IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KING DRUG COMPANY OF FLORENCE, Inc., *et al.*, On behalf of themselves and all others similarly situated, **Plaintiffs,** **v.** **CEPHALON, INC., *et al.*,** **Defendants.**	**Civil Action No.** **2:06-cv-01797-MSG** **Judge Mitchell S. Goldberg**

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES

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I. INTRODUCTION

Class Counsel, representing King Drug Company of Florence, Inc. ("King Drug"), Rochester Drug Co-Operative, Inc. ("RDC"), Burlington Drug Co., Inc. ("Burlington"), J.M. Smith Corp. d/b/a Smith Drug Co. ("Smith Drug"), Meijer, Inc. and Meijer Distribution, Inc. ("Meijer"), SAJ Distributors, Inc. and Stephen L. LaFrance Holdings, Inc. ("SAJ"), and the direct purchaser class (collectively "DPCPs"), respectfully submit this memorandum in support of their Motion for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards for the Class Representatives.[1]

For almost a decade, Class Counsel have aggressively prosecuted this highly-complex, hotly-contested antitrust case against five sophisticated pharmaceutical companies represented by some of the most prominent defense law firms in the country. On April 17, 2015, Class Counsel settled DPCPs' claims against the Cephalon Defendants[2] ("the Settlement"). Pursuant to the Settlement, the Cephalon Defendants agreed to pay $512 million in cash into an escrow fund for the benefit of DPCPs, in exchange for dismissal of the litigation between DPCPs and the Cephalon Defendants.[3] The Settlement is the largest ever in a Hatch-Waxman delayed generic

[1] Class Counsel are the firms listed in n. 3 of the accompanying Declaration of Lead Counsel Bruce E. Gerstein (the "Gerstein Dec.") annexed as Exhibit A hereto.

[2] The Cephalon Defendants are Cephalon, Inc., Teva Pharmaceutical Industries, Ltd., Teva Pharmaceuticals USA, Inc. and Barr Pharmaceuticals, Inc. Defendants Mylan Pharmaceuticals, Inc. and Mylan, Inc. ("Mylan") and Ranbaxy Laboratories, Ltd. and Ranbaxy Pharmaceuticals, Inc. (collectively "Ranbaxy") are not part of the Settlement. Solely for purposes of referring to the history of the litigation, the Cephalon Defendants, Mylan and Ranbaxy are herein collectively referred to as "Defendants" and Barr, Teva, Mylan and Ranbaxy are herein collectively referred to as the "Generic Defendants," as applicable.

[3] On July 27, 2015, the Court certified a settlement class, appointed Class Counsel consistent with the Court's prior August 19, 2009 Order, approved the form and manner of notice of the Settlement to the class, and granted preliminary approval to the Settlement, finding that it was fair, adequate and reasonable. *See* Dkt No. 831. On August 6, 2015, the Cephalon Defendants deposited $512 million into an escrow account held in trust by Morgan Stanley Smith Barney LLC ("Morgan Stanley") that is earning interest for the benefit of the class. *See* Ex. 1 to Gerstein

entry antitrust case on behalf of direct purchasers – more than twice as large as any prior settlement in a similar case. Class Counsel believe that the Settlement represents an outstanding outcome for DPCPs.

Class Counsel prosecuted DPCPs' claims against the Cephalon Defendants on a wholly contingent basis, without any guarantee of success or compensation for time spent, or for reimbursement of out-of-pocket costs and expenses.[4] DPCPs' highly favorable recovery was achieved as a result of Class Counsel's skill, competence, perseverance and diligence in the face of the Cephalon Defendants' vigorous defenses and the legal and factual hurdles Class Counsel faced in litigating the case.

From the inception of the litigation through the time that the Court granted preliminary approval to the Settlement, Class Counsel expended more than 59,000 hours of uncompensated professional time and incurred more than $3.5 million in unreimbursed out-of-pocket expenses.[5] As compensation for its efforts, Class Counsel seek an award of attorneys' fees in the amount of $140,800,000.00, *i.e.*, 27.5% of the Settlement (including a *pro rata* share of the accrued interest), and reimbursement of litigation expenses in the amount of $3,581,091.19.[6] Class

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Dec. Pursuant to the Court's order, Class Counsel's briefing in support of final approval of the Settlement and the entry of final judgment will be submitted to the Court on or before October 8, 2015, and the Fairness Hearing will take place on October 15, 2015. *See* Dkt No. 831.

[4] Class Counsel is continuing to prosecute DPCPs' claims against Mylan and Ranbaxy, and trial has been scheduled for February 2016.

[5] Because the Settlement only partially resolves this litigation, Class Counsel's application requests expenses through July 27, 2015 (the date that the Court granted preliminary approval to the Settlement) and is supported with attorney time billed up to July 27, 2015, as well as time billed after that date pertaining only to the Settlement (Class Counsel has not incurred any expenses relating to the Settlement from July 27, 2015 through the date of this submission).

[6] Class Counsel submits, as Exhibits 3-17 to the Gerstein Dec., the declarations of the individual firms that worked on this litigation. These declarations detail the professional experience and qualifications of each of these firms, and the services rendered, the hours expended, and the expenses incurred by each firm.

Counsel also seek incentive awards of $100,000 each for class representatives King Drug, RDC, Burlington and Smith Drug, and $50,000 each for class representatives Meijer and SAJ, to recognize their extensive and vital participation in this litigation.

As described more fully below and in the Gerstein Declaration, the following factors strongly support Class Counsel's application:

First, the size of the Settlement is unquestionably substantial, inasmuch as it is the largest ever in a Hatch-Waxman delayed generic entry case on behalf of direct purchasers, and will provide a significant guaranteed recovery to class members. Indeed, the $512 million settlement here (with two defendants remaining) tops the next two largest settlements in similar delayed generic entry cases *combined*.[7]

Second, four of the named plaintiffs, all of the national wholesalers (Cardinal Health, Inc., McKesson Corp. and AmerisourceBergen Corp.), and six regional wholesalers - who collectively will be entitled to a majority of the monetary recovery here - have affirmatively expressed their support for both the Settlement and Class Counsel's request for attorneys' fees of 27.5% of the Settlement. *See* Exhibits 19-31 to the Gerstein Dec. Class Counsel believe that the affirmative approval and support by the class members is the most significant factor in assessing the reasonableness of the fee request. Such is the truest indicator of what a private litigant engaging the services of counsel would believe is a reasonable fee, particularly because it comes after the results of litigation and the efforts exerted therein are fully known.[8] Significantly, unlike most class actions, the class here consists of approximately twenty-two national and regional

[7] *See infra* at pp. 17-18 (*In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-cv-340 (D. Del.) ($250 million); *In re Buspirone Antitrust Litig.*, No. 01-cv-7951 (S.D.N.Y.) ($220 million)).

[8] *See* Report of Prof. Charles Silver (Ex. 18 to Gerstein Dec.). Professor Silver, a legal ethics expert, has submitted a report opining that Class Counsel's requested fee is ethically proper.

pharmaceutical resellers, all of whom are business entities. Many have participated in numerous other Hatch-Waxman antitrust cases (most of which were prosecuted by the same Class Counsel as here) and are intimately familiar with the litigation and the efforts of Class Counsel. *See* Gerstein Dec. at ¶ 136.

Third, although antitrust cases are inherently complex and involve substantial legal risk, this case was atypically so. DPCPs, who were the *first* plaintiff group to file an action challenging Defendants' conduct,[9] asserted multiple theories of liability, including but not limited to that all Defendants entered into anticompetitive agreements under which Cephalon agreed to pay hundreds of millions of dollars to the Generic Defendants in return for the Generic Defendants' agreements to delay market entry of generic Provigil, as well as claims against all Defendants relating to Cephalon's fraudulent procurement and enforcement of its Provigil patent. Consequently, Class Counsel was faced with highly-technical patent issues in addition to an already otherwise complex antitrust case involving multiple parties and multiple agreements in the context of the Hatch-Waxman regulatory regime. *See* Gerstein Dec. at ¶¶ 126-129.

Fourth, this case has been litigated in a unique era of antitrust law. Before and throughout this litigation, Class Counsel has been litigating numerous other, similar delayed generic entry cases on behalf of the direct purchaser class, and the work that Class Counsel has performed in those cases has led to developments in the law that had a direct impact on this litigation. Specifically, at the time DPCPs filed the litigation in 2006, the appropriate legal standard for antitrust analysis of "reverse payment" agreements was a hotly contested issue. *See* Gerstein Dec. at ¶¶ 4, 126. Not only did Class Counsel file and litigate the case through the motion to dismiss and discovery stages under the restrictive (and now unnecessary) so-called "scope of the

[9] The Federal Trade Commission did not file its complaint until almost two years after DPCPs' complaint was filed. *See* Gerstein Dec. at ¶ 1 n. 4.

patent" standard, but Class Counsel continued to litigate the case in step with rapidly evolving law which, just prior to the parties briefing summary judgment motions, led the United States Supreme Court to ultimately grant *certiorari* on the issue of the appropriate legal standard and issue its seminal decision in *Federal Trade Commission v. Actavis, Inc.*, 133 S. Ct. 2223 (2013). *See* Gerstein Dec. at ¶¶ 4, 126; *infra* at n. 13.

Fifth, in addition to filing and litigating the case in the face of uncertainty in the law governing reverse payment cases, Class Counsel confronted other significant obstacles in prosecuting this litigation. All Defendants, including the Cephalon Defendants, presented vigorous, sophisticated defenses to each and every aspect of DPCPs' case, including but not limited to arguing that: (a) all of the payments at issue were not "reverse payments" but instead were made for lawful purposes pursuant to *bona fide* business transactions; (b) the Generic Defendants would not have launched earlier regardless of their settlement agreements; (c) that Cephalon lacked market power; and (d) that no class should be certified. *See* Gerstein Dec. at ¶ 130.

Sixth, the litigation is in an advanced stage, having been (partially) settled only after completion of exhaustive fact and expert discovery, significant motion practice (including numerous discovery motions, class certification, summary judgment and *Daubert* briefing), the start of trial preparations, and two lengthy but unsuccessful efforts at resolving the case through mediation. Class Counsel expended significant time and resources litigating the case against the Cephalon Defendants up until the point of an imminent trial.

Seventh, Class Counsel's percentage-of-recovery fee request is consistent with (and indeed, lower than) fee awards in similar cases and strongly supported by analyses of the "*Gunter* factors" derived from *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 193 (3d Cir. 2000),

and the "*Prudential* factors" derived from *In re Prudential Ins. Co. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 338-40 (3d Cir. 1998).

II. HISTORY OF THE LITIGATION

DPCPs are direct purchasers of Cephalon's brand-name wakefulness-promoting drug, Provigil. DPCPs filed the first complaint in these consolidated actions in April 2006. *See* Gerstein Dec. at ¶ 1. In brief, DPCPs allege that Defendants engaged in anticompetitive conduct in violation of the antitrust laws, causing members of the class to pay artificially inflated prices for Provigil and/or its generic equivalents. *Id.* at ¶¶ 2, 14. All Defendants have denied wrongdoing and have asserted numerous defenses. A detailed history of this litigation is fully set forth in the Gerstein Declaration.

III. CLASS COUNSEL'S LITIGATION EFFORTS

The team assembled by Lead Counsel includes lawyers from some of the preeminent antitrust law firms in the country. These firms have over seventeen years of extensive experience prosecuting and trying Hatch-Waxman antitrust cases on behalf of the same core class of direct purchasers, and have been involved in many of the critical decisions made by various courts in this cutting-edge area of antitrust law. *See* Gerstein Dec. at ¶125; *infra* at n. 13. Class Counsel took advantage of each firm's particular area of expertise to litigate this case in the most effective and efficient manner possible. *See* Ex. 3 to Gerstein Dec. at ¶ 3. A detailed description of Class Counsel's efforts is fully set forth in the Gerstein Declaration.

IV. ARGUMENT

A. Class Counsel's Fee Request Is Reasonable

i. The Percentage-of-Recovery Method is Appropriate for Calculating an Award of Attorneys' Fees in This Case

Federal Rules of Civil Procedure 23(h) and 54(d) permit courts overseeing class actions to award reasonable attorneys' fees and costs. The Supreme Court has long recognized that a lawyer who recovers a "common fund" on behalf of a class is entitled to reasonable attorneys' fees and expenses from the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In common fund cases, it is appropriate for attorneys' fees to be determined "based on a percentage of the fund bestowed upon the class." *Blum v. Stenson*, 465 U.S. 886, 930 n.16 (1984).

The Third Circuit has stated a preference for the use of the "percentage-of-recovery" method in determining fees. *See, e.g., In re Kirsch v. Delta Dental of New Jersey,* 534 Fed. Appx. 113, 115 (3d Cir. 2013) ("We have noted that '[t]he percentage of recovery method is generally favored in common fund cases…'") (internal quotation omitted); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006) (noting that "the percentage-of-recovery method is generally favored [in common fund cases] because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure") (citations and internal quotations omitted); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 330 (3d Cir. 2011) (*en banc*) (citations omitted). Among other reasons, courts generally favor this method because:

> The percentage method directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation, which clearly benefits both litigants and the judicial system. The percentage approach is also the most efficient means of rewarding the work of class action attorneys, and avoids the wasteful and burdensome process – to both counsel and the courts – of preparing and evaluating fee petitions, which the Third Circuit Task Force described as "cumbersome, enervating, and often surrealistic."

In re Lloyd's Am. Trust Fund Litig., 96 Civ. 1262 (RWS), 2002 U.S. Dist. LEXIS 22663, at *74 (S.D.N.Y. Nov. 26, 2002) (quoting *Court Awarded Attorney Fees, Report of the Third Cir. Task Force*, 108 F.R.D. 237, 258 (3d Cir. 1985)).

ii. Application of the Third Circuit's Reasonableness Factors Supports the Requested Fee

Class Counsel's fee request is consistent with applicable law. The Third Circuit has identified ten factors for district courts to consider when applying the percentage-of-recovery method and considering the reasonableness of a request for attorney's fees. The first seven of these factors – the *Gunter* factors – are:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

These *Gunter* factors "need not be applied in a formulaic way. Each case is different, and in certain cases, one factor may outweigh the rest." *Gunter*, 223 F.3d at 195 n.1; *Kirsch*, 534 Fed. Appx. at 116 (same).

The remaining three relevant factors – the *Prudential* factors – are:

> (1) the value of benefits accruing to class members that are attributable to the efforts of class counsel as opposed to other groups, such as government agencies conducting investigations; (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement; and (3) any "innovative" terms of settlement.

See, e.g., In re Fasteners Antitrust Litig., 2014 U.S. Dist. LEXIS 9990, *10-20 (E.D. Pa. Jan. 27, 2014) (considering both *Gunther* and *Prudential* factors). In addition to the *Gunther/Prudential* factors, a court may consider "any other factors that are useful and relevant with respect to the particular facts of the case." *AT&T*, 455 F. 3d at 166. Because each case is different, the factors

"need not be applied in a formulaic way" or be given the same weight. *AT&T*, 455 F.3d at 166 (quotation omitted).

As detailed below, analyses of these factors strongly supports approval of Class Counsel's requested fee.

a. The Size of the Fund Created and the Number of Class Members Benefitted Favors the Requested Fee Award

As noted above, the Settlement is the largest ever in a Hatch-Waxman delayed generic entry case on behalf of direct purchasers. The class, which is comprised of approximately 22 members, will share in a recovery of $512 million, net of any attorneys' fees, expenses, and incentive awards granted by the Court. Upon the Settlement becoming final, the only thing class members will need to do in order to receive their *pro rata* share of the net Settlement is to submit a claim form that will be made available to them via multiple sources, including direct mailing. Accordingly, the recovery here is unquestionably substantial and immediate.

Not only is the magnitude of this recovery substantial in terms of dollar value, but also when assessed in light of the risks faced by Class Counsel going forward against the Cephalon Defendants. *See In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 105 (D.N.J. 2012) ($41 million settlement represented a reasonable and adequate settlement for the class in view of the "substantial risks" plaintiffs faced and the "immediate benefits" provided by the settlement). Absent the Settlement, Class Counsel would have to win a favorable jury verdict against the Cephalon Defendants in the face of numerous defenses. Indeed, as this Court itself acknowledged earlier this year, Class Counsel's convincing a jury that Cephalon committed *Walker Process* fraud would involve "a lot of work." *See* Dkt No. 740 (1/29/2015 Tr. at 98).

Even assuming a win at trial, an appeal (and a petition for *certiorari* thereafter) would inevitably follow, presenting additional risk and guaranteeing additional delay in a case already

nearly a decade-old. In comparison, through the Settlement, class members are assured of immediate and substantial recovery free of the risks and delays of a jury trial against the Cephalon Defendants and subsequent appeals.

Accordingly, analysis of this factor supports Class Counsel's fee request.

b. The Overwhelming Class Support and Absence of Objections To Date Favor Awarding the Fees Requested by Counsel

The overwhelmingly favorable response of the class strongly militates in favor of approval of Class Counsel's fee request. The Third Circuit has recognized that the lack of objections to a fee request and positive views of Class Counsel's efforts, particularly from class members, are highly relevant to an evaluation of the fairness of a fee request. *See, e.g., In re Rite Aid Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (fact that a number of class members were "'sophisticated' institutional investors that had considerable financial incentive to object had they believed the fees were excessive" was a factor supporting the requested fee) (citation omitted); *See Stop & Shop*, 2005 U.S. Dist. LEXIS 9705, *33 (E.D. Pa. May 20, 2005) (noting that while class members consisted of sophisticated businesses not one class member objected to requested fee).

Here, class members were informed via notice of settlement mailed on August 17, 2015 of the details of the Settlement, and that Class Counsel intended to submit a fee application, and not a single class member has objected to date.[10] Rather, thirteen members of the class have overwhelmingly *affirmatively supported* the Settlement and Class Counsel's request for attorneys' fees by submitting supporting letters. *See* Gerstein Dec. at ¶¶ 136-152; Exhibits 19-31 to Gerstein Dec. This is particularly significant because the class consists of business entities that

[10] The period for lodging objections to either the Settlement or Class Counsel's fee application concludes on October 1, 2015. In the event that any objection is received, Class Counsel will promptly inform the Court.

possess both the incentive and knowledge to object to the Settlement or Class Counsel's fee application.

Accordingly, analysis of this factor supports Class Counsel's fee request.

c. Class Counsel Are Skilled in Antitrust Class Actions and Efficiently Resolved this Protracted Case

Class Counsel's skill and efficiency supports the fee request here. Class Counsel include some of the most preeminent antitrust firms in the United States, with decades of experience prosecuting and trying complex antitrust actions. *See* Gerstein Dec. at ¶¶ 125; Exs. 3-17 to the Gerstein Dec. These firms have a particular expertise in litigating Hatch-Waxman pharmaceutical antitrust cases on behalf of direct purchasers, having litigated such cases for over seventeen years on behalf of the same core class of direct purchasers – no other collection of firms in the U.S. has litigated more Hatch-Waxman antitrust cases on behalf of the direct purchaser class. This experience has enabled each law firm involved to specialize in particular areas of expertise (*e.g.*, antitrust violations, patents, economics, class certification, the Hatch-Waxman regulatory regime, pharmaceutical company business operations, and direct purchaser business operations), thus providing Class Counsel with the ability to quickly and efficiently coordinate, organize, and implement litigation strategies, and to react to defenses of all makes and models.

"The skill and efficiency of the attorneys involved is measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Chemi v. Champion Mortg.*, No. 2:05-cv-1238 (WHW), 2009 U.S. Dist. LEXIS 44860, at *31 (D.N.J. May 26, 2009) (citation

and internal quotations omitted). Class Counsel's experience and skill is evidenced by their effective prosecution of this case, including the highly favorable Settlement achieved.[11]

Additionally, the Court should consider the quality of defense counsel when evaluating Class Counsel's work. *See, e.g., In re Schering-Plough Corp.*, 2013 U.S. Dist. LEXIS 147981, *71 (D.N.J. Aug. 28, 2013); *Hall v. AT&T Mobility LLC*, 2010 U.S. Dist. LEXIS 109355, at *64 (D.N.J. Oct. 13, 2001). Over the course of this case, the Cephalon Defendants have been represented by some of the country's leading law firms: Kirkland & Ellis LLP, Wilmer Cutler Pickering Hale & Dorr LLP and Stevens & Lee, P.C. Achieving such a successful result for the Class when faced by such capable defense counsel further demonstrates Class Counsel's skill.

Accordingly, analysis of this factor supports Class Counsel's fee request.

d. The Complexity and Duration of the Litigation Favors the Requested Fee Award

In evaluating a fee award, the complexity and duration of the litigation is a factor to be considered by the court. *See Gunter*, 223 F.3d at 195 n. 1. "An antitrust class action is arguably the most complex action to prosecute." *In re Motorsports Merchandise Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000). *See also In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 743 (E.D. Pa. 2013) ("Antitrust class actions are particularly complex to litigate and therefore quite expensive.").

This litigation has been proceeding for almost a decade, which is of significant duration by any measure. *See, e.g., In re Fasteners Antitrust Litig.*, 2014 U.S. Dist. LEXIS 9990, *13-14 (E.D. Pa. Jan. 27, 2014) (deeming six-year antitrust litigation "lengthy"). And while all antitrust

[11] In a Hatch-Waxman case involving many of the same lawyers comprising Class Counsel here, a district court in this Circuit noted that "[t]he settlement entered with Defendants is a reflection of Class Counsel's skill and experience." *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, *37 (D.N.J. Nov. 9, 2005).

litigation is inherently complex, this litigation was exceptionally so. As an initial matter, this action has been litigated in a unique era of rapidly evolving antitrust law. As noted above, before and during the pendency of this litigation, Class Counsel has been litigating other, similar delayed generic entry cases on behalf of direct purchasers which have directly impacted the development of the law on "reverse payment" settlements, and consequently, the instant litigation. While Class Counsel lost some of these cases (and so recovered nothing), these same cases helped crystallize the central legal issues that eventually were taken up by the Supreme Court in *Actavis*.[12] Moreover, DPCPs' patent-related allegations presented technical and scientific issues lying at the intersection of patent and antitrust law. Even apart from such issues, one of DPCPs' other theories of liability – *i.e.*, that Defendants had entered into unlawful reverse payment agreements under *Actavis* – was factually complex. With five defendants and multiple allegedly anticompetitive agreements, Class Counsel had to develop an extremely detailed factual record in order to prove their allegations of four unlawful agreements and rebut Defendants' defenses that the agreements were all *bona fide* business transactions and not for delay. Separate from DPCPs' liability theories, Class Counsel also had to deal with complex issues pertaining to causation (*i.e.*, evidence that the Generic Defendants could and would have entered the market earlier absent the agreements with Cephalon), Cephalon's market power and class certification, all of which were contested by Defendants. *See In re Gen. Instruments Sec.*

[12] *See, e.g., In re Cardizem CD Antitrust Litig.*, 332 F. 3d 896 (6th Cir. 2003), *cert. denied*, 543 U.S. 939 (2004); *Valley Drug Co. v. Geneva Pharms.*, 344 F. 3d 1294 (11th Cir. 2003), *cert. denied*, 543 U.S. 939 (2004); *Arkansas Carpenters Health & Welfare Fund v. Bayer AG et al.*, 604 F.3d 98 (2d Cir. 2010), *cert. denied*, 562 U.S. 1280 (2011); *In re K-Dur Antitrust Litig.*, 686 F. 3d 197 (3d Cir. 2012), *vacated and remanded in light of Actavis*, 133 S. Ct. 2223 (2013). *See also* Gerstein Dec. at ¶¶ 4, 9. Class Counsel here has served as class counsel in all of the above cases. Further, Class Counsel here served (and continues to serve) as class counsel in the private companion case to *Actavis (In re Androgel Antitrust Litigation*, MDL No. 2084 (N.D. Ga.)) and served as amicus curiae after the Supreme Court granted *certiorari*.

Litig., 209 F. Supp. 2d 423, 433 (E.D. Pa. 2001) ("[T]his litigation involved multiple complex issues and has been a hard fought battle for many years."). Accordingly, the complexity and duration of this near-decade long litigation supports the requested fee. *See* generally Gerstein Dec.

Accordingly, analysis of this factor supports Class Counsel's fee request.

e. The Risk of Nonpayment Favors Approval of Class Counsel's Fee Request

In *Gunter*, the Third Circuit noted the "stated goal in percentage fee-award cases of ensuring that competent counsel continue to be willing to undertake risky, complex and novel litigation." *Gunter*, 223 F.3d at 198 (citations and internal quotation omitted). Indeed, attorneys' risk is a critical factor in determining an appropriate fee award. *See, e.g.*, *Schering-Plough*, 2013 U.S. Dist. LEXIS 147981, at *79-80 ("Plaintiffs' Counsel undertook this Action on a purely contingent fee basis, assuming an enormous risk that the litigation would yield potentially little, or no, recovery and leave them uncompensated for their significant investment of time and very substantial expenses. Courts have consistently recognized that this risk is an important factor favoring an award of attorneys' fees.") (citation omitted); *Stop & Shop*, 2005 U.S. Dist. LEXIS 9705 at *37-40 (risk of overcoming numerous defenses "favors approval of the percentage of recovery requested as a fee in this case"); *Nichols*, 2005 U.S. Dist. LEXIS 7061 at *72 (risk of nonpayment was high where class counsel litigated complex legal and factual issues for more than four years in the face of strong defenses and the possibility that class would not be certified).

Here, Class Counsel filed and prosecuted this case despite facing the very real risk that they would receive zero compensation for the hard work and long hours, as well as the millions of dollars in cash outlays expended litigating. The risk was particularly significant here at the

time of filing given that, as noted above, the law on reverse payment cases was in a state of flux. Moreover, proving *Walker Process* fraud is famously difficult. Nevertheless, Class Counsel represented the named plaintiffs and the class purely on a contingency fee basis, with no up-front retainer fees or allowance for expenses, nor any compensation during the course of this litigation. *See, e.g., In re Fasteners Antitrust Litig.*, 2014 U.S. Dist. LEXIS 9993, at *15 (noting that "Plaintiffs' Counsel undertook this case on a purely contingent fee basis, and that this poses a significant risk of not being paid or reimbursed for the costs of litigating the case").

Absent the Settlement, the case against the Cephalon Defendants was poised for trial (and indeed, trial has been scheduled as to DPCPs' claims against the remaining Defendants). Although Class Counsel have always been confident in DPCPs' claims, and remain so, Class Counsel had no guarantee that a jury would find in DPCPs' favor or that a favorable jury verdict would withstand appellate scrutiny.

These risk considerations have particular application to complex Hatch-Waxman antitrust cases, where several cases litigated by the same Class Counsel as here have been unsuccessful and have yielded no recovery, even after Class Counsel expended thousands of hours in time and millions of dollars in out-of-pocket expenditures.[13]

[13] For instance, after years of litigation, jury trials were lost in the cases of *Louisiana Wholesale Drug Co., Inc. v. Sanofi-Aventis*, Case No. 07-cv-07343 (S.D.N.Y.) and *In re Nexium (Esomeprazole) Antitrust Litig.*, Case No. 12-cv-2409 (D. Mass.) (notice of appeal filed). And Class Counsel litigated reverse payment agreements involving the brand drug Cipro for a decade, including conducting numerous depositions in London (with translators for German speaking witnesses of defendant Bayer). The Second Circuit affirmed dismissal of the case under the "scope of the patent" standard, but in doing so, openly questioned the correctness of its prior "scope of the patent" ruling in *In re Tamoxifen Citrate Antitrust Litig.*, 466 F.3d 187 (2d Cir. 2006). *See Arkansas Carpenters*, 604 F.3d at 108-110. The Third Circuit then picked up on this in *K-Dur*. *See* 686 F.3d at 213 ("the judges on the *Arkansas Carpenters* panel made clear that they thought that *Tamoxifen* was wrongly decided"). The Supreme Court then cited the *K-Dur* court's disagreement with the decision of the Second Circuit as a reason why it granted *certiorari* in *Actavis*. *See Actavis*, 133 S. Ct. at 2230.

Accordingly, analysis of this factor supports Class Counsel's fee request.

f. The Significant Time Devoted by Class Counsel Supports Approval of the Requested Fee Award

Class Counsel expended more than 59,000 hours litigating this case, and have advanced out-of-pocket outlays of more than $3.5 million in that effort to date. *See* Gerstein Dec. at ¶ 132. As a court in this district has observed, "[o]ver the course of years, it is reasonable that so much time would have been spent on these complex cases, particularly given the excellent counsel of Defendants and their contested nature." *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 253 (D.N.J. 2005). *See also In re Gen. Instruments*, 209 F. Supp. 2d at 433 (class counsel's devotion of over 38,000 hours over a six year period "unquestionably represent a significant commitment…"). Such was the case here. From pre-complaint investigation through the time that the Court granted preliminary approval to the Settlement, Class Counsel expended an enormous amount of time and resources on this case. *See generally* Gerstein Dec. Moreover, apart from going to trial on DPCPs' claims against the remaining defendants, Class Counsel will be expending a significant number of hours in connection with administering the Settlement without compensation. *See Varacallo*, 226 F.R.D. at 253 (fee award will be sole compensation for counsel "despite the continuing responsibilities [counsel] will have in responding to Class Member inquiries…").

Accordingly, analysis of this factor supports Class Counsel's fee request.

g. Class Counsel's Requested Fee is Lower Than Awards in Similar Cases

A comparison of Class Counsel's fee request with attorneys' fees awarded in similar cases supports the instant fee request. Indeed, Class Counsel's requested fee is significantly lower than awards granted in the most analogous cases previously settled – other complex Hatch-

Waxman antitrust class action cases brought by classes of direct purchasers alleging impeded generic entry – as the following chart indicates:

Case	Fee Award
In re Doryx Antitrust Litig., No. 12-3824 (E.D. Pa. Sept. 15, 2014)	33⅓% of $15 million settlement
In re Neurontin Antitrust Litig., No. 02-1830 (D.N.J. Aug. 6, 2014)	33⅓% of $191 million settlement
In re Skelaxin (Metaxalone) Antitrust Litig., No. 12-cv-83 (E.D. Tenn. June 30, 2014)	33⅓% of $73 million settlement
In re Flonase Antitrust Litig., No. 08-cv-3149 (E.D. Pa. June 14, 2013)	33⅓% of $150 million settlement
In re Wellbutrin XL Antitrust Litig., No. 08-cv-2431 (E.D. Pa. Nov. 7, 2012)	33⅓% of $37.5 million settlement
Rochester Drug Co-Operative, Inc. v. Braintree Labs., Inc., No. 07-142 (D. Del. May 31, 2012)	33⅓% of $17.25 million settlement
In re DDAVP Antitrust Litig., No. 05-2237 (S.D.N.Y. Nov. 28, 2011)	33⅓% of $20.25 million settlement
In re Wellbutrin SR Antitrust Litig., No. 04-5525 (E.D. Pa. Nov. 21, 2011)	33⅓% of $49 million settlement
Meijer, Inc. v. Abbott Labs., No. C07-5985 CW (N.D. Cal. Aug. 11, 2011)	33⅓% of $52 million settlement
In re Nifedipine Antitrust Litig., No. 03-mc-223-RJL (D.D.C. Jan. 31, 2011)	33⅓% of $35 million settlement
In re Oxycontin Antitrust Litig., No. 04-md-1603-SHS (S.D.N.Y. Jan. 25, 2011)	33⅓% of $16 million settlement
In re Tricor Direct Purchaser Antitrust Litig., No. 05-cv-340 (D. Del. April 23, 2009)	33⅓% of $250 million settlement
In re Remeron Direct Purchaser Antitrust Litig., 2005 U.S. Dist. LEXIS 27013 (D.N.J. Nov. 9, 2005)	33⅓% of $75 million settlement
In re Terazosin Hydrochloride Antitrust Litig., No. 99-MDL-1317, 2005 U.S. Dist. LEXIS 43082 (S.D. Fla. Apr. 19, 2005)	33⅓% of $74 million settlement
In re Relafen Antitrust Litig., No. 01-12239, 2004 U.S. Dist. LEXIS 28801 (D. Mass. April	33⅓% of $175 million settlement

9, 2004)	
In re Buspirone Antitrust Litig., No. 01-CV-7951, 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. April 11, 2003)	33⅓% of $220 million settlement
In re Cardizem CD Antitrust Litig., MDL No. 1278 (E.D. Mich. Nov. 26, 2002)	30% of $110 million settlement

Accordingly, analysis of this factor supports Class Counsel's fee request.

h. The Benefits of the Settlement to the Class Are Attributable to the Efforts of Class Counsel

The Third Circuit has suggested that, in evaluating a fee request, it "may be relevant and important to consider" whether the benefits of the Settlement were attributable to the efforts of others, such as government investigators, rather than class counsel. *AT&T*, 455 F.3d at 165 (citing *Prudential*, 148 F.3d at 338).

Here, the Settlement is directly attributable to the efforts of Class Counsel. Notably, DPCPs filed the very first complaint challenging Defendants' conduct. All complaints brought by other plaintiff groups, including the FTC, were later filed. *See* Gerstein Dec. at ¶ 1. Indeed, the FTC filed its case (against Cephalon only) almost two years after DPCPs' complaint was filed. *Id.* Moreover, at Apotex's request, DPCPs consulted with Apotex in their patent case, and since DPCPs were not parties to that litigation, DPCPs had to develop their own aspects of the patent case and pursue rulings concerning the preclusive effect of the Court's rulings in Apotex's case. *See* Gerstein Dec. at ¶ 127. Additionally, even apart from the patent-related aspects of DPCPs' antitrust case, Class Counsel aggressively worked to, among other things: (a) establish that Cephalon possessed monopoly power; (b) build a strong record that "but for" the agreements at issue all four of the Generic Defendants would have launched less-expensive generic versions of Provigil in 2006 (something not required of the FTC); (c) calculate overcharge damages on a

class-wide basis (not required of the FTC); (d) successfully defeat Defendants' motions to dismiss and *Actavis* summary judgment motions by presenting an intricate factual record; and (e) certify both a settlement and litigation class of direct purchasers (not required of FTC or any other plaintiff group). *See* Gerstein Dec. at ¶ 127. Finally, the $512 million Settlement with the Cephalon Defendants was reached *before* the FTC executed its settlement with Cephalon and Teva.[14] In sum, it cannot be said that the Settlement is attributable to the efforts of others.

Accordingly, analysis of this factor supports Class Counsel's fee request.

i. The Percentage Fee Requested Is Consistent With The Fee That Would Have Been Negotiated If The Case Had Been Subject To A Private Contingent Fee Agreement

While at least one court has interpreted *Prudential* as counseling courts not to give "great weight" to this factor because it is a "hypothetical exercise," (*see McDonough*, 2015 U.S. Dist. LEXIS 7510 at *124), the percentage fee requested by Class Counsel is consistent with the fee that would have been negotiated had this case been subject to a private contingent fee arrangement. *See, e.g.*, *AT&T*, 455 F.3d at 165 (citing *Prudential*, 148 F.3d at 338). "The percentage-of-the-fund method of awarding attorneys' fees in class actions should approximate the fee that would be negotiated if the lawyer were offering his or her services in the private marketplace." *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *46. In *In the Matter of Continental Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (Posner, C.J.), the court explained that:

> The object in awarding a reasonable attorney's fee . . . is to give the lawyer what he would have gotten in the way of a fee in an arm's length negotiation, had one

[14] As DPCPs previously informed the Court by letter, DPCPs' settlement with the Cephalon Defendants is entirely independent of and not contingent in any way upon the FTC settlement. *See* Dkt No. 812. Rather, the amount of DPCPs' settlement with the Cephalon Defendants will be credited against the FTC settlement. *Id.* As noted in the Gerstein Declaration, the Cephalon Defendants have already deposited the settlement funds pertaining to the DPCPs' settlement into the escrow account established by DPCPs and the Cephalon Defendants, which was approved by the Court as part of its preliminary approval grant. *See* Gerstein Dec. at ¶¶ 121-122.

> been feasible. In other words the object is to simulate the market where a direct market determination is infeasible.

Here, the requested fee of 27.5% is consistent with what would be "a privately negotiated contingent fee in the marketplace." *Hall*, 2010 U.S. Dist. LEXIS 109355, at *71. "Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class commercial litigation." *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *46. *See also In re Orthopedic Bone Screw Prods. Liab. Litig*., No. 97-381, 2000 U.S. Dist. LEXIS 15980, at *29 (E.D. Pa. Oct. 23, 2000) (noting that "plaintiffs' counsel in private contingency fee cases regularly negotiate agreements providing for thirty to forty percent of any recovery"). Indeed, Class Counsel has previously contracted private contingency fee arrangements ranging from 30-40% in other national pharmaceutical antitrust cases.

Accordingly, analysis of this factor supports Class Counsel's fee request.[15]

[15] Where, as here, the attorneys' fees requested as part of a large class action settlement satisfy the *Gunter*/*Prudential* factors, the Third Circuit declines to apply the so-called "declining percentage" approach to awarding fees, where a district court reduces the percentage of requested attorneys' fees simply because a proposed settlement is particularly large. *See Sullivan v. DB Investments, Inc.*, 667 F. 3d 273, 331 (3d Cir. 2011) ("[T]here is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizable fund," and we have approved large settlements where "class counsel's efforts played a significant role in augmenting and obtaining an immense fund") (internal quotations omitted); *Rite Aid*, 396 F.3d at 303 (rejecting an attempt to apply the declining percentage approach to a $126.6 million settlement and concluding that "put simply, the declining percentage concept does not trump the fact-intensive *Gunter/Prudential* analysis" utilized for evaluating attorney fee awards); *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 197 (E.D. Pa. 2000) (criticizing "declining percentage" approach as "penaliz[ing] attorneys who recover large settlements," "cast[ing] doubt on the whole process by which courts award fees by creating a separate, largely unarticulated set of rules for cases in which the recovery is particularly sizable" even if all of the relevant factors support a higher percentage). Moreover, the proffered rationale for the "declining percentage" approach, *i.e.*, that a large recovery cannot be said to be attributed to the direct efforts of counsel, is not applicable here in view of Class Counsel's aggressive prosecution of this case for nearly a decade and past summary judgment. *See Sullivan*, 667 F. 3d at 331 (noting that cases applying declining percentage involve recoveries that have "no direct relationship" to the efforts of counsel).

j. The Settlement Contains Innovative Terms

The presence of an innovative term contained in the Settlement further supports Class Counsel's fee request. *See Prudential*, 148 F. 3d at 339. At the time DPCPs and the Cephalon Defendants reached a settlement, oral argument on class certification was just days away. Consequently, DPCPs successfully negotiated for a settlement term which guaranteed recovery for class members even if the Court ultimately denied certification of a direct purchaser class. Specifically, the Settlement provides that even if the Court does not approve the settlement for any reason other than that the settlement is not fair, reasonable or adequate (including because the Court does not certify the Class for purposes of settlement), the Cephalon Defendants will offer Class members their *pro rata* allocated share of the settlement fund (subject to 40% of each share being placed into escrow while the Court reviews Class Counsel's petition for attorney's fees, costs, and incentive awards for the named plaintiffs). This represents an innovative term of settlement that took account of the specific procedural posture of the litigation at the time of the Settlement that works to benefit class members.

Accordingly, analysis of this factor supports Class Counsel's fee request.

k. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

The Third Circuit has suggested that district courts cross-check the percentage award against the "lodestar" -- which is determined by multiplying the number of hours reasonably worked on the case by a reasonable hourly rate for such services -- to help ensure the reasonableness of the fee. *See, e.g., Kirsch*, 534 Fed. Appx. at 116-17 (affirming district court's use of the percentage of recovery method to review fee application with lodestar calculation as a cross-check); *Gunter*, 223 F. 3d at 195 n. 1 ("[W]e have also suggested that district courts cross-check the percentage award at which they arrive against the "lodestar" method…"). In

calculating the lodestar for cross-check purposes, the court need not scrutinize the documented hours. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) ("The lodestar cross-check calculation need entail neither mathematical precision nor bean counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records.").

Class Counsel's requested percentage-of-recovery fee award is also reasonable when analyzed in light of a lodestar crosscheck. As detailed in the Gerstein Declaration, Class Counsel worked 59,464.07 hours on this case, which is collectively $34,133.957.95 million in time based on current billing rates. *See* Gerstein Dec. at ¶ 132. A 27.5% fee award would equate to a lodestar multiplier of 4.12. A multiplier "need not fall within any pre-defined range." *AT&T*, 455 F. 3d at 164. The Third Circuit has recognized that "[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied." *Prudential*, 148 F. 3d at 341 (quotation omitted). *See also Sewell v. Bovis Lend Lease LMB, Inc.*, 2012 U.S. Dist. LEXIS 53556, *38 (S.D.N.Y. Apr. 20, 2012) (courts "commonly award lodestar multipliers between two and six").[16]

Accordingly, the lodestar cross check in this case supports the requested fee.

B. Class Counsel's Costs And Expenses Are Reasonable And Were Necessarily Incurred To Achieve The Benefit Obtained.

It is well-settled that counsel who have created a common fund for the benefit of a class are entitled to be reimbursed for out-of-pocket expenses reasonably incurred in creating the fund.

[16] Higher multipliers have been granted in Hatch-Waxman antitrust cases. *See, e.g., Nichols v. Smithkline Beecham Corp.*, No. 00-6222, 2005 U.S. Dist. LEXIS 7061, at *78 (E.D. Pa. Apr. 22, 2005) (noting that "[t]he fee awarded in [the *Buspar* antitrust litigation] resulted in a multiplier of 8.46"); *Stop & Shop*, 2005 U.S. Dist. LEXIS 9705, at *60 (approving multiplier of 15.6 in Paxil antitrust litigation).

See Planned Parenthood of Central New Jersey v. Attorney General of State of New Jersey, 297 F.3d 253, 267 (3d Cir. 2002) (attorneys may be reimbursed for costs that are "incidental and necessary expenses incurred in furnishing effective and competent representation"); *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *48-49 ("Counsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.") (citing *In re Cendant Corp.*, 232 F. Supp. 2d 327, 343 (D.N.J. 2002) (internal citation omitted)).

Class Counsel's unreimbursed expenses were reasonably incurred and necessary to the representation of the Class. These expenses include fees paid to experts who were instrumental in supporting DPCPs' liability, causation and damage theories and refuting Defendants' defenses. *See* Exs. 3-17 to Gerstein Dec. [17] These expenses also include costs for computerized legal research, the creation and maintenance of an electronic document database, travel and lodging expenses, copying, court reporters, deposition transcripts and mediation. *Id.*[18] Accordingly, the Court should approve reimbursement of Class Counsel's expenses in full.

[17] Certain of the individual declarations and affidavits of Class Counsel may list "contribution to the litigation fund" (or similar phrase) as an expense. Lead Counsel established a litigation fund used to pay certain of the reasonable expenses herein, most particularly document database hosting fees and expert fees, and various firms made regular contributions to this fund throughout the litigation.

[18]Such expenses are of the type routinely charged to hourly fee-paying clients. *See, e.g.*, *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *49-50 (finding the following expenses 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.") (citing *Oh v. AT&T Corp.*, 225 F.R.D. 142, 154 (D.N.J. 2004)); *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 479 (D.N.J. 2008).

C. Incentive Awards For the Class Representatives Are Appropriate and Reasonable.

Class Counsel requests that the Court approve incentive awards in the amount of $100,000 for each of class representatives King Drug, RDC, Burlington and Smith Drug, and $50,000 for each of class representatives Meijer and SAJ, to recognize them for their extensive participation in this litigation. The named plaintiffs 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 responding to document requests and interrogatories, appearing for deposition keeping apprised of the progress of the case, and participating in mediation and settlement efforts. *See* Gerstein Dec. at ¶ 153.

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'y 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"). Moreover, numerous courts have awarded named class plaintiffs for the benefits they have conferred on the class, and the amount requested here is in line with typical awards.[19] This Court should therefore approve these appropriate and reasonable incentive awards to the named plaintiffs.

[19] *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.*,

V. CONCLUSION

For the reasons set forth above and in the Gerstein Declaration, Class Counsel respectfully request that this Court enter an Order awarding Class Counsel fees in the amount of $140,800,000.00, *i.e.*, 27.5% of the Settlement (including a *pro rata* share of the accrued interest), and reimbursement of expenses in the amount of $3,581,091.19. Class Counsel also respectfully request that this Court approve incentive awards of $100,000 for each of class representatives King Drug, RDC, Burlington and Smith Drug, and $50,000 for each of class representatives Meijer and SAJ for their efforts on behalf of the Class in the prosecution of this action.

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218 F.R.D. 508, 535-36 (E.D. Mich. 2003) (awarding $75,000 to each of two corporate class representatives).

September 17, 2015

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