counsel have expended more than 46,000 hours of uncompensated time, and incurred substantial out of pocket expenses, with no guarantee of

recovery. Class Counsel's hours were reasonably expended in this highly complex case that was vigorously litigated for almost a decade, and their time was expended at significant risk of non-payment.

10. Class Counsel's requested fee is consistent with attorney fee awards in numerous other, Hatch-Waxman cases alleging delayed generic entry, where the courts in such cases have routinely granted a fee award of 33 $\frac{1}{3}$ %. Class Counsel's requested fee is also consistent with and/or lower than the fee that would have been negotiated had the case been subject to a private contingent fee agreement.

11. A 33 $\frac{1}{3}$ % fee award would equate to a negative lodestar multiplier of approximately 0.772. Such a multiplier is well below the range of those frequently awarded in common fund cases.

12. Upon consideration of Class Counsel's petition for fees, costs and expenses, Class Counsel are hereby awarded attorneys' fees totaling \$20,066,666.70 (representing 33 $\frac{1}{3}$ % of the Settlement Fund) and costs and expenses totaling \$3,076,544.67, together with a proportionate share of the interest thereon from the date the funds are deposited in the Settlement Escrow Account until payment of such attorneys' fees, costs and expenses, at the rate earned by the Settlement Fund, to be paid solely from the Settlement Fund and only if and after the Settlement becomes final in accordance with paragraph 7 of the Settlement Agreement. Upon consideration of Class counsel's petition for incentive payments for Direct Purchaser Class Representatives, Louisiana Wholesale Drug Co. is hereby awarded \$100,000.00 to be paid solely from the Settlement Fund and only if and after the Settlement becomes final in accordance with paragraph 7 of the Settlement Agreement. Berger & Montague, P.C. and Garwin Gerstein & Fisher LLP shall allocate and distribute such attorneys' fees, costs and expenses among the various Class

Counsel which have participated in this litigation. Berger & Montague, P.C. and Garwin Gerstein & Fisher LLP shall also ensure the incentive award is paid to class representative Louisiana Wholesaler Drug Co., which has participated in this litigation. The Released Parties (as defined in paragraph 14 of the Settlement Agreement) shall have no responsibility for, and no liability whatsoever with respect to, any payment or disbursement of attorneys' fees, expenses, costs or incentive awards among Class Counsel and/or Class Representatives, nor with respect to any allocation of attorneys' fees, expenses, costs or incentive awards to any other person or entity who may assert any claim thereto. The attorneys' fees, costs and expenses, and incentive awards authorized and approved by Final Judgment and Order shall be paid to Berger & Montague, P.C. within five (5) days after this Settlement becomes final pursuant to paragraph 7 of the Settlement Agreement or as soon thereafter as is practical and in accordance with the terms of the Settlement Agreement and the Escrow Agreement. The attorneys' fees, costs and expenses, and incentive award authorized and approved by the Final Judgment and Order shall constitute full and final satisfaction of any and all claims that Plaintiffs and any Direct Purchaser Class member, and their respective counsel, may have or assert for reimbursement of fees, costs, and expenses, and incentive awards, and Plaintiffs and members of the Direct Purchaser Class, and their respective counsel, shall not seek or demand payment of any fees and/or costs and/or expenses and/or incentive awards from any source other than the Settlement Fund, including the Defendants.


13. As provided in the Final Judgment and Order, the Court retains exclusive jurisdiction over the Settlement and the Settlement Agreement as described therein, including the administration and consummation of the Settlement.

14. The Court finds that the Final Judgment and Order adjudicates all of the claims, rights and liabilities of the parties to the Settlement Agreement (including the members of the

Direct Purchaser Class), and is final and shall be immediately appealable. This order is also final and immediately appealable. Neither this Order nor the Settlement Agreement nor any other Settlement-related document shall constitute any evidence or admission by the Defendants or any other Released Party on liability, any merits issue, or any class certification issue (including but not limited to whether a class can be certified for purposes of litigation or trial) in this or any other matter or proceeding, nor shall either the Settlement Agreement, this Order, or any other Settlement-related document be offered in evidence or used for any other purpose in this or any other matter or proceeding except as may be necessary to consummate or enforce the Settlement Agreement, the terms of this Order, or if offered by any released Party in responding to any action purporting to assert Released Claims.

IT IS SO ORDERED.

Dated: 10/5, 2017



The Honorable Stanley R. Chesler
Senior United States District Judge
U.S. District Court for the
District of New Jersey