Jonathan D. Clemente
CLEMENTE MUELLER, P.A.
222 Ridgedale Avenue
Cedar Knolls, NJ 07927
(973) 455-8008
Liaison Counsel for Direct Purchaser Class Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

In re Neurontin Antitrust Litigation	**Master File No. 02-1390**
THIS DOCUMENT RELATES TO:	
LOUISIANA WHOLESALE DRUG COMPANY, INC., MEIJER, INC. and MEIJER DISTRIBUTION, INC., on behalf of themselves and all others similarly situated,	**Civil Action No. 02-1830** **Civil Action No. 02-2731**
Plaintiffs,	
v.	
PFIZER, INC. and WARNER-LAMBERT CO.,	
Defendants.	

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

DOCKETED CASES

FEDERAL STATUTES

I. INTRODUCTION.

Class Counsel,[1] on behalf of Louisiana Wholesale Drug Company, Inc. ("LWD"), Meijer, Inc., and Meijer Distribution, Inc. (together, "Meijer")[2] and the Class[3] (LWD, Meijer and the Class collectively, "Plaintiffs"), respectfully submit this Memorandum of Law in Support of their Motion for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards for the Class Representatives, under Federal Rules of Civil Procedure 23(h)(1) and 54(d)(2).

---

[1] This Court designated the following law firms to serve as "Class Counsel" pursuant to Fed. R. Civ. P. 23(c)(1)(B) and 23(g): Garwin Gerstein & Fisher, LLP and Kaplan Fox & Kilsheimer LLP as Co-Lead Counsel; Clemente Mueller, P.A. as Liaison Counsel; and Odom & Des Roches, LLP, Smith Segura & Raphael, LLP (formerly The Smith Foote Law Firm), Sperling & Slater, P.C., and Berger & Montague, P.C., to serve as an Executive Committee in combination with Co-Lead counsel. Doc. No. 412 at ¶ 7. Heim, Payne & Chorush LLP served as patent counsel.

[2] This Court appointed LWD and Meijer as representatives of the Class (the "Class Representatives"). *Id.* at ¶ 6.

[3] On January 25, 2011, this Court certified a class (the "Class") consisting of:

> All persons or entities in the United States that purchased Neurontin from Pfizer at any time during the period of December 11, 2002 through August 31, 2008 and who have purchased generic gabapentin. Excluded from the Class are Defendants and each of their respective parents, employees, subsidiaries, affiliates, and franchisees, and all government entities.

Id. at ¶ 4. Also excluded from the Class are CVS Pharmacy Inc., Caremark, L.L.C., Rite Aid Corporation, Rite Aid HDQTRS Corp., Walgreen Co., American Sales Co, Inc., HEB Grocery Co. LP, Safeway Inc., SuperValu Inc., and The Kroger Co., in their own right as direct purchasers of Neurontin from Pfizer and as assignees limited to their purchases of Neurontin from Class members.

For a dozen years, Class Counsel have prosecuted this complex, hotly-contested antitrust class action (the "Action")[4] against Defendants Pfizer Inc. and Warner-Lambert Co. (together, "Defendants" or "Pfizer") on a wholly contingent basis, without any guarantee of success. In all, Class Counsel expended over 60,000 hours of uncompensated professional time and incurred over $2,213,537.35 in unreimbursed out-of-pocket expenses prosecuting this Action. Through its efforts, Class Counsel obtained a settlement (the "Settlement") in the amount of $190 million plus interest for the benefit of the Class (the "Settlement Fund").[5] This remarkable recovery was achieved as a result of Class Counsel's skill, competence, perseverance and diligence in the face of significant legal and factual hurdles during the course of litigation against vigorous and skillful opponents. As compensation for its efforts, Class Counsel seeks an award of attorneys' fees in the aggregate amount of 33⅓% of the total Settlement Fund, and reimbursement of litigation expenses in the amount of $ 2,213,537.35 and interest thereon. Class

---

[4] This Action consolidated the cases *Louisiana Wholesale Drug Company, Inc., et al. v. Pfizer, Inc. and Warner-Lambert,* No. 2:02-cv-01830-FSH (D.N.J.) and *Meijer, Inc., et al. v. Pfizer, Inc. and Warner-Lambert,* No. 2:02-cv-02731 (D.N.J.).

[5] Pursuant to the terms of the Settlement, on June 2, 2014, Defendants deposited $190,416,438.36, representing the agreed-upon $190 million plus 1% per annum interest that had accrued since March 14, 2014 (the date that the parties first orally agreed to the terms of the Settlement), into an escrow account held in trust by UBS AG that is earning interest for the benefit of the Class. *See* Joint Decl. at ¶ 91.

Counsel also seeks incentive awards in the amount of $100,000 for each of the Class Representatives, LWD and Meijer, to compensate them for their extensive participation in this Action.

A detailed description of this Action, Class Counsel's work in achieving the Settlement, and the numerous and substantial risks that Class Counsel faced (and would have faced in the future absent the Settlement) are set forth in the accompanying Joint Declaration of Co-Lead Counsel Bruce E. Gerstein and Richard J. Kilsheimer (the "Joint Declaration" or "Joint Decl.").[6] That said, certain of this case's important and unique characteristics bear mention at the outset.

First and foremost, as a result of its experience with this Action, as well as its prior experience with *In re Remeron*,[7] this Court is already aware that the Action is unique. In a typical class action, a class's evaluation of counsel's efforts is limited to counsel's performance in that particular case. Here, the Class consists

---

[6] Class Counsel submits, as Exhibits 19 through 31 of the Joint Decl., affidavits of the 10 individual firms (in addition to Co-Lead Counsel) that worked on this Action. These affidavits detail the professional experience and qualifications of each of these firms, the services each firm rendered, the hours each firm expended, and the expenses incurred by each firm.

[7] *In re Remeron* was another Hatch-Waxman direct purchaser antitrust class action litigated in this Court by many of the same firms that comprise Class Counsel here.

of approximately 45 national and regional pharmaceutical resellers. The core of the Class – a group of sophisticated business entities that made approximately 93% of all Class purchases in this case – have been class members in a series of Hatch-Waxman antitrust cases (most of which were prosecuted by the same Class Counsel as here) that challenged conduct that allegedly impeded generic competition. These core Class members have closely monitored the work of Class Counsel in this case, as they have in other cases.

The Class Representatives, the "Big 3" national wholesalers (consisting of Cardinal Health, Inc., McKesson, Inc. and AmerisourceBergen Co.) and 11 regional wholesalers, all of whom collectively made approximately 93% of all Class purchases in this case, have expressed their support for Class Counsel's requests for attorneys' fees of one-third of the Settlement Fund and expense reimbursement. *See* Exhibits 2 through 16 to the Joint Decl. These Class members recognize the legal hurdles and risks involved in this twelve-year-old case, the extraordinary results obtained, and Class Counsel's superior efforts in obtaining those results. As this Court has recognized, the percentage fee requested by Class Counsel "should approximate the fee that would be negotiated if the lawyer were offering his or her services in the private marketplace." *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085 (FSH), 2005 U.S. Dist. LEXIS 27013, at, at *46 (D.N.J. Nov. 9, 2005) (Hochberg, J.). Given the affirmative support by

these Class members for Class Counsel's fee request, the Court need not speculate on this issue.

Second, this Action has been vigorously fought, both by Class Counsel and Defendants' highly-respected counsel. Besides the typical motion to dismiss and summary judgment battles, this case also included (1) protracted disputes regarding Defendants' privilege logs (which, ultimately, required the involvement of a Special Master), *see* Joint Decl. at ¶¶ 38-40; (2) litigation of Plaintiffs' two motions designed to obtain discovery on the basis of the crime-fraud exception (which also required the involvement of a Special Master), *see* Joint Decl. at ¶¶ 41-46; and (3) Defendants' failure to provide, on multiple occasions, an appropriate Rule 30(b)(6) witness on issues relating to the illegal marketing of Neurontin for off-label uses and the factual bases for Defendants' denials concerning their promotion of Neurontin for off-label uses in their Answer in this case, which led to Plaintiffs' partially-successful motion for sanctions, adjudicated by a Magistrate Judge and the Court (on appeal), *see* Joint Decl. at ¶¶ 47-57. Not surprisingly, the prosecution of this Action required Class Counsel to expend tens of thousands of hours doing sophisticated legal work, and to incur millions of dollars in as-yet unreimbursed out-of-pocket expenses.

Third, this Action was atypically and exceptionally complicated. It raised a multitude of difficult and complicated factual and legal matters regarding highly-

technical subjects. Plaintiffs alleged that Defendants, among other things, improperly maintained their exclusivity for Neurontin by delaying generic competition through an overarching, multi-faceted scheme over a ten-year period that included a host of interrelated acts. Plaintiffs' case required an understanding of all of the complicated details involved in a multi-year overall scheme. In turn, Defendants presented sophisticated defenses to each aspect of Plaintiffs' case, including that Plaintiffs would be unable to establish causation; namely, whether the cause of the delay in generic entry was due to Pfizer's alleged scheme (which Defendants denied), or rather was the result of actions unrelated to Defendants' conduct. Embracing this case's complexity, Class Counsel retained and worked closely with expert witnesses in such varied fields as antitrust economics, patent prosecution and chemistry, and dove into extensive discovery of facts surrounding all elements and defenses.

In light of the above (and as explained in further detail below), the reasonableness of Class Counsel's "percentage-of-recovery" fee request is strongly supported by analyses of the "*Gunter* factors" derived from *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 193 (3d Cir. 2000) and the relevant factors outlined in *In re Prudential Ins. Co. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 338-40 (3d Cir. 1998) (the "*Prudential* factors"). Additionally, a "lodestar cross-check" confirms the reasonableness of Class Counsel's requested fee. *See Gunter*, 223

F.3d at 195 n.1. Because Class Counsel's unreimbursed expenses were incidental and necessary to representation of the Class, and were reasonably expended to prosecute this Action, this Court should also approve Class Counsel's request for reimbursement of such expenses. *See Remeron*, 2005 U.S. Dist. LEXIS 27013, at *48-49.

Additionally, Class Counsel seeks incentive awards of $100,000 for each of the Class Representatives, LWD and Meijer.[8] Given that each Class Representative participated actively throughout the twelve years of this litigation, including, among other things, responding to multiple discovery requests, appearing at depositions, and regularly communicating with Class Counsel concerning the progress of the litigation and settlement negotiations, this Court should approve such awards.

II. HISTORY OF THE LITIGATION.

A. Nature of the Claims.

Plaintiffs are direct purchasers of Defendants' brand-name drug, Neurontin, which was initially approved by the FDA for the treatment of epilepsy. Plaintiffs filed this Action in 2002 and alleged that Defendants maintained and enhanced their monopoly power with respect to Neurontin (also known by its generic name,

[8] Plaintiffs Meijer, Inc. and Meijer Distribution, Inc. (together referred to as "Meijer") would, pursuant to Class Counsel's request for incentive rewards, *together* receive one incentive award of $100,000, if allowed by the Court.

gabapentin) in violation of the Sherman Act, 15 U.S.C. § 2. Among other things, Defendants allegedly delayed generic competition for Neurontin through an overarching, multi-faceted scheme that included illegal off-label promotion, manipulation of the patent application process, violation of Hatch-Waxman Act procedures, repeated filing and maintenance of sham patent suits, and perpetration of fraud on the courts hearing those cases. Defendants' alleged conduct delayed the market entry of less expensive generic versions of Neurontin, thereby forcing members of the Class to pay artificially inflated prices for Neurontin and/or its AB-rated generic equivalents. *See* Joint Decl. at ¶ 3, 67(b).

Defendants denied Plaintiffs' allegations and asserted a number of defenses. *See* Joint Decl. at ¶¶ 16, 65-66. Having ruled on extensive cross-motions for summary judgment, this Court is quite familiar with the parties' factual and legal positions.

B. Class Counsel's Litigation Efforts.

The team assembled by Class Counsel (drawn primarily from the firms listed in footnote 1 above) includes lawyers from some of the preeminent antitrust law firms in the country.[9] These firms have over fifteen years of extensive experience

---

[9] In addition to the firms listed in footnote 1 above, other firms that participated in the prosecution of this case on behalf of the Class have submitted affidavits in support of Class Counsel's motion, which are appended as Exhibits 27 through 31 to the Joint Declaration.

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 emerging area of antitrust law. *See* Joint Decl. at ¶ 113. 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* Joint Decl. at p. 3.

1. Discovery and Related Disputes.

Prior to filing the first class action on March 26, 2002, Class Counsel undertook an exhaustive investigation of the facts and law giving rise to the claims alleged. This investigation included monitoring various patent infringement litigations filed by Defendants against manufacturers of generic Neurontin and investigating Defendants' efforts to block or delay the entry of generic Neurontin. *See* Joint Decl. at ¶¶ 1-3. In the subsequent process of preparing an amended complaint, Class Counsel reviewed, analyzed, and marshalled facts from, millions of pages of documents produced in the patent infringement litigations, as well as hearing transcripts, plea agreements and information released to the public as part of criminal proceedings related to Defendants' illegal off-label promotion. *See* Joint Decl. at ¶¶ 12-15.

After defeating Defendants' motion to dismiss, Class Counsel conducted substantial fact and expert discovery. *See* Joint Decl. at ¶¶ 16-27, 31-37. During

this lengthy and hotly-contested litigation, Class Counsel, among other things, (1) drafted and served comprehensive document requests, interrogatories and requests for admission, as well as subpoenas directed to multiple third parties; (2) obtained and analyzed millions of pages of documents received from Defendants and third parties; (3) objected to Defendants' discovery requests and worked with the Class Representatives to respond and to prepare and defend Rule 30(b)(6) witnesses at deposition; (4) took a leading role in identifying fact witnesses from Defendants and non-parties, and then took a leading or substantial role in more than 40 fact depositions, including negotiating, arranging for, and taking a third-party deposition outside of the United States; (5) retained and worked closely with expert witnesses in such varied fields as antitrust economics, patent prosecution and chemistry, who provided analysis and testimony in support of Plaintiffs' claims and to rebut Defendants' defenses, including the preparation for, and defense of, such experts' depositions; (6) responded to, and took depositions of, experts retained by Defendants on a wide variety of issues; and (7) litigated and argued multiple important discovery disputes before the Court, including (a) protracted disputes regarding Defendants' privilege logs, (b) two motions to obtain discovery on the basis of the crime-fraud exception, (c) a motion for sanctions, which was renewed multiple times, related to Defendants' failure to produce an adequate Rule 30(b)(6) witness on issues related to Pfizer's illegal marketing of

Neurontin for off-label uses, and (d) motion practice relating to the admissibility of, and production of discovery regarding settlements of the patent infringement actions. *See* Joint Decl. at ¶¶ 22-23, 31-57, 76.

2. Motion Practice.

On April 1, 2008, Defendants' moved to dismiss Plaintiffs' amended complaint on a variety of grounds. Class Counsel researched and developed responsive arguments and drafted a brief in opposition. On August 28, 2009, the Court denied Defendants' motion to dismiss, holding that Plaintiffs had sufficiently alleged an overall anticompetitive scheme, rejecting Defendants' attempts to bind the Court with opinions and statements from the related patent infringement litigation, and noting that Plaintiffs' amended complaint raised myriad factual issues that could not be resolved at that stage of the case. *See* Joint Decl. at ¶¶ 16-18.

Class Counsel also played the lead role in obtaining class certification. Working closely with Plaintiffs' expert, Dr. Gary French, Class Counsel conducted extensive document analyses to support Plaintiffs' claims of class-wide impact and to rebut Defendants' defenses to class certification, and submitted the requisite motion and briefing, including a trial plan. *See* Joint Decl. at ¶¶ 58-61. On January 25, 2011, the Court granted Plaintiffs' motion for class certification and certified the Class. *See* Doc. No. 412.

At the summary judgment stage, Plaintiffs moved for partial summary judgment on two related issues: (a) Pfizer's monopoly power in the market for gabapentin prior to generic entry and (b) Pfizer's improper maintenance of that monopoly power. Plaintiffs also moved for an order that Defendants be collaterally estopped from relitigating certain findings from the government's criminal action related to Defendants' off-label marketing and related litigations. Defendants, too, moved for summary judgment with respect to all of Plaintiffs' claims, asserting a variety of arguments. Class Counsel's extensive efforts, including researching and briefing the motions and opposition, as well as working with Defendants' counsel to draft, revise and submit a joint statement of undisputed material facts, were, on the whole, successful. On August 8, 2013, the Court denied Defendants' motion for summary judgment (which put the case on a course for trial) and, though it also denied Plaintiffs' motion for partial summary judgment, granted Plaintiffs' request for collateral estoppel with respect to several key findings. *See* Joint Decl. at ¶¶ 64-71.

Plaintiffs also moved, pursuant to *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579 (1993), to exclude the opinions of several of Defendants' experts. Preparation of these motions involved considerable effort on Class Counsel's part, including thorough review of those experts' opinions, prior testimony and publications. Plaintiffs also filed oppositions to Defendants' *Daubert* motions

that sought to exclude certain opinions offered by Plaintiffs' experts. These *Daubert* motions were still pending as of the time the parties reached agreement to settle in March 2014. *See* Joint Decl. at ¶¶ 77-78.

3. Trial Preparation.

Following the Court's August 8, 2013 summary judgment decision, Class Counsel began to prepare for trial. In the roughly seven months between the Court's summary judgment decision and Class Plaintiffs' signing of an agreement settling the class action, Class Counsel engaged in final preparations for trial, including drafting motions *in limine*; identifying trial exhibits; devising a chronological ordering of fact and expert witnesses; designating deposition testimony for likely non-live witnesses; preparing cross-examinations for likely live witnesses; working on opening statements; creating demonstratives; and attending to all the other details of preparing for trial. As part of its trial preparation, Class Counsel retained a nationally-known jury consultant and, over two days in December 2013, presented to focus groups made up of members of the prospective jury pool from northern New Jersey. Class Counsel devoted significant time preparing for these focus groups, which were convened to test different case theories and means of presentation. Class Counsel carefully reviewed the report produced by the jury consultant, and took its

recommendations into account as trial preparations proceeded. *See* Joint Decl. at ¶ 79.

4. Mediation.

Class Counsel prepared for, and participated in, mediation sessions (in December 2010, February 2013 and February/March 2014) conducted by Eric Green, a well-respected mediator with extensive experience mediating settlements in pharmaceutical cases. For certain of these mediation sessions, Class Counsel prepared detailed mediation statements for Professor Green and delivered live presentations for both Professor Green and the Defendants that outlined key theories and supporting evidence.

Besides serving as a mediator, Professor Green is a well-respected authority on evidence, having written many books and articles on the subject. He also teaches several courses at Boston University School of Law. Throughout the mediation sessions, Professor Green probed both parties regarding the legal and evidentiary weaknesses in their cases. Familiar with Professor Green and his methods, Class Counsel knew that it was necessary to be well-prepared to respond with vigorous and well-supported advocacy, as well as with intimate knowledge of all aspects of the case.

Representatives from LWD and Meijer traveled to New York to attend and participate in the mediation session held in December 2010, and Class Counsel was

in close communication with key decision-makers at LWD and Meijer during all mediation sessions and settlement discussions.

III. ARGUMENT.

A. Class Counsel's Fee Request Is Reasonable.

1. The Percentage-of-Recovery Method is the Appropriate Method for Calculating Attorneys' Fees in This Case

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 AT&T Corp.*, 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).)

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

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 factors – the *Gunter* factors – derive from *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 193, 195 n.1 (3d Cir. 2000):

> (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.

The remaining three potentially relevant factors considered by courts weighing the reasonableness of fee requests – the *Prudential* factors – derive from *In re Prudential Ins. Co. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 338-40 (3d Cir. 1998): (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. Because each case is different, these factors "need not be applied in a formulaic way" or be given the same weight. *AT&T*, 455 F.3d at 166 (quotation omitted)

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.

The Settlement provides a significant recovery for the Class, which is comprised of approximately 45 members that will share in the $190 million plus interest, 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 Fund is to submit a claim form that will be made available to them via multiple sources, including direct mailing. Accordingly, the recovery is both substantial and immediate. *See In re Relafen Antitrust Litig.*, No. 01-12239-WGY, 2004 U.S. Dist. LEXIS 28801, at *19 (D. Mass. Apr. 9, 2004) (multi-million dollar cash settlement fund for direct purchasers of prescription drug conferred a substantial benefit on the class).

Additionally, the magnitude of this recovery is substantial – both in absolute terms and, particularly, when assessed in light of the significant obstacles and risks faced by Class Counsel in this case. *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). Indeed, absent the Settlement, Class Counsel would have to win a favorable jury verdict in the face of the numerous defenses raised by Defendants and their able counsel. *See* Joint Decl. at ¶¶ 84-87. As in any case, receipt of a favorable jury verdict would be uncertain. And, even if Class Counsel succeeded in obtaining a favorable jury verdict, given the size and complexity of the case, Defendants would likely appeal any such verdict – perhaps even multiple times (*e.g.*, motions for reconsideration,

rehearing *en banc* and potentially *certiorari*). Upholding a verdict through such appeals would be an obstacle to Class Counsel's ability to obtain any recovery for the Class.

Accordingly, analysis of this *Gunter* 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 objection to a fee request and positive view of Class Counsel's efforts, particularly from sophisticated class members, is 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).

As described above, in the wake of the dissemination of detailed notice describing the Settlement, Class members have overwhelmingly *affirmatively supported* the Settlement and Class Counsel's requests for fees, expense reimbursement and incentive awards. Indeed, core Class members who made

approximately 93% of the purchases at issue in this case (entitling them to a like percentage of the Settlement Fund, net of fees, costs, and incentive awards) have written to this Court to support the Settlement and Class Counsel's one-third fee request. *See* Exhibits 19 through 31 to Joint Decl.

Furthermore, though the period for lodging objections does not expire until July 17, 2014, not a single Class member has objected to date.[10] This is particularly significant because the Class consists of sophisticated businesses that possess both the incentive and the knowledge to object if they believed that Class Counsel's requests are inappropriate. The lack of any objection, particularly in a class that consists of sophisticated entities, is a "rare phenomenon," *see Rite Aid*, 396 F.3d at 305 (citation and internal quotation omitted), and strongly supports the requested fee.

Thus, analysis of this *Gunter* factor favors the reasonableness of the 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. Many of the firms that comprise Class Counsel are among the preeminent antitrust firms in

[10] In the event that any objection is received, Class Counsel will promptly inform the Court.

the United States, with decades of experience prosecuting and trying complex antitrust actions. *See* Joint Decl. at ¶ 112. These firms have a particular expertise in litigating Hatch-Waxman pharmaceutical antitrust cases on behalf of direct purchasers, having litigated such cases for over fifteen years on behalf of the core class of such direct purchasers. This experience enables each law firm involved to specialize in particular areas of expertise, thus providing Class Counsel with the ability to quickly and efficiently coordinate, organize, and implement litigation strategies. *See* Joint Decl. at p. 3; ¶ 112.

"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]

---

[11] In *Remeron*, a Hatch-Waxman case involving many of the same lawyers comprising Class Counsel here, this Court noted that "[t]he settlement entered with Defendants is a reflection of Class Counsel's skill and experience." *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *37.

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, Pfizer has been represented by some of the country's leading law firms: Kaye Scholer LLP; Skadden, Arps, Slate, Meagher & Flom, LLP; Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Drinker Biddle & Reath, LLP. 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 *Gunter* factor weighs in favor of 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"). And this twelve-year old case is no exception.

This case raised many complex legal and factual issues regarding highly-technical subjects. Among other things, Plaintiffs' case required an understanding of the complicated details involved in a multi-year overall scheme that consisted of myriad components that, at first blush, might appear disparate and unrelated. Additionally, as evidenced by Defendants' motion for summary judgment, Defendants presented sophisticated defenses to each aspect of Plaintiffs' case that the Class had to overcome in order to succeed. Indeed, Defendants asserted that Plaintiffs could not prove the existence of monopoly power, exclusionary conduct, or causation. Accordingly, the complexity and duration of this twelve-year litigation supports the requested fee. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 305.

Analysis of this *Gunter* factor therefore favors approval of Class Counsel's fee request.

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

Class Counsel achieved the $190 million plus interest Settlement despite facing the significant risk that they would receive no compensation whatsoever for the hard work and long hours, as well as the millions of dollars in cash outlays, expended litigating this Action. Class Counsel represented the Class Representatives and the Class entirely on a contingency fee basis, with no up-front retainer fees or allowance for expenses. And, despite devoting over 60,570 hours

prosecuting this case, Class Counsel received no compensation during the course of this litigation. *See, e.g., In re Fasteners Antitrust Litig.*, No. 08-md-1912, 2014 U.S. Dist. LEXIS 9993, at *15 (E.D. Pa. Jan. 27, 2014) (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").

A determination of a fair fee must include consideration of the characteristics of contingent antitrust actions, including the uncertain nature of the fee, the wholly contingent outlay of large out-of-pocket sums by class counsel, and the fact that the risk of failure (and thus nonpayment) in an antitrust case may be extremely high. *See, e.g., Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. 03-4578, 2005 U.S. Dist. LEXIS 9705, at *37-40 (E.D. Pa. May 20, 2005) (risk of overcoming *Noerr-Pennington* defense, among others defenses, "favors approval of the percentage of recovery requested as a fee in this case"). 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. This Court and others have consistently recognized that this risk is an important factor favoring an award of attorneys' fees.") (citation omitted).

The risks of non-recovery were abundant from the outset of this Action, as Class Counsel expended tens of thousands of hours and millions of dollars in out-of-pocket expenses investigating the Class's claims, taking extensive discovery, retaining and working with experts, briefing numerous motions, and preparing for trial. *See* Joint Decl. at ¶ 113. Moreover, Defendants' counsel vigorously asserted defenses to each element of the Class's claims. Success in complex litigation is highly unpredictable. As one court observed in another antitrust class action: "It is known from past experience that no matter how confident one may be of the outcome of the litigation, such confidence is often misplaced." *West Virginia v. Chas. Pfizer & Co.,* 314 F. Supp. 710, 743-44 (D.C.N.Y. 1970), *aff'd*, 440 F.2d 1079 (2d Cir. 1971).

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 expending thousands of hours in time and millions of dollars in expenditures.

Accordingly, the substantial risks of non-payment assumed by Class Counsel in order to achieve the Settlement for the benefit of the Class support the fee requested.

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

Plaintiffs' Counsel expended 60,572.12 hours litigating this twelve-year case, and have advanced out-of-pocket outlays of $2,213,537.35 in that effort to date. *See* Joint Decl. at ¶ 113. 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). Such was the case here. From the pre-complaint investigation through comprehensive trial preparation, Class Counsel expended an enormous amount of time, energy and resources on this case. *See* Joint Decl. at ¶¶ 1-79.

Moreover, Class Counsel will likely continue to work a significant number of hours in connection with administering the Settlement and carrying out the Plan of Allocation. *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…").

Analysis of this *Gunter* factor therefore supports the reasonableness of the fee request.

g. Plaintiffs' Counsel's Fees are Comparable to Awards in Similar Cases.

A comparison of Class Counsel's fee request with attorneys' fees awarded in similar cases, *see Gunter*, 223 F.3d at 198-99; *Rite Aid*, 396 F.3d at 303, supports the instant fee request. Indeed, Class Counsel's requested fee is consistent with awards granted in the most analogous cases previously settled – other complex Hatch-Waxman antitrust class action cases brought by classes of direct purchasers (that overlap substantially with the Class here) alleging impeded generic entry – as the following chart indicates:

Case	Fee Award
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., 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	33⅓% of $175 million settlement

(D. Mass. April 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

The percentage requested in this case –33[1]/3% of the total $190 million (plus interest) Settlement – is consistent with these fee awards.

Additionally, district courts in the Third Circuit have consistently awarded fees similar to Class Counsel's request. *See, e.g., Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 150 (E.D. Pa. 2000) ("the award of one-third of the fund for attorneys' fees is consistent with fee awards in a number of recent decisions within this district"). Indeed, a one-third fee from a common fund has been found to be typical by several courts that have undertaken surveys of awards within the Third Circuit, as well as other circuits. *See, e.g., In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 settlements demonstrates "average attorney's fees percentage [of] 31.71%" with a median value that "turns out to be one-third"); *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *42-43 (collecting cases); *Brumley v. Camin Cargo Control, Inc.*, Nos. 08-1798 (JLL), 10-2461 (JLL), 09-6128 (JLL), 2012 U.S. Dist. LEXIS 40599, *36 (D.N.J. Mar. 26, 2012) ("Counsel's request for one-third of the settlement fund falls within the

range of reasonable allocations in the context of awards granted in other, similar cases").

Accordingly, analysis of this *Gunter* factor weighs in favor of approval of 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 benefits of the Settlement are directly attributable to the efforts of Class Counsel, rather than a separate antitrust investigation or litigation. No government agency investigated whether, or brought a proceeding alleging that, Pfizer had violated the antitrust laws by illegally extending their monopoly over Neurontin. And although the Department of Justice investigated Defendants' off-label promotion, and ultimately Defendants pled guilty to engaging in such illegal conduct, *see* Joint Decl. at ¶ 13, that conduct was only one element of Defendant's overall anticompetitive scheme. No government entity (or any other entity, for that matter) compiled the evidence of the overarching scheme that Plaintiffs alleged here. In short, there was no government agency investigating or litigating this case for the benefit of the Class.

Accordingly, application of this *Prudential* 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

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

Indeed, the 33[1]/3% requested fee is "consistent with 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").

Here, the Class Representatives, LWD and Meijer, have independently represented that, had they individually retained certain members of Class Counsel to represent them in this complex litigation, they would have engaged counsel based on a one-third contingency fee. *See* Declaration of Gayle White at ¶3, attached as Exhibit 15 to the Joint Decl.; Declaration of Chad Gielen at ¶5, attached as Exhibit 14 to the Joint Decl.; Declaration of Cynthia Rogowski at ¶ 4, attached as Exhibit 16 to the Joint Decl.

Accordingly, Class Counsel's requested fee is supported by application of this *Prudential* factor.[12]

---

[12] Where, as here, the attorneys' fees requested as part of a large class action settlement satisfy the *Gunter*/*Prudential* factors, courts in the Third Circuit decline to apply the so-called "declining percentage" approach to awarding fees, where a district court reduces the percentage of requested attorneys' fees because the proposed settlement is particularly large. *See Rite Aid*, 396 F.3d at 303 (rejecting an attempt to apply the declining percentage approach to a $126.6 million settlement, pointing out that "there is no rule that a district court must apply a declining percentage reduction" and concluding that "put simply, the declining percentage concept does not trump the fact-intensive *Gunter/Prudential* analysis" utilized for evaluating attorney fee awards). The "declining percentage" approach has been criticized as failing to recognize the enormous risk of non-recovery that class counsel undertakes in prosecuting class actions. *See In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 197 (E.D. Pa. 2000).

3. A Lodestar Cross-Check Confirms the Reasonableness of Class Counsel's Requested Fee.

The Third Circuit has suggested that district courts cross-check the percentage award against the "lodestar" to help ensure the reasonableness of the fee. *See Gunter*, 223 F.3d at 195 n.1. *See also Drazin v. Horizon Blue Cross Blue Shield of New Jersey, Inc.*, 832 F. Supp. 2d 432, 440 (D.N.J. 2011) (Hochberg, J.) ("The percentage of recovery is usually . . . 'cross-checked' against the lodestar, to ensure that the fee is reasonable and appropriate."). As part of the cross check, the lodestar is determined by multiplying the hours reasonably expended on the case by a reasonable hourly rate. *See Gunter*, 223 F.3d at 195 n.1 (citation omitted). 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). In calculating the lodestar for cross check purposes, the court does not need to scrutinize the documented hours. *See Rite Aid*, 396 F.3d at 306-07 ("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 fee award is reasonable when analyzed in light of a lodestar crosscheck. As detailed in the Joint Declaration, Class Counsel have worked 60,570.12 hours on this case, which is collectively $31,807,227.57 in time

based on current billing rates. *See* Joint Decl. at ¶ 113.[13] A one-third fee award would equate to a lodestar multiplier of 1.99. *See* Joint Decl. at ¶ 114. This is well within the acceptable multiplier range of 1-4 noted in *Prudential*. It is also well below the multiplier granted in some other 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).

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. *See Remeron*, 2005 U.S. Dist. LEXIS

---

[13] As detailed in the Joint Declaration, Co-Lead Counsel carefully allocated assignments based on the experience and expertise of each member of Class Counsel in a manner that effectively prosecuted the case and avoided duplication of effort. *See* Joint Decl. at p.3. A description of the expenditures from the litigation fund is included in the Declaration of Richard J. Kilsheimer on Behalf of Kaplan Fox & Kilsheimer LLP in Support of Direct Purchaser Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, attached as Exhibit 20 to the Joint Declaration.

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)). Attorneys may be reimbursed for costs that are "incidental and necessary expenses incurred in furnishing effective and competent representation." *Planned Parenthood of Central New Jersey v. Attorney General of State of New Jersey*, 297 F.3d 253, 267 (3d Cir. 2002).

Class Counsel's unreimbursed expenses, which total $ 2,213,537.35, were incidental and necessary to representation of the Class. These expenses were reasonably expended to prosecute this litigation, and they include fees paid to experts and consultants who were instrumental in helping Plaintiffs obtain class certification, establish monopoly power and exclusionary conduct, calculate damages, refute Defendants' defenses, prepare for trial, and obtain this favorable Settlement for the Class. *See* Joint Decl. at ¶¶ 36-37, 71, 79, 80-81. These expenses also include costs for computerized research, the creation of an electronic document database, travel and lodging expenses, copying, court reporters, deposition transcripts, mediation, and preparation for trial.[14] *See* Joint Decl. at ¶¶

[14] Certain of the individual declarations and affidavits of Class Counsel may list "contribution to the litigation fund" (or similar phrase) as an expense. Class

20-23; Exhibits 19 through 31 to Joint Declaration. Such expenses are of the type routinely charged to hourly fee-paying clients.

Reimbursement of such expenses is routinely permitted. *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).

Additionally, Class members comprising approximately 93% of Class purchases have written to support Class Counsel's request for reimbursement of expenses. *See* Exhibits 2 through 16 to Joint Decl.

Accordingly, the Court should approve reimbursement of Class Counsel's expenses in full.

Counsel made individual contributions to this fund, which was, in turn, used to pay certain of the reasonable expenses described herein.

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

Class Counsel requests that the Court approve an incentive award in the amount of $100,000 each for each of the Class Representatives, LWD and Meijer. To date, no Class member has objected to the requested incentive awards. To the contrary, Class members with the largest stake in this litigation have expressly supported the requested incentive awards to the Class Representatives. *See* Joint Decl. at ¶ 117; Exhibits 2 through 4 to the Joint Decl.

Courts have long held that private class action suits are a primary weapon in the enforcement of the 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"). LWD and Meijer actively pursued the Class's interests by filing suit on behalf of the Class and undertaking the responsibilities attendant upon them as representative plaintiffs, including responding to document requests and interrogatories, appearing for deposition and keeping apprised of the progress of the case, including settlement efforts. *See* Joint Decl. at ¶ 116.

Numerous courts have found it appropriate to reward 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 the Third Circuit and elsewhere. *See, e.g., 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) (attached as Exhibit 17 to the Joint Decl.) (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) (attached as Exhibit 18 to the Joint Decl.) (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).

This Court should therefore approve these appropriate and reasonable incentive awards to Class Representatives, LWD and Meijer.

IV. CONCLUSION

For the reasons set forth above and in the Joint Declaration, Class Counsel respectfully request that this Court approve their fee and expense request and enter an Order awarding Class Counsel fees in the amount of 33⅓% of the Settlement Fund (which includes the $190 million Settlement plus interest, and a

proportionate share of the interest thereon through the date of the award), and reimbursement of expenses in the amount of $ $2,213,537.35 plus interest. Class Counsel also request that this Court approve incentive awards of $100,000 to each of the Class Representatives, LWD and Meijer, for their efforts on behalf of the Class in the prosecution of this action.

Dated: July 1, 2014

Respectfully submitted,

CLEMENTE MUELLER, P.A.
222 Ridgedale Avenue
Cedar Knolls, NJ 07927
Tel.: (973) 455-8008

By: /s/ Jonathan D. Clemente
Jonathan D. Clemente
Liaison Counsel

GARWIN GERSTEIN & FISHER, L.L.P.
Bruce E. Gerstein
88 Pine Street, 10th Floor
New York, NY 10005
Tel.: (212) 398-0055
Fax: (212) 764-6620

KAPLAN FOX & KILSHEIMER LLP
Robert N. Kaplan
Richard J. Kilsheimer
850 Third Avenue, 14th Floor
New York, NY 10022
Tel.: (212) 687-1980
Fax: (212) 687-7714

Co-lead Counsel for the Direct Purchaser Class Plaintiffs

ODOM & DES ROCHES, LLP
John Gregory Odom
Stuart E. Des Roches
Suite 2020, Poydras Center
650 Poydras Street
New Orleans, LA 70130
Tel.: (504) 522-0077
Fax: (504) 522-0078

SMITH SEGURA & RAPHAEL LLP
David P. Smith
720 Murray Street
P.O. Box 1632
Alexandria, LA 71309
Tel.: (318) 445-4480
Fax: (318) 487-1741

SPERLING & SLATER, P.C.
Paul E. Slater
55 West Monroe Street
Suite 3200
Chicago, IL 60603
Tel.: (312) 641-3200
Fax: (312) 641-6490

BERGER & MONTAGUE, P.C.
Daniel Berger
Eric L. Cramer
Ellen T. Noteware
1622 Locust Street
Philadelphia, PA 19103
Tel.: (215) 875-3000
Fax: (215) 875-4604

VANEK, VICKERS & MASINI, P.C.
Joseph M. Vanek
David P. Germaine
111 S. Wacker, Suite 4050
Chicago, IL 60606
Tel.: (312) 224-1500
Fax: (312) 224-1510

HEIM, PAYNE & CHORUSH LLP
Russell A. Chorush
600 Travis, suite 6710
Houston, Texas 77002
Tel.: (713) 221-2000
Fax: (713) 221-2021

GRANT & EISENHOFER PA
Linda P. Nussbaum
485 Lexington Ave., 29th Fl.
New York, NY 10017
Tel.: (646) 722-8504
Fax: (646) 722-8501

KOHN, SWIFT & GRAF, P.C.
Joseph C. Kohn
One South Broad Street
Suite 2100
Philadelphia, PA 19107
Tel.: (215) 238-1700
Fax: (215) 238-1968

KOZYAK TROPIN &
THROCKMORTON, P.A.
Adam Moskowitz
2800 First Union Financial Center
200 South Biscayne Boulevard
Miami, FL 33131-2335
Tel.: (305) 377-0652
Fax: (305) 372-3508