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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

IN RE NEURONTIN ANTITRUST LITIGATION	MDL Docket No. 1479 Master Civil Action No. 02-1390 (FSH)
THIS FILING RELATES TO: DIRECT PURCHASER CLASS CASES	Civil Action Nos. 02-1830 (FSH) 02-2731 (FSH)

JOINT DECLARATION OF BRUCE E. GERSTEIN AND RICHARD J. KILSHEIMER IN SUPPORT OF DIRECT PURCHASER CLASS PLAINTIFFS' MOTIONS FOR FINAL APPROVAL OF SETTLEMENT AND FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES

I. INTRODUCTION

Bruce E. Gerstein, the managing partner at Garwin Gerstein & Fisher, L.L.P. (here, "Garwin Gerstein"), and Richard J. Kilsheimer, a partner at Kaplan Fox & Kilsheimer LLP (here, "Kaplan Fox"), the two firms appointed by the Court as Co-Lead Counsel for the Direct Purchaser Class Plaintiffs (here, the "Class Plaintiffs"), respectfully submit this declaration in support of Class Plaintiffs' motion for final approval of the settlement of this case, under which defendants Pfizer, Inc. and Warner-Lambert Company (collectively, "Pfizer") have paid $190 million (plus interest) to the certified Class in return for certain releases and dismissal of the case with prejudice.

This declaration is also submitted in support of Class Plaintiffs' application for an award of attorneys' fees totaling one-third of the Settlement Fund, reimbursement of expenses totaling $2,213,537.35 that were incurred in the prosecution of this case, and incentive awards of $100,000 each for plaintiffs Meijer[1] and Louisiana Wholesale Drug Company, Inc. ("LWD"), who were the named class representatives in this case. Garwin Gerstein and Kaplan Fox have been involved in all material aspects of this litigation from its inception in 2002 to

[1] As used here, "Meijer" refers collectively to plaintiffs Meijer, Inc. and Meijer Distribution, Inc.

its settlement in 2014, and we are therefore fully familiar with the facts set forth below.

This has been a hard fought litigation for more than 12 years. Throughout this litigation, Co-Lead Counsel spearheaded and coordinated work of the law firms experienced in prosecution and trying of complex pharmaceutical and antitrust cases, carefully allocating assignments by taking in consideration each firms' strengths and expertise.

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. Pfizer battled throughout, at virtually every instance. Pfizer moved to dismiss Class Plaintiffs' amended complaint, vigorously opposed class certification, sought extensive discovery from plaintiffs Meijer and LWD, brought a motion for summary judgment, and filed *Daubert* motions to strike many of Class Plaintiffs' experts.

At all junctures, Class Plaintiffs were at high risk. The case could have been dismissed at either the motion to dismiss or summary judgment stages. Even after surviving summary judgment, at the time a settlement was reached, three of Class Plaintiffs' experts, who would have been vitally important at trial, were subject to

defendants' pending *Daubert* challenges. If Class Plaintiffs had lost any of these motions, their multi-year efforts, undertaken at great time and expense, would have been for naught. Moreover, Class Plaintiffs faced significant risks if the case had gone to trial. It was particularly uncertain whether a jury would accept Class Plaintiffs' theories of causation as well as their contentions about Pfizer's "overarching scheme" to delay generic entry.

Throughout the litigation, Class Plaintiffs fought back. Class Counsel[2] reviewed over seven million pages of documents and took 42 fact depositions; retained four experts, who rendered reports concerning various subjects; defended their depositions; and took the depositions of nine defense experts. There were a number of discovery disputes and Class Plaintiffs brought motions to compel and for sanctions which resulted in further production of documents by defendants and additional testimony.

The settlement process was mediated by Eric Green, a well-known mediator, over a period of more than three years. The first mediation occurred in December 2010, but was not successful. Professor Green held a further mediation session in February 2013. Again it was unsuccessful. Finally in 2014, Professor Green held

[2] "Class Counsel" refers to Co-Lead Counsel and several other law firms who worked closely with, and under the direction of, Co-Lead Counsel during the prosecution of this case.

two additional mediation sessions and, at the second session in March 2014, a settlement in principle was achieved.

The mediation sessions were not merely negotiations between the parties with Professor Green as an intermediary, but on two occasions involved evidentiary presentations that allowed for a vigorous debate of the facts, the law, and Counsel's ability to present their sides' evidence in this very complex case in a manner that could be easily understood by a lay jury.

Despite the risks in this litigation, even while in mediation, Class Counsel continually litigated at full throttle until they achieved a settlement whose level they believed to be an excellent result for the Class.

II. HISTORY OF THE LITIGATION

A. Commencement of the Case and Initial Proceedings Through the Filing of the Direct Purchaser Class Plaintiffs' Amended Complaint

1. Beginning in 1998, defendants Pfizer and Warner-Lambert Co. (which Pfizer acquired in 2000) began instituting litigation against a number of generic drug-makers alleging, *inter alia*, violation of defendants' patents covering the drug Neurontin, known as the '476, the '479 and the '482 patents. Over time, Pfizer instituted more than 20 such lawsuits against a number of generic drug manufacturers. These patent-infringement lawsuits (except for the lawsuits Pfizer

filed against Apotex Corp. ("Apotex") in Illinois federal court related to Apotex's alleged infringement of Pfizer's '476 and '479 patents), were originally transferred in 2001 by the Judicial Panel on Multidistrict Litigation ("JMPL") to Judge John C. Lifland in the District of New Jersey for coordinated pre-trial proceedings under MDL No. 1384. The Illinois litigation and the cases under MDL No. 1384 are referred to collectively here as the "Patent Actions."[3] Class Counsel, who have significant experience litigating antitrust cases against brand-name drug manufacturers for anticompetitive conduct aimed at delaying the entry into the market of cheaper generic drugs, monitored the Patent Actions and began investigating defendants' efforts to block or delay the entry of generic Neurontin.

2. In March and April 2001, the courts overseeing the various Patent Actions began to issue opinions which supported the theory that defendants' litigations against the generic drug-makers were shams aimed at improperly extending Pfizer's monopoly on Neurontin when faced with the threat of

[3] MDL No. 1384, which bore the caption *In re Gabapentin Antitrust Litigation*, included actions that Pfizer or Warner-Lambert Co. had filed against Apotex, Purepac and Faulding (*Warner Lambert Co. v. Purepac and Faulding*, 98-cv-2749 (D.N.J.), *Warner Lambert Co. v. Purepac Pharm.*, 99-cv-5948 (D.N.J.), *Warner-Lambert Co. v. Purepac Pharm.*, 00-cv-2931 (D.N.J.), *Pfizer Inc. et al. v. Purepac Pharm.*, 00-cv-3522 (D.N.J.)) and *Pfizer, Inc. v. Apotex Corp.*, 01-cv-0611 (D.N.J.)). The '476 and '479 cases against Apotex that were not included as part of MDL No. 1384 were *Warner-Lambert Co. v. Apotex Corp.*, 98-cv-4293 (N.D. Ill.) and *Pfizer Inc. et al. v. Apotex Corp.*, 00-cv-4398 (N.D. Ill.).

competition from generics. On March 3, 2001, the district court in Illinois granted Apotex's motion for summary judgment, holding that Apotex's formulation of generic Neurontin did not infringe the '476 and '479 patents. On September 13, 2001, the United States Court of Appeals for the Federal Circuit affirmed the district court's holding that Apotex had not infringed those patents.

3. The first class action complaint on behalf of direct purchasers of Neurontin alleging that Pfizer had violated the antitrust laws was filed in the District of New Jersey on March 26, 2002 and assigned to Judge Lifland and then-Magistrate Judge Stanley R. Chesler. An additional class-action complaint was filed by other direct purchasers in the District of New Jersey (these cases are referred to here collectively as the "Antitrust Actions"). While Class Plaintiffs would later supplement these original complaints with numerous facts about defendants' alleged over-arching scheme to keep generic Neurontin off the market, these two initial direct purchaser class action complaints asserted that the defendants engaged in various anti-competitive acts to unlawfully maintain and extend their monopoly over gabapentin formulations.[4] Specifically, the proposed class of direct purchasers alleged that Pfizer and Warner-Lambert successfully blocked generic competition for its brand-name drug Neurontin, through, *inter*

[4] Gabapentin anhydrous is the active pharmaceutical ingredient (or API) in Neurontin.

alia, the wrongful listing of patents in the Orange Book, and by instituting sham litigation (the Patent Actions) against all of the generic companies that had filed ANDAs seeking to market generic forms of Neurontin.

4. Other types of plaintiffs, including individuals and entities who were indirect purchasers of Neurontin or generic gabapentin (the "End-Payor Plaintiffs"), filed complaints in the District of New Jersey and other districts. Defendants then moved before the JPML to transfer the cases to Judge Lifland for coordinated or consolidated pre-trial proceedings. The Antitrust Actions and other cases pending before Judge Lifland were stayed pending the JPML's decision on transferring the cases to a single district for pre-trial purposes.

5. On August 15, 2002, the JPML ordered that all cases alleging antitrust violations against defendants Pfizer or Warner-Lambert relating to delayed entry of generic Neurontin be transferred to Judge Lifland in the District of New Jersey under the caption MDL No. 1479.

6. On August 28, 2002, defendants moved to stay the Antitrust Actions until the resolution of the underlying patent-infringement litigation before Judge Lifland. (Doc. No. 9) On October 29, 2002, Magistrate Judge Chesler granted defendants' motion to stay the antitrust litigation. (Doc. No. 25) However, notwithstanding that stay, at the request of Co-Lead Counsel, Judge Chesler

directed that defendants make available to the plaintiffs in the Antitrust Actions all of the discovery exchanged by the parties, and all the materials filed with the Court in the Patent Actions up to that point, subject to the entry of a confidentiality order.

7. On March 14, 2003, Magistrate Judge Mark Falk (to whom this case was reassigned when Judge Chesler received his commission as a district court judge) ordered the consolidation and coordination of the various Antitrust Actions, and designated Kaplan Fox and Garwin Gerstein as Co-Lead Counsel for the direct purchaser class, and Jonathan D. Clemente, a partner at the law firm of Clemente Mueller, P.A. (then known as Clemente, Mueller & Tobia, P.A.) as Liaison Counsel for all plaintiffs in the direct purchaser class action cases. (Doc. No. 27)

8. On August 23, 2005, Judge Lifland issued opinions granting summary judgment motions, and dismissed the Patent Actions against several generic drug manufacturers. On June 5, 2006, Judge Lifland entered final judgment based upon his August 2005 summary judgment decisions in the Patent Actions, which allowed the parties in the Patent Actions to appeal to the United States Court of Appeals for the Federal Circuit. Judge Lifland's June 5, 2006 final judgment also stayed certain antitrust and unfair-competition counterclaims filed by two of the defendants in the Patent Actions (Apotex and Purepac) pending the appeal of the summary judgment orders.

9. Pfizer moved to stay all proceedings in the Antitrust Actions pending resolution of the appeals in the Patent Actions, and on August 25, 2006, Judge Lifland granted defendants' motion, further staying the Antitrust Actions. (Doc. No. 47) On October 18, 2006, Magistrate Judge Falk entered an agreed-upon confidentiality order, giving plaintiffs in the Antitrust Actions access to discovery and other materials from the Patent Actions during the pendency of the stay. (Doc. No. 48)

10. On March 12, 2007, the Antitrust Actions were reassigned to Judge Faith S. Hochberg and Magistrate Judge Patty Shwartz. (Doc. No. 52) On June 26, 2007, this Court directed that the Antitrust Actions be stayed until 90 days after the Federal Circuit's decision on the summary judgment appeals from the Patent Actions. (Doc. No. 55)

11. On September 21, 2007, the Federal Circuit issued an opinion reversing in part, and affirming in part, Judge Lifland's orders on summary judgment, and remanded the cases for further proceedings. The Federal Circuit ruled that there were material issues of fact concerning the claims that the generic drug companies had infringed the '482 Patent. The parties in the Patent Actions sought *en banc* review of that decision. The parties in the Antitrust Actions conferred and agreed that under the circumstances, the *status quo* should remain in

place until the Federal Circuit decided the *en banc* motion. The Federal Circuit denied those motions and issued its mandate on November 21, 2007.

B. Class Plaintiffs' Amended Complaint

12. This Court held a status conference with the parties in the Antitrust Actions on January 10, 2008 during which briefing on defendants' proposed motions to dismiss Class Plaintiffs' amended complaints, which were scheduled to be filed in February 2008, was discussed.

13. Class Counsel expended considerable time researching the legal and factual bases for Class Plaintiffs' amended complaint. Class Counsel reviewed and analyzed the millions of pages of documents from the Patent Actions that had been produced following the lifting of the discovery stay in late 2006, and specifically referenced many of these documents in the amended complaint. After Class Plaintiffs filed their first complaints in the spring of 2002, there had been disclosures related to defendants' off-label marketing campaign involving illegal promotion of Neurontin for a variety of unapproved uses. While some of defendants' illegal off-label efforts for Neurontin began to emerge in press reports in late 2002, in 2004 Pfizer entered a guilty plea admitting to engaging in such promotion, and a number of documents defendants produced in the Antitrust Actions confirmed the wide-ranging nature of their illegal scheme. Class Counsel

used the facts adduced in discovery and the hearing transcripts, plea agreements and information released to the public as part of the criminal proceedings in Massachusetts federal court in Class Plaintiffs' amended complaint to buttress their existing allegations about the scope of defendants' overarching scheme to delay entry of generic Neurontin.

14. In addition to the facts related to defendants' criminal, off-label scheme, Class Counsel reviewed the voluminous record from the Patent Actions to support the amended complaint's allegations that defendants' patent-infringement lawsuits were shams, and part-and-parcel of their misuse and abuse of the court system and the Hatch-Waxman statutory scheme to prevent generic competition. Unlike in 2002 when Class Plaintiffs' initial complaint was filed, by 2008 Class Counsel were faced with the potentially-adverse impact of the Supreme Court's 2007 decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, which Class Counsel (rightly) believed defendants would characterize as having increased Class Plaintiffs' pleading burdens on a motion to dismiss.

15. On February 14, 2008, Class Plaintiffs filed their amended complaint, alleging that defendants had willfully and unlawfully acquired and maintained a monopoly over the market for gabapentin anhydrous in violation of Section 2 of the Sherman Act. (Doc. No. 68) Class Plaintiffs alleged that this monopoly was

built and maintained through an overall scheme consisting of defendants' illegal off-label promotion of Neurontin, manipulation of the patent-application and approval process, violation of Hatch-Waxman procedures, and the repeated filing of sham patent litigation. The amended complaint alleged that, but for defendants' tactics, their monopoly on gabapentin anhydrous would have quickly been dissipated by generic competition.

C. Motion to Dismiss Class Plaintiffs' Amended Complaint

16. As anticipated, defendants strongly disputed Class Plaintiffs' allegations, and on April 1, 2008, moved to dismiss the amended complaint on a variety of grounds, including: failure to properly state a claim for relief under the *Twombly* decision; decisions in the Patent Actions allegedly undermining Class Plaintiffs' sham litigation allegations; failure to bring monopolization claims within the applicable statute of limitations; failure to allege an actionable restraint of trade; immunity for certain of their '482 Patent-prosecution actions under the *Noerr-Pennington* doctrine; and lack of causation. (Doc. No. 90)

17. On May 16, 2008, Class Plaintiffs filed their opposition to defendants' motion to dismiss that highlighted the myriad facts alleged in the amended complaint, and challenged defendants' improper efforts to use opinions and statements from the Patent Actions as support for their motion to dismiss the

Antitrust Actions. (Doc. No. 103) On June 5, 2008, Pfizer filed a reply, arguing that Class Plaintiffs' allegations of an overarching scheme to block generic entry failed to allege any illegal conduct, and again asserting that the proceedings from the Patent Actions were integral to Class Plaintiffs' complaints and should be considered by the Court on a motion to dismiss. (Doc. No. 108) In March 2009, defendants moved to submit ostensibly relevant new authority in further support of their motion to dismiss, a motion which was opposed by the Class Plaintiffs, but which Judge Hochberg ultimately granted prior to her decision on the motion to dismiss. (Doc. Nos. 169-174)

18. Judge Hochberg held a hearing on defendants' motion to dismiss on April 22, 2009, during which counsel for Pfizer and for Class Plaintiffs made lengthy arguments supporting their positions. On August 28, 2009, Judge Hochberg issued an order denying defendants' motion to dismiss the amended complaint. (Doc. No. 216) The Court found that Class Plaintiffs had sufficiently alleged an overall anticompetitive scheme, rejected defendants' attempts to have opinions and statements from the Patent Actions bind the Court in the Antitrust Actions, and further noted that the amended complaint raised myriad factual issues that could not be resolved at that stage of the case.

D. Discovery

i. Document Discovery

19. As noted above, on October 29, 2002, Magistrate Judge Chesler granted defendants' motion to stay the Antitrust Actions pending resolution of outstanding motions for summary judgment in the Patent Actions. However, notwithstanding that stay, Magistrate Judge Chesler directed that defendants should make available to the plaintiffs in the Antitrust Actions all the discovery exchanged by the parties, and all the materials filed with the Court up to that point, in the Patent Actions, subject to the entry of a confidentiality order. Class Counsel met and conferred with Pfizer's counsel over a period of time to reach an agreed-upon form of confidentiality order. However, due in part to objections from the defendants in the Patent Actions (*i.e.*, the generic drug companies whose information was included in Judge Chesler's October 29, 2002 order), a confidentiality order covering the materials from the Patent Actions was not entered until October 18, 2006.

20. Defendants began producing documents from the Patent Actions on a rolling basis starting in late December 2006. By early March 2007, defendants had completed their production of these materials, which ran to nearly one million pages. As part of the preparation of their amended complaint, Class Counsel

reviewed these materials as they were produced, and created a document database using a Concordance-based document-review system on a server dedicated specifically to the litigation, which has been hosted by Co-Lead Counsel since 2006.

21. The database eventually grew to include 522 gigabytes of information and currently contains 19 million files including PDF, text, optical-character-recognition, Microsoft Excel spreadsheet, searchable transcripts and TIFF image files. It includes all documents produced in this litigation and over 70 deposition transcripts comprising all of the testimony taken in the Antitrust Actions and a significant amount of the testimony taken in the Patent Actions. In addition, the database also eventually included voluminous trial transcripts and exhibits from the trial in the Patent Actions, as well as publicly-available documents from the *qui tam* action against Pfizer (*United States ex rel. Franklin v. Parke-Davis*, 96-cv-11651-PBS (D. Mass.), referred to here as the "*Franklin* Action") and the Racketeer Influenced and Corrupt Organizations Act litigation against Pfizer (*Kaiser Foundation Health Plan et al. v. Pfizer, Inc., et al.*, 04-cv-10739-PBS (D. Mass.), referred to here as the "*Kaiser* Litigation").

22. When the discovery stay was lifted in the autumn of 2006, Class Counsel served defendants with document requests, interrogatories and requests

for admission. Class Counsel met-and-conferred extensively with counsel for the defendants on the scope and timing of this discovery. Defendants eventually produced more than 7 million pages of documents in response to Class Plaintiffs' document requests (exclusive of defendants' electronic sales data and other transactional data, which were provided directly to the Class' experts as part of those experts' preparation for Class Plaintiffs' motion for class certification). Defendants also responded to Class Plaintiffs' interrogatories and requests for admission.

23. Using the same Concordance database first created to host and review the Patent Actions' documents, Class Counsel spent significant time running searches on all of the these millions of pages of documents produced in discovery to prepare for depositions; to develop Class Plaintiffs' theories of liability and damages; to prepare their motion for partial summary judgment and their opposition to defendants' motions for summary judgment; to prepare Class Plaintiffs' mediation statements; and to prepare for trial.

(a). Class Counsel's Active Monitoring of the Other Cases Involving Pfizer's Alleged Overarching Scheme to Delay Entry of Generic Neurontin

24. Throughout this litigation, Class Counsel actively monitored and reviewed the record from the Patent Actions, including the many dueling expert

reports the parties served in those litigations. Class Counsel worked with experts for Class Plaintiffs in assessing these expert reports for possible inconsistencies, or potentially-helpful concessions, in the statements and opinions offered by certain of the experts that were being offered by Pfizer in both the Patent and Antitrust Actions.

25. As the Patent Actions moved towards trial in the spring of 2011, Class Counsel (as they had throughout the duration of the Antitrust Actions) closely monitored the progress of those cases to ensure that Class Plaintiffs would be apprised of any findings or testimony in those cases that may have had potentially beneficial or negative effects on the Antitrust Actions. This monitoring also allowed Class Counsel to be aware of positions Pfizer was taking in the Patent Actions that contradicted its positions in the Antitrust Actions. For example, in the patent case Pfizer did not have to define a relevant market. However, its expert's approach to the calculation of damages demonstrated that there was a lack of cross-elasticity between the drugs that were suggested by Pfizer as potential alternatives to Neurotin.

26. Co-Lead Counsel attended the first two days of the jury trial in the Patent Actions, which began in mid-May 2011. As the trial in the Patent Actions progressed, Class Counsel obtained and reviewed the trial transcripts and exhibits,

and attended the trial when the parties made their opening statements and when one of Pfizer's expert witnesses from the Antitrust Actions was testifying in the Patent Actions, in order to assess his demeanor and the consistency of his opinions. This proved particularly fruitful in that the testimony of certain of Pfizer's witnesses during the trial of the Patent Actions appeared to undermine some of the opinions proffered by defendants' experts on positions asserted by Pfizer in the Antitrust Actions.

27. Class Counsel also obtained, reviewed and analyzed the publicly-available materials from the government's criminal case related to defendants' off-label marketing. Class Counsel's discovery efforts also entailed obtaining, reviewing and assessing the public record from the *Franklin* and *Kaiser* Litigations that focused on some of the same conduct that formed the basis for defendants' guilty plea and the off-label marketing element of Class Plaintiffs' antitrust claims. Class Counsel reviewed thousands of pages of publicly-available pleadings, briefing, expert reports, discovery documents, deposition exhibits and deposition, hearing and trial transcripts from the *Kaiser* Litigation. Class Counsel's review of these materials aided their prosecution of the Antitrust Actions by supplementing the discovery received from the defendants here, and Class Plaintiffs ultimately

relied on certain of the factual findings from the *Kaiser* Litigation in opposing defendants' motion for summary judgment.

(b). Discovery from Plaintiffs Meijer and LWD

28. Beginning in April 2008, defendants served plaintiffs Meijer and LWD with discovery seeking, *inter alia*, information related to their purchases of Neurontin and generic gabapentin. They also sought discovery concerning any assignments of claims from one or more drug distributors who had purchased, then resold, defendants' drugs. Defendants also sought discovery related to the basis for Class Plaintiffs' claims and the extent of their damages alleged to have resulted from defendants' antitrust violations.

29. Throughout the spring and summer of 2008, Class Counsel served objections to defendants' discovery, and met-and-conferred with defendants' counsel on the scope of this discovery. As those discussions occurred, Class Counsel worked with plaintiffs Meijer and LWD to gather potentially responsive documents and data for production. Class Counsel met and communicated with knowledgeable employees who collected, sorted and compiled documents and data for eventual production to defendants. Class Counsel reviewed Meijer and LWD's documents for responsiveness and privilege, and began production of those materials in the summer of 2008.

30. Class Plaintiffs reviewed and produced thousands of pages of documents in response to defendants' document requests (which included both hard-copy files and transactional data in electronic format). Meijer and LWD also worked with Class Counsel to respond to interrogatories, and Class Counsel met and communicated with employees from both Meijer and LWD to prepare for those employees' depositions in June 2009, which were defended by Class Counsel. LWD's Rule 30(b)(6) witness travelled from the company's Louisiana headquarters to Co-Lead Counsel's New York offices to prepare for and attend a full-day deposition on June 4, 2009, and Meijer's Rule 30(b)6) witness travelled from the company's Michigan headquarters to Chicago to prepare for and attend a full-day deposition on June 10, 2009.

(c). Document Discovery from Non-Parties

31. Beginning in early 2009, Class Counsel served subpoenae *duces tecum* on many of the defendants in the Patent Actions, including Apotex, Eon Labs, Teva/Ivax, Purepac and Watson Pharmaceuticals. This non-party discovery was aimed primarily at obtaining documents related to the matters at issue in the Patent Actions, to the extent that those documents had not already been produced by Pfizer following the October 18, 2006 entry of the confidentiality order that permitted production of discovery from the Patent Actions. Class Counsel met-

and-conferred with counsel for these non-parties, and the non-parties began to produce responsive documents in the summer of 2009.

32. In response to Class Plaintiffs' subpoenae, non-party Teva produced electronic documents (primarily spreadsheets) that were the equivalent of one million pages of hard-copy documents. In addition to the Teva production, other non-parties produced a combined total of 1.6 million pages of documents, including approximately 300,000 pages from Eon Labs, 50,000 pages from Apotex, 1.3 million pages from Purepac, and 5,000 pages from Watson Pharmaceuticals. Working with their experts, Class Counsel reviewed and analyzed these documents and spreadsheets.

ii. Deposition Discovery – Fact Witnesses

33. In addition to Class Counsel's document-discovery efforts, Class Counsel took a leading role in identifying fact witnesses from defendants and non-parties (primarily the generic drugmakers that were defendants in the Patent Actions). Class Counsel also engaged in time-consuming meet-and-confers with defendants and non-parties about the substance and logistics of those depositions, including scheduling, resolving disputes as to the scope of testimony and coordinating with counsel for other plaintiff groups. In addition, Class Counsel

took the lead in preparing for and conducting many of these depositions, and actively participated in nearly all of the others.

34. Class Counsel took a leading or substantial role in more than 40 fact depositions, including nearly 20 of defendants' current or former employees who were examined on a wide variety of topics including: defendants' marketing tactics; the development of Neurontin; the chemical formulation of gabapentin; the history of defendants' patent-prosecution efforts and their dealings with regulators throughout the NDA and Hatch-Waxman process; defendants' marketing, sales and research-and-development costs and the profitability of brand-name Neurontin; and licensing of defendants' gabapentin patents to affiliated companies such as Pfizer's Greenstone generic subsidiary. Class Counsel also took the lead, or a significant role, in preparing for and deposing defendants' corporate representatives on a variety of topics, including (as detailed below in the section of this declaration related to Class Plaintiffs' crime-fraud and sanctions motions) the nature and scope of defendants' off-label marketing scheme. In addition, as part of deposition discovery from non-parties, Class Counsel prepared for and deposed, or significantly participated in the preparation and depositions of, over 20 witnesses from Apotex, Eon, Teva/Ipax and Purepac.

35. The following chart reflects the fact witness depositions taken in this litigation:

#	Name [Title]	Company	Date(s)	Location(s)
1	Allen, Charles Scott [Director, Quality Control]	Purepac	12/07/09	New York City
2	Babcock, Mark [Director, Analytical Development]	Eon	09/15/09	Broomfield, Colo.
3	Bauer, Jeff [V.P., Business Development]	Eon	11/05/09	Princeton, N.J.
4	Bauer, Kristen [Deputy General Counsel]	Teva	10/09/09	Blue Bell, Pa.
5	Bauersmith, James [Senior Counsel, Legal Affairs]	Teva	09/23/09 12/22/09	Washington, D.C. Blue Bell, Pa.
6	Bond, Byron [Sr. Director, Trade Operations]	Pfizer	10/14/09	New York City
7	Boothe, Douglas [CEO, Actavis (30(b)(6) Witness)]	Purepac	11/19/09 11/20/09	New York City
8	Calvitt, Claude [Sr. Associate Scientist]	Pfizer	01/31/11	New York City
9	Cantor, Michael [Outside Patent Counsel (30(b)(6) Witness)]	Purepac	01/22/10	Hartford, Conn.
10	Carrado, Joseph [V.P., Regulatory Affairs]	Eon	10/20/09	Princeton, N.J.
11	Davidson, Simon [Productions/Operation Mgr.]	Pfizer	01/31/11	New York City
12	Diaz, Andres [Sr. Manager, Global Logistics (30(b)(6) Witness)]	Pfizer	07/02/09	New York City
13	Donevan, Sean [Medical Director, Lyrica Team]	Pfizer	12/02/09	New York City
14	Engels, David [V.P., Global Portfolio Maximization]	Pfizer	09/29/09	New York City
15	Evans O'Conner, Linda	Teva	12/04/09	Princeton, N.J.

#	Name [Title]	Company	Date(s)	Location(s)
	[Director, Regulatory Compliance (30(b)(6) Witness)]			
16	Fahner, Gordon [V.P., Supply Chain (30(b)(6) Witness)]	Apotex	12/08/09	Toronto, Ont.
17	Furqueron, Zachary [Director, Analytics – Medical Communications Dep't.]	Pfizer	11/09/09	New York City
18	Gaenzle, Christopher [Ass't. General Counsel]	Pfizer	08/03/11	New York City
19	Gibney, James [Director, Corporate Compliance]	Pfizer	03/17/10	New York City
20	Harvey, James [Director, Sourcing]	Pfizer	06/11/09	New York City
21	Hillel, Uri [Exec. Director, Quality Assurance]	Teva	10/15/09 10/16/09	New York City
22	Hobart, William [Assoc. Director, New Products]	Teva	12/11/09	Blue Bell, Pa.
23	Isaacs, Sarah [V.P., Compliance]	Teva	12/11/09	New York City
24	Jadeja, Janak [Director of Regulatory Affairs]	Purepac	11/24/09	New York City
25	Jaskot, Deborah [V.P., Regulatory Affairs]	Teva	09/09/09	Blue Bell, Pa.
26	Jaworski, Pat [Sr. Director, Regulatory Affairs (30(b)(6) Witness)]	Teva	11/06/09	Woodcliff Lake, N.J.
27	Johnson, Rady [Ass't. General Counsel (30(b)(6) Witness)]	Pfizer	11/18/09 06/15/10 06/10/11	New York City New York City New York City
28	Kennally, William [Director (30(b)(6) Witness)]	Greenstone	06/26/09	Philadelphia
29	King, Jennifer [Assoc. Director, New Product Forecasting (30(b)(6) Witness)]	Teva	10/05/09	Blue Bell, Pa.
30	Lynch, Frederick	Purepac	08/14/09	New York City

#	Name [Title]	Company	Date(s)	Location(s)
	[V.P., Supply Chain/Manufacturing]			
31	Magrab, Brendan [V.P., Supply Chain/Manufacturing]	Purepac	01/20/10	New York City
32	Marth, William [Pres./CEO, Teva N. America (30(b)(6) Witness)]	Teva	12/22/09	North Wales, Pa.
33	Mishra, Avanish [District Bus. Mgr., Northeast]	Pfizer	08/27/09 02/04/10	New York City New York City
34	Myers, Jeffrey [Patent Counsel]	Pfizer	11/13/09	New York City
35	Naiman, Jonathan [Sr. Director, Supply Chain]	Pfizer	06/25/09	New York City
36	Ostrowski, William [Sr. Director, I.T. (30(b)(6) Witness)]	Purepac	08/20/09	New York City
37	Pesachovic, Michael [Project Manager, Analytical R&D[	Teva	11/18/09 11/19/09	New York City
38	Schwartz, Edi [Head of R&D, Europe (30(b)(6) Witness)	Teva	10/28/09 10/29/09	New York City
39	Stainmatz, Michael [Plant Manager, Plant 12]	Teva	10/22/09	New York City
40	Sullivan, Kevin [Senior Director, Finance]	Pfizer	10/29/09	New York City
41	Svokos, George [V.P., Sales & Marketing]	Teva	12/10/09	New York City
42	Tremonte, Joseph [Sr. Director, Marketing (30(b)(6) Witness)]	Eon	07/17/09	Princeton, N.J.

iii. Expert Discovery

36. Class Counsel retained expert witnesses who provided analysis and testimony in support of Class Plaintiffs' claims and to rebut defendants' defenses. Those experts included:

a. Gary L. French, Ph.D., Class Plaintiffs' economic expert, who evaluated and opined on the issues of class certification and damages. Dr. French, who prepared reports for both class certification and the merits, opined that the delay in generic entry caused Class members to pay higher prices for gabapentin products for a longer period of time than they would have in the absence of defendants' exclusionary conduct. The economic impact of delayed generic entry on the prices of gabapentin products was predictable, substantial, market-wide and lent itself to aggregate economic assessment. Dr. French also opined that there was a feasible and reliable methodology to calculate the aggregate antitrust overcharge damages, and he estimated class-wide aggregate damages suffered by Class members as a result of defendants' alleged anticompetitive conduct. Dr. French determined that the Class's aggregate damages have a broad range anywhere from hundreds of millions of dollars to billions of dollars, depending on a number of factors and assumptions, *inter alia*, (a) his definition of the "but for" world (*i.e.* timing of the generic entry and number of generic manufacturers entering the

market absent Defendants' unlawful conduct), and (b) two different approaches to the quantification of the overcharges paid by the Class based on whether the phenomenon known as "generic bypass" was accounted for or not. Class Counsel devoted significant time and resources in working with Dr. French in the preparation of his reports, and to prepare him for his depositions. Class Counsel has continued to work with Dr. French and his staff during the settlement phase of this litigation.

b. Professor Carl Moy, a patent expert who evaluated the prosecution history of the '482 Patent and opined that defendants delayed the issuance of the '482 Patent. Professor Moy also opined that defendants had no reasonable basis to claim infringement of the '476 Patent and that their lawsuits for the alleged infringement of the '479 Patent had no realistic chance of success. Professor Moy also opined that Pfizer's lawsuits against Apotex, Geneva, and Mutual for the alleged infringement of the '482 Patent did not have a realistic chance of success.

c. Peter T. Kissinger, Ph.D., an expert in chemistry, evaluated the chemistry of the '482 Patent, and its limitations. Dr. Kissinger also opined on the methodology used by defendants to establish infringement of the '482 Patent and whether it had any basis in good scientific practice.

d. Keith B. Leffler, Ph.D., an economic expert on liability issues, analyzed the relevant economic market in which Neurontin competes and opined that the relevant economic market was the market for the sale and purchase of gabapentin in the United States and that defendants had a 100 percent share in this market until generics entered in 2004. Class Counsel worked closely with Dr. Leffler as he and his staff prepared his liability reports, and prepared for his depositions.

37. Class Counsel also had to respond to experts retained by defendants in a variety of subjects. Specifically, Class Counsel, with the assistance of Class Plaintiffs' experts, reviewed and analyzed the reports submitted by defendants' experts, and compared their opinions with the opinion and testimony of Pfizer's experts in the Patent actions. Class Counsel also prepared for and took the depositions of the following defense expert witnesses:

a. James Hughes, Ph.D., defendants' economic expert at the class certification stage, whose opinion was submitted to contradict Class Plaintiffs' assertion that Class members' injury and damages could be accurately assessed on a class-wide basis without individual analysis for each member of the proposed Class.

b. Monica G. Noether, Ph.D., defendants' economic expert at the merits stage, who opined that Class Plaintiffs' experts did not establish that Pfizer had market power in the relevant market and did not provide "direct" or "indirect" evidence of monopolization. Dr. Noether opined that Neurontin competed in several relevant antitrust markets corresponding to the various therapeutic uses of Neurontin. She further criticized Class Plaintiffs for not removing defendants' off-label sales from their "but-for world" model. Dr. Noether also criticized Class Plaintiffs' "but-for world" scenarios for allegedly erroneous assumptions.

c. Christopher N. Sipes, who, among other things, analyzed the Hatch-Waxman regulatory regime and its requirements for the Orange Book listing. Mr. Sipes, a partner at the law firm of Covington & Burling, opined that a reasonable basis existed for listing the '476, '479, and '482 patents in the Orange Book in connection with Neurontin. Mr. Sipes disagreed with Class Plaintiffs' allegations, and their experts' opinions, that the listing and enforcement of the '476 and '479 patents were components of defendants' overall exclusionary scheme. Mr. Sipes also opined that Pfizer's issuance and listing of the '482 Patent could not be characterized as manipulation of the Hatch-Waxman system.

d. Peter Barton Hutt, also a partner at the law firm of Covington & Burling, who was defendants' other expert concerning the Hatch-Waxman

regulatory system. Mr. Hutt opined on the history of the legislation and enactment of the Hatch-Waxman Act and policies underlying the Act.

e. Lawrence H. Pretty, defendants' patent expert, who opined on whether Pfizer's prosecution of the '482 Patent involved improper delay. Mr. Pretty also testified that the '476, '479, and '482 patent lawsuits had objectively reasonable bases and could not have constituted "sham litigation."

f. Gregory K. Bell, Ph.D., who evaluated Class Plaintiffs' "overall scheme" allegations and opined that Pfizer's conduct with respect to Neurontin could not be characterized as a scheme to manipulate the Hatch-Waxman regulatory regime.

g. Andrew Slaby, M.D., M.P.H., Ph.D., who opined about prescribing gabapentin and other drugs that are competitive treatments for bipolar and mood disorders. Dr. Slaby opined that gabapentin was an effective treatment for some patients suffering from bipolar and other recurrent cyclic mood disorders.

h. Michael J. McLean, M.D., Ph.D., who opined that physicians utilize various drug alternatives to treat patients with epilepsy and neuropathic pain. Specifically, Dr. McLean opined that other drugs in addition to Neurontin are used to treat epilepsy and neuropathic pain and physicians choose among the drugs on the basis of such factors as their own experience and preferences, the drugs that

patients have used previously and their reaction to these drugs, and the safety, efficacy and tolerability of one drug over another for each specific patient.

i. Prof. Martyn C. Davies, Ph.D., defendants' chemistry expert, whose report contradicted the assertion, by Class Plaintiffs' chemistry expert Dr. Kissinger, that there was no available pH methodology to determine whether there were more than 20 parts-per-million acidic chloride in a sample of gabapentin, which is one of the claims of the '482 Patent.

iv. Discovery Disputes

(a). Pfizer's Privilege Logs and the Appointment of Special Master Professor Paul R. Rice

38. On or about July 17, 2009, Pfizer served a privilege log containing in excess of 2,100 entries. Following extensive discussions about the adequacy of this log, Pfizer revealed that it had withheld as privileged, but not logged, 4,000 – 5,000 additional documents. In December 2009, the Court directed Pfizer to log all documents withheld under a claim of privilege.

39. On March 12, 2010, the Court appointed Professor Paul R. Rice as Special Master to resolve disputes concerning Pfizer's privilege log. (Doc. No. 304) On or about April 7, 2010, Pfizer produced final, complete versions of its privilege logs in addition to roughly 7,500 additional pages of previously-withheld documents. Class Plaintiffs sought to take two additional depositions of former

Pfizer employees Claude Calvitt and Simon Davidson concerning a subset of those documents, and on April 23, 2010, the parties met and conferred regarding that request. On August 23, 2010, Class Plaintiffs renewed their request for the depositions of Messrs. Calvitt and Davidson, both of which took place on January 31, 2011.

40. The proceedings before Special Master Rice related to the privilege logs continued through the autumn of 2010, and Co-Lead Counsel prepared extensively for, and participated in, numerous in-person and telephonic conferences, including a number of presentations before Special Master Rice on the disputed privilege issues, and submissions of reasons why Pfizer's privilege claims were questionable. Class Counsel were hampered in part in this effort, because in making those arguments, they could only rely on the privilege logs and their descriptions of the documents. Special Master Rice issued a number of decisions concerning Pfizer's claims of privilege, upholding some and rejecting others. As a result of those proceedings, Pfizer ultimately produced more than 10,000 pages of documents it had initially withheld under claims of privilege.

(b). Class Plaintiffs' Crime-Fraud Motions

41. Class Counsel's efforts in obtaining discovery to support Class Plaintiffs' claims led to significant, time-consuming and hard-fought disputes with

defendants resulting from defendants' refusal, on the basis of attorney-client privilege and work-product protection, to produce certain requested evidence. Specifically, Pfizer refused to produce a voluminous body of evidence believed by Class Counsel to be relevant to Class Plaintiffs' allegations of defendants' sham lawsuits regarding alleged infringement by generic manufacturers of the '476 and '479 patents. This dispute resulted in Class Plaintiffs filing two motions to obtain discovery on the basis of the crime-fraud exception (collectively referred to here as the "Crime-Fraud Motions").

42. Class Plaintiffs filed the first Crime-Fraud Motion on February 19, 2010, arguing that Pfizer had admitted to committing a crime when it pled guilty to violating 21 U.S.C. §§ 331(d), 333(a)(2) & 355(a) in connection with its promotion of Neurontin for off-label uses. (Doc Nos. 288-289) Class Plaintiffs also argued that Pfizer's filing and prosecution of the '479 Patent infringement litigation, as well as numerous instances of alleged misrepresentations to the courts in those cases, were in furtherance of a crime. Therefore, Class Counsel sought discovery of communications between Pfizer and its counsel relating to the basis for prosecuting the '479 Patent lawsuits and any advice given to Pfizer regarding off-label promotion of Neurontin.

43. On May 21, 2010, pursuant to a May 17, 2010 order, Class Plaintiffs supplemented their first Crime-Fraud Motion by providing the Court, for its *in camera* review, with lists of allegedly privileged documents that Pfizer and its outside patent counsel had identified on their privilege logs. (Doc. No. 343) The first list was a privilege log produced by Pfizer's outside counsel in the patent infringement litigation regarding: (a) off-label uses or off-label marketing of Neurontin; (b) Pfizer's July 1, 1999 letter to Judge Chesler in *Warner-Lambert v. Purepac & Faulding*, No. 98-2749 (JCL); (c) the December 27, 2000 hearing in the same action before Judge Chesler; (d) the summary judgment papers concerning the '479 patent; and (e) statements made concerning off-label marketing at the September 24, 2004 hearing in *Warner-Lambert v. Purepac*, No. 00-2931 (JCL). The second list was a list of internal Pfizer documents on the same topics. The three remaining lists were of documents the descriptions of which appeared to fall within the five categories listed above, but could not be evaluated by Class Plaintiffs without further information.

44. In an August 10, 2011 order, the Court found a *prima facie* case of fraud committed by defendants which was furthered by the actions of Pfizer's counsel through its misrepresentations to the patent courts. (Doc. No. 477) The Court held that Class Plaintiffs had established entitlement to *in camera* review of

the documents outlined in the five categories set forth in their May 21, 2010 submission. The Court further ordered that the identified documents should be submitted to Professor Paul R. Rice, the Special Master appointed by the Court on March 12, 2010 to resolve the parties' privilege disputes, for his *in camera* review.

45. In the process of Special Master Rice's *in camera* review, Class Counsel were involved in extensive discussions with him and defendants in the pursuit of the production of responsive documents that were withheld as ostensibly privileged or protected.

46. Class Plaintiffs filed their second Crime-Fraud Motion on November 18, 2011. (Doc. Nos. 494-495) In their second Crime-Fraud Motion, Class Plaintiffs moved for the production of documents pursuant to the crime-fraud exception to the attorney-client privilege relating to defendants' prosecution of the '476 Patent litigation. Class Plaintiffs argued that the '476 Patent was improperly listed in the Orange Book and the '476 Patent lawsuits were improperly initiated and maintained by Pfizer as a part of its overall exclusionary scheme to delay generic competition. Class Plaintiffs specifically contended that: (a) Pfizer had no initial basis for filing the '476 capsule cases against Purepac and other generic manufacturers; (b) Pfizer also had no basis to continue the '476 capsule cases once it had irrefutable evidence that the gabapentin active pharmaceutical ingredient

(the "API") supplied by Teva to Purepac was made in Israel; and (c) even after learning that the API supplied by Teva did not infringe the '476 Patent, Pfizer continued to assert the same allegations in subsequent '476 infringement cases. Further, Class Plaintiffs argued that defendants made misrepresentations to the patent courts in relation to Purepac's and Apotex's motions for attorneys' fees which constituted a separate basis for the crime-fraud exception. Therefore, Class Plaintiffs requested that the Court order Pfizer to produce documents it withheld relating to the above matters for *in camera* review. On November 30, 2012, the Court denied Class Plaintiffs' second Crime-Fraud Motion. (Doc. No. 681)

(c). Class Plaintiffs' Motion for Sanctions

47. Class Counsel undertook significant efforts to obtain discovery, specifically Rule 30(b)(6) witness testimony, on the issues related to Pfizer's illegal marketing of Neurontin for off-label uses, including off-label promotion of Neurontin for neurodegenerative diseases claimed by the '479 Patent, and the factual bases for Pfizer's denials in its Answer in this case concerning its promotion of Neurontin for off-label uses. The issues of Pfizer's off-label promotion of Neurontin, particularly off-label promotion of Neurontin for neurodegenerative diseases, were believed by Class Counsel to be important for the overall exclusionary scheme alleged by Class Plaintiffs.

48. Not being able to resolve this issue after extensive communications with defendants by the end of the agreed-upon discovery period, on December 8, 2009, Class Counsel submitted a joint dispute letter to Magistrate Judge Shwartz requesting that defendants be ordered to designate a Rule 30(b)(6) witness to testify with respect to: (a) Pfizer's off-label marketing of Neurontin for neurodegenerative diseases; (b) defendants' compliance efforts after the 2004 guilty plea; and (c) the factual basis for defendants' denials in their Answer to Class Plaintiffs' amended complaint of the off-label allegations; and (d) delayed prosecution of the '482 Patent. Defendants opposed this request.

49. On December 10, 2009, Magistrate Judge Shwartz granted Class Plaintiffs' request to compel defendants to produce a Rule 30(b)(6) witness concerning their off-label marketing for neurodegenerative diseases and the factual basis for the off-label uses denials in its Answer, but denied the other requests. (Doc. No. 264)

50. Pursuant to the Court's order, Pfizer designated James Gibney, Pfizer's director of corporate compliance, as its Rule 30(b)(6) witness. Class Counsel took the lead in preparing for and taking Mr. Gibney's deposition on March 17, 2010. At the deposition, it became clear that Mr. Gibney was not prepared to provide the information on the relevant topics. Therefore, on April 5,

2010, Class Plaintiffs moved for sanctions pursuant to Fed. R. Civ. P. 37. (Doc. No. 312)

51. On April 15, 2010, Magistrate Judge Shwartz denied Class Plaintiffs' request for sanctions, but ordered that defendants produce a Rule 30(b)(6) witness no later than April 30, 2010 to provide the testimony regarding defendants' off-label denials in their Answer, and how those statements were consistent with Pfizer's public statements and actions. (Doc. No. 318)

52. On May 7, 2010, Magistrate Judge Shwartz denied defendants' request for reconsideration of her April 15, 2010 order. (Doc. No. 333) After Class Counsel undertook extensive negotiations and conferences with defense counsel regarding an extension of the deposition deadline, Pfizer's Rule 30(b)(6) witness, Assistant General Counsel Rady Johnson, was produced for deposition on June 15, 2010.

53. Class Counsel found that Mr. Johnson was an inadequate witness whose testimony consisted of a recitation of an outline titled "Factual Bases for Denials Relating to Off-Label Allegations," which had been prepared by defendants' outside counsel. On July 8, 2010, after an unsuccessful attempt to resolve this issue directly with defendants, Class Plaintiffs renewed their motion for sanctions or, alternatively, for permission to depose: (a) defendants' outside

counsel who represented Pfizer and Warner-Lambert during the criminal investigation of Pfizer's off-label promotion of Neurontin and the negotiation of the guilty plea, and (b) those outside counsel involved in preparing defendants' Answer to Class Plaintiffs' amended complaint. (Doc. No. 362)

54. On January 24, 2011, Magistrate Judge Shwartz partially granted Class Plaintiffs' request for sanctions, ordering that Rule 30(b)(6) witness Mr. Johnson be re-deposed and provide the responses required by the Court's December and March orders, and to answer Class Plaintiffs' questions seeking, *inter alia*: (a) the facts upon which defendants denied off-label promotion; (b) how these denials were consistent with Pfizer's public actions; (c) the steps taken by defendants to review their Answer before it was filed; and (d) steps that Mr. Johnson took to prepare for his deposition. (Doc. No. 409) The Court also, *inter alia*, struck all objections posed during Mr. Johnson's June 15, 2010 deposition, including those ostensibly based on work-product protection regarding Pfizer's denial of off-label uses. The Court also ordered that, at trial, defendants would be prohibited from offering any evidence regarding their off-label denials except for: (a) the evidence disclosed in the deposition testimony of Messrs. Gibney and Johnson; and (b) the evidence specifically listed in the outline, prepared by

defendants' counsel, titled "Factual Bases for Denials Relating to Off-Label Allegations."

55. Defendants objected to Magistrate Judge Shwartz's January 24, 2011 order, and Class Counsel took the lead in arguing that the order should be affirmed. On June 9, 2011 Judge Hochberg affirmed Magistrate Shwartz's January 24, 2011 order. (Doc. No. 469)

56. Class Counsel took a leading role in preparing for and deposing Pfizer's Rule 30(b)(6) witness Rady Johnson for the second time on June 11, 2011. After taking the deposition, Class Plaintiffs renewed their motion for sanctions, arguing that Mr. Johnson was again not adequately prepared for his deposition, erroneously testified that illegal off-label promotion did not extend beyond 2000, and excluded some off-label uses from those being illegally promoted by defendants.

57. On July 5, 2011, Magistrate Judge Shwartz denied Class Plaintiffs request for sanctions, but allowed the deposition of Chris Gaenzle, Pfizer's senior litigator, who worked with the outside counsel and approved the Answer which denied off-label use. (Doc. No. 471) Pursuant to the July 5, 2011 order, Class Counsel prepared for the deposition of Chris Gaenzle and took his deposition on August 3, 2011.

E. Class Certification

58. Although document discovery had been underway for nearly two years, immediately following Judge Hochberg's denial of defendants' motion to dismiss on April 22, 2009, Class Counsel began finalizing the papers in support of their forthcoming motion for class certification. On September 25, 2009, Class Plaintiffs moved to certify a class of "[a]ll persons or entities in the United States who had purchased Neurontin from defendant Pfizer at any time during the period of July 16, 2000 through September 25, 2009." (Doc. Nos. 226-227) Defendants filed their opposition brief and supporting papers on October 26, 2009. (Doc. No. 234) On November 25, 2009, Class Plaintiffs filed their reply brief in further support of their class certification motion. (Doc. No. 251) On March 12, 2010, and again on April 28, 2010, Class Plaintiffs moved to supplement their motion for class certification by revising their proposed definition to conform the Class Period to the evidence in the record that developed after the close of class briefing in November 2009; Class Plaintiffs now proposed a shorter Class Period of December 11, 2002 through August 31, 2008. (Doc. Nos. 301-302, 329).

59. The preparation of the class certification papers was intense and time-consuming. Class Counsel conducted extensive document analyses to support the claims of class-wide impact, and to rebut defendants' defenses to class certification

as expressed by Dr. Hughes, the economist Pfizer retained to oppose class certification. Class Counsel also worked closely with Dr. French, an economist with considerable experience in assessing antitrust impact and calculating damages in complex antitrust actions. As part of the discovery related to class certification, Class Counsel requested and received from Pfizer the equivalent of thousands of pages of electronic sales data, which Dr. French and his colleagues used to construct a model for assessing damages on a class-wide basis. Class Counsel devoted significant time and resources to preparing and defending Dr. French at deposition, and also expended considerable time and resources to prepare for and take the deposition of Dr. Hughes, defendants' expert.

60. Defendants vigorously contested Class Plaintiffs' motion for class certification. Their opposition focused largely on the effect of the Third Circuit's class certification decision in *In re Hydrogen Peroxide*, 552 F.3d 305 (2008). Pfizer argued that that decision increased Class Plaintiffs' burden to show common impact under Rule 23 – a showing that defendants strenuously contended could not be met by Class Plaintiffs' overcharge theory and the proposed damages methodology developed by Dr. French.

61. Judge Hochberg heard oral argument on Class Plaintiffs' class certification motion on April 13, 2010 and further argument on September 13,

2010. Pursuant to Judge Hochberg's Order of May 28, 2010 (Doc. No. 346), Class Plaintiffs submitted a statement of undisputed facts relevant to class certification, a proposed summary of the claims, issues, or defenses subject to class treatment, and a trial plan describing the issues likely to be presented at trial and demonstrating that they were susceptible to class-wide proof. On January 25, 2011, Judge Hochberg granted Class Plaintiffs' motion (including their motion to amend the proposed class definition), certifying a class of "[a]ll 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," excluding from the class definition the "defendants and each of their respective parents, employees, subsidiaries, affiliates, and franchisees, and all government entities." (Doc. No. 412) Judge Hochberg's January 25, 2011 class certification order also appointed Garwin Gerstein and Kaplan Fox as Co-Lead Counsel for the certified Class, and designated plaintiffs Meijer and LWD as representatives of the certified class.

62. On February 7, 2011, Judge Hochberg approved Co-Lead Counsel's proposed form and manner of notice of pendency of the now-certified class action. (Doc. No. 423) The Court approved Class Counsel's retention of Berdon Claims Administration, LLC ("Berdon"), a claims-administration firm with extensive

experience in class action antitrust litigation related to generic drugs, to perform services related to notifying Class Members of the pendency of the class action. Using defendants' transactional sales data, Berdon identified 67 potential Class Members and mailed the approved long-form notice of pendency of class action. Berdon then caused the short-form notice of pendency of class action to be published in the February 28, 2011 issue of *The Pink Sheet*, a drug-industry publication widely read by Class Members.

63. On or prior to the April 4, 2011 deadline for requests for exclusions from the certified class, Berdon received timely requests for exclusion from CVS Pharmacy, Inc., Caremark, L.L.C., Rite Aid Corp., Rite Aid HDQTRS Corp., Walgreen Co., the Kroger Co., Supervalu, Inc., Safeway, Inc., American Sales Company, Inc. and HEB Grocery Company, LP.[5] (Doc. No. 446)

F. Motions for Summary Judgment

64. On April 30, 2012, Class 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

[5] The requests for exclusion of CVS, Rite Aid, Caremark, Walgreens, Supervalu, Safeway, American Sales Co. and HEB included claims for purchases made from drug distributors Cardinal Health, Inc. and McKesson Corporation, which Cardinal and McKesson had assigned to one or more of the entities that requested exclusion from the certified class.

monopoly power. Class Plaintiffs also moved for an order that defendants be collaterally-estopped from relitigating judicial and factual findings from the government's criminal action related to their off-label marketing, the *Kaiser* Litigation and the Patent Actions. (Doc. Nos. 517-520)

65. On April 30, 2012, defendants also moved for summary judgment with respect to all of Class Plaintiffs' claims, asserting a variety of arguments that attacked all the aspects of Class Plaintiffs' claims and evidence, including Defendants' contentions that (a) Pfizer did not have a monopoly power in a relevant market; (b) Class Plaintiffs cannot establish that Pfizer engaged in anticompetitive conduct; and (c) Class Plaintiffs cannot establish that the alleged anticompetitive conduct caused their injuries. (Doc. Nos. 515-516, 521, 522, 524, 526-527).

66. In support of its arguments, Pfizer vigorously challenged evidence submitted to demonstrate that Pfizer had monopoly power prior to the introduction of generic gabapentin, and that Pfizer had maintained that monopoly power by wrongfully listing the '476 and '479 patents in the Orange Book, pursuing sham litigation on the '476 and '479 patents, and engaging in off-label marketing to expand the market for Neurontin and to disadvantage generics, leading to the introduction of Lyrica, Pfizer's successor brand-name drug to Neurontin. Pfizer

challenged evidence of Pfizer's monopoly power, which included: (a) direct evidence of Pfizer's ability to maintain a price for gabapentin well above its competitive price; and (b) indirect evidence demonstrating the existence and scope of the relevant market (defined by Class Plaintiffs' expert Dr. Leffler), and Pfizer's ability to profitably set prices of Neurontin at a level well above the costs of producing, distributing and selling Neurontin without patients and doctors switching to alternative therapies. Because proof of monopoly power is an essential element of any Sherman Act Section 2 claim, Pfizer's argument regarding its lack of monopoly power, if successful, would have defeated Class Plaintiffs' claims similar to the Court's findings in its favor in respect to the alleged anticompetitive conduct and causation.

67. To refute Pfizer's summary judgment motion, Class Counsel marshalled legal and factual evidence and expert testimony, and asserted that:

a. The relevant market, for purposes of indirectly proving monopoly power, was properly defined as Neurontin and its AB-rated generics. Class Counsel devoted substantial time to rebut the opinions of Dr. Noether, defendants' economic expert, who asserted that the relevant market was broader, and that it was sufficiently broad to preclude a showing of market power that would have allowed Pfizer to act anti-competitively;

b. Pfizer willfully maintained monopoly power through a variety of methods, including: (i) the off-label marketing scheme that was the subject of its 2004 guilty plea; (ii) its use of litigation to delay generic competition, by filing multiple lawsuits on the ‘476 and ‘479 patents, even though Pfizer knew it did not have the factual basis to support the patent-infringement cases for the ‘476 and ‘476 patents; (iii) defendants knew that they lacked the factual support to legally list the ‘476 and ‘479 patents in the Orange Book; (iv) Pfizer intentionally delayed the prosecution of its ‘482 Patent, and maintained its ‘482 Patent lawsuits long past the point where they had no realistic chances of success; and (v) there were sufficient disputed facts regarding causation that warranted a trial.

68. Class Counsel’s role in summary judgment briefing was extensive and time-consuming. Class Counsel expended many hours working with defense counsel to draft, revise and submit a detailed Joint Statement of Undisputed Material Facts (the “Joint Statement”) that was filed concurrently with the parties’ respective motions for summary judgment. (Doc. No. 523) The Joint Statement, which was over 100 pages, contained succinct recitations of facts which both sides agreed were true, and thus could be relied upon by the Court in considering the motions for summary judgment. Its preparation involved collecting and distilling

the contents of hundreds of documents, scores of pleadings, briefs and transcripts from multiple litigations, dozens of deposition transcripts and expert reports from the Patent and Antitrust Actions, and multiple meet-and-confers with defense counsel about the evidence to be referenced in the Joint Statement.

69. Class Counsel devoted considerable time preparing Class Plaintiffs' Statement of Undisputed Material Facts, which (like the Joint Statement) involved many hours of compiling and distilling the factual and economic evidence, and contained those facts that Class Counsel contended were material to the motion and were supported by the record developed in the litigation, but which Pfizer disputed. Class Counsel also expended many hours responding to defendants' Statement of Undisputed Material Facts, setting forth the reasons, including references to specific evidence, why those purported facts were in dispute.

70. Class Counsel also spent a large amount of time and effort on the legal research necessary to support their motion for partial summary judgment and collateral estoppel, and also to defeat defendants' motion for summary judgment. This research involved numerous procedural issues related to collateral estoppel, as well as a thorough examination and explanation of the Hatch-Waxman Act and antitrust precedent on monopoly power. Furthermore, responding to defendants' summary judgment briefing involved extensive legal research to counter their

arguments that the evidence failed to establish the existence of any illegal scheme. Defendants' contentions that Class Plaintiffs' experts and evidence failed to show the existence (or maintenance) of monopoly power – either by the direct evidence method or indirect evidence of such power – required Class Counsel to research the viability of both theories of proving monopoly power, an effort that involved research into many complex legal, factual and economic issues.

71. Class Counsel retained and worked closely with four experts – economists Drs. French and Leffler, chemist Dr. Kissinger, and patent expert Professor Moy – in support of Class Plaintiffs' motion for partial summary judgment and to counter defendants' summary judgment motion. Class Counsel's work with these experts related to various issues raised in the parties' summary judgment papers, including the definition of the contours of the relevant market and the nature and scope of competition for brand-name Neurontin, the propriety of defendants' patent litigation, and the reasonableness of defendants' asserted claim construction in the Patent Actions.

i. Motions to Strike Portions of Defendants' Summary Judgment Motion

72. Because defendants' summary judgment motion challenged Class Plaintiffs' sham litigation claims by relying on evidence of their settlement of certain of the Patent Actions, on May 30, 2012 Class Plaintiffs moved to strike

those portions of defendants' motion as barred by Fed. R. Evid. 408, and to preclude defendants from using those settlements as a defense in the Antitrust Actions. (Doc. Nos. 545-546) Alternatively, Class Plaintiffs sought discovery related to the negotiation, drafting and execution of those settlement agreements. Defendants opposed Class Plaintiffs' motion to strike.

ii. Decision on Summary Judgment Motions

73. On August 8, 2013, Judge Hochberg denied defendants' motion for summary judgment and Class Plaintiffs' motion for partial summary judgment. (Doc. No. 688-689) Judge Hochberg held that there were genuine issues of material fact regarding Pfizer's monopoly power, and that Class Plaintiffs had proffered sufficient evidence of defendants' market power to justify a trial. She also held that Class Plaintiffs had introduced sufficient evidence demonstrating that there were disputed issues of fact regarding whether defendants' overall scheme delayed generic entry or whether there were intervening causes, warranting trial on causation issues.

74. In the same order, Judge Hochberg granted Class Plaintiffs' request that collateral estoppel be applied to the facts that formed the basis of defendants' guilty plea in the criminal off-label marketing case, and ordered that the parties meet-and-confer to resolve the outstanding dispute as to the scope of defendants'

guilty plea in that case. Following Judge Hochberg's summary judgment order, Class Counsel conferred with the defendants and reached agreement as to the scope of Pfizer's guilty plea, with one small exception. On September 23, 2013 the parties submitted a joint stipulation detailing their agreement as to the conduct forming the basis of defendants' guilty plea, and the single open issue. (Doc. No. 693)

75. Judge Hochberg's summary judgment decision also ordered that defendants be precluded from denying the factual findings from the *Kaiser* Litigation, but held that while both parties could rely on prior court rulings from the Patent Actions to support, or defend against, Class Plaintiffs' sham litigation allegations, whether the Patent Actions were, in fact, a sham was an issue to be tried. With respect to Class Plaintiffs' motion to strike defendants' references to settlement agreements in certain of the Patent Actions, Judge Hochberg denied the motion but referred the matter to Magistrate Judge Michael A. Hammer for appropriately circumscribed discovery on the settlement agreements.

iii. Discovery Concerning Settlements from the Patent Actions

76. Class Counsel then drafted and served document requests on the parties to those settlement agreements, including Pfizer and non-parties Teva, Sandoz (formerly Eon), and Actavis (formerly Purepac). Class Counsel met-and-

conferred with defense counsel and counsel for the non-parties after those entities objected to Class Plaintiffs' discovery requests. Class Counsel then participated in a telephonic hearing with Magistrate Judge Hammer in an effort to resolve the dispute about this post-summary judgment discovery (which was still pending as of the time of Class Plaintiffs' settlement in principle with defendants).

G. *Daubert* Motions

77. Concurrent with summary judgment briefing, on August 31, 2012, Class Plaintiffs also moved pursuant to *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579 (1993), to exclude the opinions offered by defendants' experts Dr. Monica Noether (whose opinion was submitted to contradict Class Plaintiffs' economic expert Dr. Leffler on the issue of monopoly power as well as an opinion rebutting the damages calculations of Class Plaintiffs' experts Drs. Leffler and French); Dr. Martyn Davies (a chemistry expert whose opinions were submitted to contradict Class Plaintiffs' expert Dr. Kissinger on Pfizer's ostensible proof of infringement in the Patent Actions); Covington & Burling partners Christopher Sipes and Peter Hutt (lawyers, sometimes retained by Pfizer for regulatory matters, who offered opinions regarding the Hatch-Waxman Act and the alleged reasonableness and lawfulness of defendants' Orange Book listings for the '476 and '479 patents and the initiation of the '476 and '479 patent lawsuits); and Dr.

Gregory Bell (a management consultant who offered opinions on the development and commercialization of Neurontin to rebut Class Plaintiffs' allegations that defendants manipulated the Hatch-Waxman procedures). (Doc. Nos. 632-633) Preparation of Class Plaintiffs' *Daubert* motion involved considerable effort on Class Counsel's part, including thorough review of those experts' opinions and prior testimony and publications.

78. Defendants also filed a *Daubert* motion seeking to exclude certain opinions offered by Class Plaintiffs' experts Drs. Leffler, Kissinger and Moy. (Doc. Nos. 634-637) Defending against these *Daubert* motions involved considerable legal and factual research and close consultation with the experts. These *Daubert* motions were fully submitted and still pending as of the time Class Plaintiffs settled with defendants in March 2014.

H. Preparation for Trial

79. Following Judge Hochberg's August 8, 2013 summary judgment decision, Class Counsel began to prepare for trial. In the roughly seven months between Judge Hochberg'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*, determining which witnesses would be available for live testimony and which testimony would be

presented by deposition transcripts, and otherwise developing their strategy for trial. As part of that trial preparation, Class Counsel retained a nationally-known jury consultant, and over two days in December 2013, organized and presented to focus groups made up of individuals from 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, and which proved very valuable as Class Plaintiffs prepared to try their case. These efforts included compiling and presenting opening statements outlining both Class Plaintiffs' theories as well as theories and counter-arguments that defendants were expected to present at any jury trial. Class Counsel carefully reviewed the report produced by the jury consultant, and took its recommendations into account as trial preparations proceeded.

III. MEDIATION AND SETTLEMENT

80. Class Counsel prepared for and participated in mediation sessions that occurred in December 2010, February 2013 and February and March 2014, conducted by Eric Green, a well-respected mediator with extensive experience in mediating settlements in pharmaceutical cases.

81. The sessions on December 12 and 13, 2010 were full-day mediation sessions. Class Counsel prepared detailed mediation statements or presentations

outlining their theories of the case and the evidence supporting their position. These presentations were delivered by the parties at the mediation attended by decision makers for both sides. In their presentation, Class Counsel described each component of Class Plaintiffs' case and their interrelation, including proof of Pfizer's monopoly power and relevant market, the alleged exclusionary conduct, its impact on Class members, and damages. In turn, defendants delivered a presentation attacking almost all the components of Class Plaintiffs' case, including Class Plaintiffs' allegations of an overall exclusionary scheme, as well as their causation theory. Professor Green raised numerous legal and evidentiary issues related to the parties' arguments that had to be addressed in the discussion following the presentations. Professor Green's unbiased assistance and expertise enabled the parties to vet their analysis and focus on the most critical elements of the case. Further mediation sessions in February 2013 and February and March 2014 allowed the parties to further engage in productive negotiations.

82. Representatives from Meijer and LWD travelled to New York to attend and participate in the mediation session held in December 2010 and February 2013, and Class Counsel was in close communication with key decision-makers at Meijer and LWD during all mediation sessions and settlement discussions.

83. The settlement of this hard-fought, twelve-year old litigation was reached after extensive negotiations between Class Counsel and Pfizer's counsel, under the supervision of a highly-experienced mediator. The parties expected that the Court could set a trial date at any time, and knew that a trial of this case would be both long and complex. When this case was settled in March 2014, Class Plaintiffs believed that they would have prevailed, but Class Counsel understood that the Class faced significant risks if the case were brought to trial.

A. Risks of Bringing this Case to Trial

84. In particular, defendants asserted that Class Plaintiffs could not prove causation: namely, whether the cause of the delay in generic entry was due to Pfizer's alleged scheme involving improper Orange Book listings, delays in the prosecution of the '482 Patent before the Patent and Trademark Office, illegal off-label promotion and sham litigation (all of which Pfizer denied), or rather was the result of actions unrelated to Pfizer's conduct. Specifically, there was evidence that Purepac, who was the first ANDA filer and entitled to 180 days of exclusivity before any other generic could enter the market, was not capable of manufacturing the drug due to manufacturing problems. One of Class Plaintiffs' entry scenarios depended upon another generic company's achieving success earlier in the patent litigation against it, triggering Purepac's exclusivity period and allowing entry by

others six months later, regardless of whether Purepac actually could enter the market or not. Whether a jury would credit the evidence for this scenario was uncertain.

85. Class Counsel also considered the likelihood that, in light of defendants' assertions regarding causation, Class Plaintiffs' damages models would not have been accepted by a jury, and whether a jury might ultimately limit, or preclude, an award of damages.

86. In addition, although discovery regarding defendants' settlements in the Patent Actions was still pending as of the time an agreement to settle this action was reached, the defendants may have been able to introduce evidence that those cases had been settled. While Class Plaintiffs planned to move to exclude evidence of the Patent Action settlements, the fact that Pfizer had obtained monetary settlements from the generics might have been presented to the jury, which would have posed a threat to Class Plaintiffs' claims that the '482 Patent cases were sham litigations undertaken as part of defendants' overall scheme to delay generic entry of Neurontin.

87. With respect to liability issues, this litigation is particularly risky given the complicated interrelation between, among other things, antitrust law, patent law, the Hatch-Waxman Act, state substitution laws and complex economic

principles. Class Plaintiffs also faced risks convincing a jury at trial about the "overarching scheme" liability theories. While Pfizer's guilty plea, and the judicial findings from the *Kaiser* Litigation, were strong evidence supporting Class Plaintiffs' liability theory, there was a risk that a jury would disagree with Class Plaintiffs' contention that the off-label marketing played a critical role in defendants' antitrust violations.

B. Preliminary Approval of the Settlement and Notice to the Class

88. By Order, dated May 2, 2014 (Doc. No. 727) (the "May 2, 2014 Order"), this Court found that the proposed Settlement was arrived at by arm's-length negotiations by highly experienced counsel and preliminarily approved it. This Court also approved forms of notice to the Class, *i.e.* the written notice for mailing to Class members and the summary notice for publication in the industry trade journal, *The Pink Sheet*, and the mode and schedule of their dissemination to the Class. This Court approved the retention of Berdon.

89. Pursuant to the May 2, 2014 Order, Berdon mailed the written notice to Class Members on May 12, 2014 advising them about the terms of the Settlement and their right to object. On the same day Berdon and Co-Lead Counsel posted the written notice together with the Settlement Agreement on their

respective websites. Concurrently, the summary notice was published in *The Pink Sheet*.

90. Attached as Ex. 1 is an affidavit of Michael Rosenbaum re: Mailing and Publication of Notice with exhibits, dated June 25, 2014.

91. On June 2, 2014, Defendants deposited $190,416,438.36, which is the agreed-upon $190 million plus 1% per annum interest that had accrued since March 14, 2014 when the parties agreed to settle the litigation, into an escrow account held in trust by UBS AG that is earning interest for the benefit of the Class.

92. As of the date of this Declaration, no objections to the Settlement or any of its terms have been received.

93. This class is unique in that the core of the Class is a group of wholesalers that made the major part of all Class purchases in that case. They closely monitored the litigation of this case and provided their continued support to Class Counsel based on their familiarity with the Hatch-Waxman cases and numerous risks involved in their litigation. These Class members have written to the Court to express their support of the settlement and Class Counsel's request for attorneys' fees of one-third of the Settlement Fund and Class Counsel's reimbursement of expenses.

94. Attached as Ex. 2 is a letter from Donald W. Myers on behalf of AmerisourceBergen Corporation to the Court dated June 19, 2014.

95. Attached as Ex. 3 is a letter from Robert J. Tucker on behalf of Cardinal Health, Inc. to the Court dated June 18, 2014.

96. Attached as Ex. 4 is a letter from Steven Winick on behalf of McKesson Corporation to the Court dated June 16, 2014.

97. Attached as Ex. 5 is a letter from Margaret M. Glazier on behalf of Burlington Drug Co. to the Court dated June 11, 2014.

98. Attached as Ex. 6 is a letter from Matthew Kipp on behalf of Dakota Drug Inc. to the Court dated June 11, 2014.

99. Attached as Ex. 7 is a letter from Raul Rodriguez Font on behalf of Drogueria Betances, Inc. to the Court dated June 11, 2014.

100. Attached as Ex. 8 is a letter from W. Keith Elmore on behalf of King Drug Company of Florence, Inc. to the Court dated June 10, 2014.

101. Attached as Ex. 9 is a letter from Anthony V. Rattini on behalf of Miami-Luken, Inc. to the Court dated June 16, 2014.

102. Attached as Ex. 10 is a letter from Thomas G. Schoen on behalf of Prescription Supply, Inc. to the Court dated June 11, 2014.

103. Attached as Ex. 11 is a letter from Ken Couch on behalf of J M Smith Corporation d/b/a Smith Drug Co. to the Court dated June 11, 2014.

104. Attached as Ex. 12 is a letter from Gregory Drew on behalf of Value Drug Co. to the Court dated June 11, 2014.

105. Attached as Ex. 13 is a letter from Laurence F. Doud, III on behalf of Rochester Drug Co. to the Court dated June 25, 2014.

106. Class Representatives, LWD and Meijer, also support Class Counsel's request for attorneys' fees of one-third of the Settlement Fund and reimbursement of Class Counsel's expenses.

107. Attached as Ex. 14 is a declaration of Chad Gielen, President/Chief Executive Officer of Louisiana Wholesale Drug Co., Inc. dated June 16, 2014.

108. Attached as Ex. 15 is a declaration of Gayle White, former President and General Manager of Louisiana Wholesale Drug Co., Inc. dated June 15, 2014.

109. Attached as Ex. 16 is a declaration of Cynthia Rogowski, Senior Counsel for Meijer, Inc. and Meijer Distribution, Inc. dated July 24, 2014.

110. Attached as Ex. 17 is a copy of an order dated January 31, 2011 from *In re Nifedipene Antitrust Litig.*, MDL No. 1515, Dkt. No. 333, Civil Action No. 1:03-mc-223 (RJL) (D.D.C.).

111. Attached as Ex. 18 is a copy of the April 20, 2009 Order and Final Judgment in *Meijer, Inc. et al. v. Barr Pharmaceuticals, Inc.*, Civ. Action No. 05-2195 (CKK) (D.D.C.).

IV. SUMMARY OF ATTORNEYS' FEES AND UN-REIMBURSED EXPENSES

112. Co-Lead Counsel led a team of highly experienced and highly respected law firms that have over 15 years of extensive experience prosecuting and trying Hatch-Waxman antitrust cases on behalf of the same core class of direct purchaser plaintiffs and have been involved in many critical decisions made by various courts in this area of antitrust law.

113. The following chart summarizes the aggregate time and necessary and incidental expenses of all Class Counsel, as set forth in more detail in the separate firm declarations of Class Counsel, appended here as Exhibits 19-30:

Firm Name	Hours	Lodestar	Expenses
Garwin Gerstein & Fisher LLP	17,548.50	$10,081,077.50	$504,771.49
Kaplan Fox & Kilsheimer LLP	11,251.50	$6,195,676.25	$567,990.34
Clemente Mueller, P.A.	658.75	$242,192.24	$4,408.88
Odom & Des Roches LLP	14,797.75	$7,369,606.25	$425,373.49

Firm Name	Hours	Lodestar	Expenses
Smith Segura & Raphael LLP	12,607.40	$5,549,824.50	$413,444.42
Sperling & Slater, P.C.	126	$99,050.00	$3,057.67
Berger & Montague, P.C.	2,301.09	$1,542,827.00	$272,646.52
Heim Payne & Chorush LLP	800.80	$529,825.00	$17,234.09
Vanek Vickers & Masini, P.C.	218.63	$95,083.83	$4,014.76
Grant & Eisenhofer, P.A.	36.3	$17,822.50	$487.28
Kohn, Swift & Graf, P.C.	65.3	$44,770.00	$108.41
Kozyak Tropin & Throckmorton, P.A.	154.1	$36,772.50	$0
Oren Giskan	4	$2,700.00	$0
TOTAL	60,570.12	$31,807,227.57	$2,213,537.35

114. Based upon the lodestar set forth above, the requested one-third fee results in a multiplier of 1.99.

115. Additionally, detailed time records and expense vouchers/receipts are available to the Court *in camera* should the Court wish to examine them.

V. THE EFFORTS OF THE CLASS REPRESENTATIVES ON BEHALF OF THE CLASS

116. The Class Representatives have each made a significant contribution in prosecuting this action for the benefit of the Class members. They actively protected the Class's interests by filing the suit on behalf of the Class and undertaking all the responsibilities involved in being a named plaintiff, including responding to document requests and interrogatories, monitoring the progress of the case, testifying at depositions, and attending mediation sessions. The Class representatives were required to expend significant time and effort that was not compensated over the 12 years of this litigation.

117. The "Big 3" national wholesalers (Cardinal Health, Inc., McKesson, Inc. and AmerisourceBergen Co.) have expressly supported the requested incentive awards to the Class Representatives.

118. In recognition of their time and effort expended for the benefit of the Class, Class Counsel have requested an incentive award of $100,000 for each of LWD and Meijer.

We declare under penalty of perjury that the above is true and correct.

Dated: July 1, 2014

Bruce E. Gerstein

Richard J. Kilsheimer