EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION **THIS DOCUMENT RELATES TO:** **All Direct Purchaser Actions**	**Case No. 1:15-cv-07488-CM-RWL**

DECLARATION OF STUART E. DES ROCHES ON BEHALF OF ODOM & DES ROCHES, LLC IN SUPPORT OF MOTION FOR APPROVAL OF THE SETTLEMENT AND MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS FOR THE NAMED PLAINTIFFS

Stuart E. Des Roches, subject to the penalties of perjury provided by 18 U.S.C. § 1746, does hereby declare as follows:

1. I am a managing member of the law firm of Odom & Des Roches, LLC (hereinafter "the firm" or "ODR"). I submit this declaration in support of the Motion for Approval of the Settlement and the Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards for the Named Plaintiffs.

Involvement in the Case

2. The firm has participated in this case as co-counsel for the Direct Purchaser Class Plaintiffs ("Class counsel").

3. The firm has been actively involved in this matter from initiation of the pre-filing investigation to the filing of the complaint; throughout fact and expert discovery;

in opposing dispositive motions; in preparing for trial; and participating in mediation sessions and reaching settlement with defendants Forest Laboratories, LLC, Actavis plc, Forest Laboratories, Inc., and Forest Laboratories, Holdings Ltd. (collectively, "Defendants" or "Forest") on behalf of the Direct Purchaser Class Plaintiffs.

4. More specifically, ODR was involved in, among other things, conducting pre-filing investigations and analysis regarding: (a) the regulatory background underlying and pertaining to branded Namenda IR and XR, and the numerous Abbreviated New Drug Applications ("ANDA" or "ANDAs") filed by generic manufacturers and naming Namenda IR as the reference listed drug; (b) the FDA approval package for Namenda XR in comparison to Namenda IR; (c) the impact of the Pediatric Exclusivity on FDA approval of the generic Namenda IR ANDAs in light of the ANDA filers' maintenance of ANDAs containing paragraph IV certifications (as opposed to switching to paragraph III certifications) after settlement with Forest of the '703 patent lawsuits; and (d) the ability and willingness of generic ANDA filers to enter the market earlier with less-expensive, AB-rated generic versions of Namenda IR "but for" the patent settlement agreements with Forest.

5. Thereafter, Burlington Drug Company, Inc. ("Burlington Drug"), filed its complaint in the United States District Court for the Southern District of New York on May 29, 2015; J M Smith Corp. d/b/a Smith Drug Co. ("Smith Drug) on September 22, 2015; and Rochester Drug C-Operative, Inc. ("RDC") on December 28, 2015.

6. In each of those complaints, all of which were filed as class actions under Fed.R.Civ.P. 23, the Direct Purchaser Class Plaintiffs challenged both (a) Forest's patent settlement agreements with the generic ANDA first-filers that were seeking to market AB-rated generic versions of Namenda IR, and (b) Forest's hard-switch product hop from Namenda IR to Namenda XR. Initially, the Direct Purchaser Class Plaintiffs challenged agreements settling patent litigation between Forest and fourteen (14) generic ANDA filers but eventually narrowed the focus to challenging the settlement agreement between Forest and Mylan, the last of the generic ANDA filers to settle and the only generic to receive compensation for both attorneys' fees and an alleged sham "side deal" relating to the marketing of an authorized generic version of Forest's branded drug Lexapro. The Direct Purchaser Class Plaintiffs alleged that the patent settlement agreement between Forest and Mylan constituted an anticompetitive "reverse payment" deal in violation of Section 1 of the Sherman Act and sought damages under Section 4 of the Clayton Act.

7. The alleged reverse payment agreement between Forest and Mylan was the primary focus of the Direct Purchaser Class Plaintiffs in that it gave rise to the largest amount of overcharge damages and was a necessary precursor to Forest's subsequent product hop from Namenda IR to Namenda XR.

8. From the outset of this case, the efforts by all Class counsel were closely coordinated and highly organized. Class counsel representing the Direct Purchaser Class Plaintiffs in this case have worked together for over 21 years on Hatch-Waxman antitrust cases alleging impaired or delayed market entry of less-

expensive generic drugs. Efforts here were generally divided according to the expertise that each firm has built over the years with each issue team interacting with other teams to ensure that overall strategies and themes were consistent throughout. All Class counsel worked together to devise and implement an overall litigation plan, and ensured that all litigation tasks were appropriately staffed, pursued, and executed in an efficient and effective manner.

9. For its part, ODR participated with co-counsel in the following litigation tasks once the pre-filing investigation was completed and the complaints were filed: (a) drafting oppositions to Forest's motions to dismiss and for summary judgment, including drafting responses to Forest's detailed statement of facts supporting its summary judgment motions and in drafting an equally detailed counter statement of uncontested facts; (b) drafting the Direct Purchaser Class Plaintiffs' motions for summary judgment and motion for collateral estoppel; (c) drafting oppositions to some of Forest's *Daubert* motions and drafting affirmative *Daubert* motions; (c) drafting numerous requests for production, interrogatories, and third-party subpoenas; (d) participating in the meet-and-confer processes with generic ANDA filers regarding their responses and objections to producing documents and deponents in response to third-party subpoenas; (e) assisting in the review of over 4 million pages of documents obtained from defendants and third parties; (f) developing a searchable database which allowed efficient and meaningful access to the above-described documents; (g) constructing a deposition strategy and identifying key witnesses associated with Forest and third-parties for deposition, and then participating in depositions; (h) working with experts and consultants in

the fields of antitrust economics, the Hatch-Waxman Act, FDA regulations and procedures, and operation of pharmaceutical companies in terms of launch processes and capabilities; (j) preparing for and attending court hearings; (k) preparing for trial; and (l) preparing for and participating in several mediation sessions and settlement discussions.

10. ODR was a core member of the Direct Purchaser Class Plaintiffs' settlement and mediation team. This work involved, among other things, drafting portions of various mediation statements, including the causation sections describing the more competitive world that would have existed "but for" the reverse payment agreement between Forest and Mylan, and thereafter participating in negotiation sessions.

11. ODR was also a member of the Direct Purchaser Class Plaintiffs' trial team. The undersigned was designated by co-counsel to serve as Lead Trial Counsel for the Direct Purchaser Class; Andrew W. Kelly of the firm was designated to lead the examination for several key witnesses including that of the Direct Purchaser Class Plaintiffs' economics expert Prof. Einer Elhauge and third party genrics; and Chris Letter was designated to help lead the trial war room. ODR's paralegals, namely Kimberly Fontenot and Amy Kennelly, were also key members of the trial team assisting in running the trial war room, preparing video-depositions to be shown at trial, preparing witness examination binders, working with computer and graphics technicians, and many additional essential tasks. These trial responsibilities required ODR to be involved in every aspect of trial preparation, such as: (a) compiling the initial Pre-Trial Order filed in January 2018 and the

later revised Pre-Trial Order filed in April 2019; (b) briefing and opposing a host of motions *in limine;* (c) moving to Manhattan in October 2019 in the lead up to the anticipated start of trial on October 28, 2019; (d) preparing for and participating in the multi-hour Final Pre-Trial Conference with the Court during which arguments were presented on Phase 1 trial exhibits; (e) selecting major trial themes and strategies; (f) selecting deposition testimony and exhibits to show to the jury; (g) deciding which fact and expert witnesses to present as well as the ordering of those witnesses; (h) creating demonstratives for the Court and jury; (i) researching the evidentiary bases for introduction of, or opposition to, key pieces of testimony and exhibits; (j) evaluating Forest's trial exhibits, deposition designations, and demonstratives for objections; (k) engaging in meet-and-confers with defense counsel regarding objections to various evidentiary and presentation issues, including attempted stipulations as to the willingness and ability of generic manufacturers to enter the market earlier; (l) preparing for the direct examination of some of plaintiffs' expert witnesses; (m) preparing for the cross-examination of some of Forest's live fact and expert witnesses; (n) preparing for the presentation of the opening statement; and (o) working with a jury consultant and preparing to pick the jury.

Attorneys' Fees and Costs/Expenses

12. Prosecution of this case was a monumental task in terms of the complex antitrust theories involved; the complexity of the pharmaceutical, regulatory, patent, Medicaid "Best Price," economic, scientific, and manufacturing issues underlying the legal theories, which required detailed analysis by lawyers and experts in

these fields; the volume of information and documents obtained, reviewed, analyzed, and synthesized for depositions, motion practice, and trial purposes; the number of fact and expert depositions; the aggressive schedule set by the Court for discovery and trial; and outstanding defense counsel.

13. Based on my twenty-seven (27) years of engaging in complex business litigation, which includes over twenty-one (21) years of handling Hatch-Waxman antitrust cases on behalf of direct purchasers, I can attest to the risk of non-recovery. Some previous Hatch-Waxman antitrust cases have been lost at the motion to dismiss, motion for summary judgment or jury trial stages, and after the expenditure of tens of thousands of work hours and millions of dollars in expenses. The risk of non-recovery here was particularly high given the hotly contested nature of the legal standard surrounding reverse payment analysis, which continues to evolve; complexity surrounding the "side deal" reverse payment made by Forest to Mylan, which implicated technical aspects of the Medicaid "Best Price" regulatory regime; patent issues surrounding the settlement agreements at issue; and the prospects of demonstrating that one or more less-expensive, generic versions of Namenda IR would have entered the market sooner "but for" the reverse payment deal between Forest and Mylan. Any one of those issues, and others, could have tripped up a jury.

14. Contained below is a chart demonstrating the time spent on this case by each ODR attorney and paralegal, and the lodestar calculation based on the firm's 2019 billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by the firm, which are available for the

Court's *in camera* inspection if necessary. Time expended in preparing the application for fees and reimbursement of expenses has not been included.

Name & Position	Hourly Rate	Total Hours	Lodestar
Stuart E. Des Roches (Partner)	$950	1619.25	$1,538,287.50
Andrew W. Kelly (Partner)	$900	533.75	$480,375.00
Chris Letter (Partner)	$750	1654.85	$1,241,137.50
Craig Glantz (Of Counsel)	$650	238.50	$155,025.00
Annie M. Schmidt (Associate)	$500	290.75	$145,375.00
Dan C. Chiorean (Associate)	$625	2044.25	$1,277,656.25
Chris Stow-Serge (Associate)	$550	1197.25	$658,487.50
John E. Fitzpatrick (Associate)	$400	237.00	$94,800.00
Amy Kennelly (Paralegal)	$250	951.50	$237,875.00
Kim Fontenot (Paralegal)	$275	1368.50	$376,337.50
		Total Hours: 10,135.60	Total Lodestar: $6,205,356.25

15. The total number of hours expended on this litigation by the firm is 10,135.60. The total lodestar for the firm is $6,205,356.25.

16. In addition to the above, ODR has incurred a total of $940,397.65 in un-reimbursed expenses in connection with the prosecution of this case. The expenses and costs incurred in this action are reflected in the firm's detailed Work-In-Progress ("WIP") Report, which is also available to the Court for *in camera* inspection upon request. The WIP Report is prepared from expense vouchers, check records and other source materials and are an accurate

recordation of the actual expenses and costs incurred. No "premium" or other additional charge has been added to these figures. The categorical breakdown of the un-reimbursed costs and expenses is as follows:

Expense	**Amount**
Consulting experts	
Court reporter	
Document database vendor	
FDA and other document fees	
Filing fees/court costs	$432.54
Litigation fund assessment	$848,000.00
Postage/air Express/messengers	$2,636.31
Process server and subpoena expenses	
Reproduction costs (outside vendor)	$8,553.55
Research and datasets	$78.30
Scientific literature fees	
Telephone/teleconference/facsimile	
Travel/hotel/meals	$80,696.95
Trial expenses (furniture and equipment)	
Total:	**$940,397.65**

Experience of ODR

17. With respect to the standing of counsel in this case, attached hereto is a brief biography of the firm. ODR has engaged in antitrust litigation for many years, including over twenty-one (21) years of litigating Hatch-Waxman antitrust cases on behalf of direct purchaser class plaintiffs. ODR was a member of the litigation team that first challenged reverse payments on behalf of the direct purchaser class starting in 1998 and later challenging for the first time other conduct that artificially delays or impairs generic drug entry, such as the filing of sham citizen petitions, product hopping, improper obtaining and enforcement of patents, and manipulation of the FDA regulatory system.

18. Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 9th day of March, 2020.

Stuart E. Des Roches

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Firm Resume

Odom & Des Roches, LLC, engages in multi-party litigation of complex civil matters throughout the United States. The firm's clients have included local businesses, national and international companies, and private individuals.

The lawyers of Odom & Des Roches, LLC, have particular depth of experience in antitrust litigation, corporate litigation, and pharmaceutical industry litigation. The firm routinely handles complex class action cases and other matters both inside and outside the Multi-District Litigation context. The firm's members have served as lead trial counsel in national antitrust class cases that have gone to trial in various federal courts around the country or were settled on the "courthouse steps."

The firm has been intimately involved in, among others, the following national antitrust cases representing direct purchasers:

- *In re AndroGel Antitrust Litig.*, Civil Action No. 09-md-2084, N.D. Ga. (private settlements).
- *In re Buspirone Antitrust Litig.*, MDL Docket No. 1410, S.D.N.Y. (district court-approved settlement of $220,000,000).
- *In re Cardizem CD Antitrust Litig.*, MDL Docket No. 1278, E.D. Mich. (district court-approved settlement of $110,000,000).
- *In re Hypodermic Direct Purchaser Antitrust Litig.*, Civil Action No. 05-1602, D.N.J. (district court-approved settlement of $45,000,000).
- *In re K-Dur Antitrust Litig.*, MDL Docket No. 1419, D.N.J. (district court-approved settlement of $60,000,000).

- *In re Lamictal Direct Purchaser Antitrust Litig.*, Civil Action No. 2:12-cv-00995, D.N.J. (case pending).

- *In re Lidoderm Antitrust Litig.*, Civil Action No. 3:15-cv-01784, N.D. Cal. (district court approved settlement of $166,000,000).

- *In re Neurontin Antitrust Litig.*, MDL Docket No. 1479, D.N.J. (district court-approved settlement of $190,000,000).

- *In re Prograf Antitrust Litig.*, Civil Action No. 11-md-2242, D.Mass. (district court-approved settlement of $98,000,000).

- *In re Relafen Antitrust Litig.*, Master File No. 01-12239, D. Mass. (district court-approved settlement of $175,000,000).

- *In re Remeron Antitrust Litig.*, Civil Action No. 03-CV-0085, D.N.J. (district court-approved settlement of $75,000,000).

- *In re Suboxone (Buprenorphine Hydrochloride and Nalaxone) Antitrust Litig.*, MDL No. 2445, E.D. Pa. (case pending).

- *In re Terazosin Hydrochloride Antitrust Litig.*, MDL Docket No. 1317, S.D. Fla. (district court-approved settlement of $72,500,000).

- *In re TriCor Direct Purchaser Antitrust Litig.*, Civil Action No. 05-340, D. Del. (district court-approved settlement of $250,000,000).

- *King Drug of Florence, Inc., et al. v. Cephalon, Inc., et al.*, Civil Action No. 2:06-cv-01797, E.D. Pa. (district court-approved settlement of $512,000,000 and additional private settlements).

- *Meijer, Inc. et al. v. Abbott Laboratories*, Civil Action No. 4:07-cv-05985, N.D. Cal. (district court-approved settlement of $52,000,000).

- *Natchitoches Parish Hospital Service District, et al. v. Tyco International (US), et al.*, Civil Action No. 05-12024, D. Mass. (district court-approved settlement of $32,500,000).

The core of the firm's philosophy and practice is its commitment and ability to try jury cases, and its lawyers structure their strategy from the outset of an engagement with an eye towards eventual appearances in the courtroom for motion practice and jury trials. It is the firm's philosophy and experience that being prepared for the rigors of motion practice and trial maximizes the opportunities for the client to obtain favorable results. In addition to its active

jury trial practice, the firm has extensive appellate experience, and its senior partner argued and won the unanimous reversal of a federal circuit court of appeals before the United States Supreme Court. Odom & Des Roches, LLC, which is rated "AV" by Martindale-Hubbell, maintains offices in New Orleans, Louisiana and Hahira, Georgia. The firm is listed in Martindale-Hubbell's "Bar Register of Preeminent Lawyers."

MEMBERS

John Gregory Odom, PLC. Mr. Odom was born in Hahira, Lowndes County, Georgia on November 29, 1951, and was admitted to the bar of the State of Georgia in 1978, the District of Columbia in 1982, and the State of Louisiana in 1983. He is also admitted to the bars of numerous United States District Courts and Courts of Appeals throughout the country, as well as the United States Supreme Court. He practiced with a leading Savannah firm for several years, and was a business litigation partner in the second-largest firm in Louisiana for seven years before leaving to form his own firm in 1990.

Mr. Odom was educated at Yale University (B.A., cum laude, 1973); The Queen's College, Oxford University (B.A. (hons.), 1975; M.A., 1981); and the University of Virginia School of Law (J.D., 1978). He is the author of "Recent Developments in Litigation Under the Racketeer Influenced and Corrupt Organizations Act and Federal Securities Law," Manual of Recent Developments in the Law, Louisiana State Bar Association, 1987-1990, and "Creative Applications of Civil RICO," 11 Am. J. Trial Adv. 245, Fall, 1987. His regular areas of practice include corporate litigation, healthcare industry litigation, securities litigation, RICO litigation, professional liability litigation, class action litigation, and antitrust litigation.

Stuart E. Des Roches, LLC. Mr. Des Roches was born in New Orleans, Louisiana on August 12, 1966, and was admitted to the bar for the State of Louisiana in 1992. He has practiced continuously with Mr. Odom since 1992 and was made a partner in the firm in 1998. He is admitted to practice in numerous United States District Courts and Courts of Appeals throughout the country, as well as the United States Supreme Court. Mr. Des Roches was educated at the University of New Orleans (B.A., 1989), and Tulane University School of Law (J.D., 1992), and is a member of the New Orleans, Louisiana, and American Bar Associations, and the United States Supreme Court Historical Society.

Mr. Des Roches has routinely practiced antitrust law for over twenty-five years, and has particular experience in antitrust litigation relating to the Hatch-Waxman Act, the pharmaceutical industry, and medical devices. Mr. Des Roches served as the lead trial lawyer for the class of direct purchasers in *In re Tricor Direct Purchaser Antitrust Litigation* (D. Del.), which resulted in the largest settlement at that time of a Hatch-Waxman antitrust case ($250,000,000) after commencement of trial. He also served as co-lead trial counsel with the firm's partner Mr. Kelly in *Natchitoches Parish Hospital Service District, et al. v. Tyco Healthcare, et al.* (D. Mass.), which settled for $32,500,000 after three weeks of trial and on the eve of closing arguments. He has also been involved in various other litigation matters, including numerous trials, in the areas of general business and accountant's liability defense.

Andrew W. Kelly. Mr. Kelly was born in Bellefonte, Pennsylvania on December 6, 1966, and was admitted to the bar for the States of California and Louisiana in 1994. He is admitted to practice in the United States District Courts for the Eastern, Middle, and Western Districts of Louisiana, the Southern District of California, the United States Court of Appeals for the Fifth Circuit, as well as admitted *pro hac vice* in various additional federal courts. Mr. Kelly was educated at the University of California at Berkeley (B.A., 1988), and the University of San Diego School of Law (J.D., 1994). He served as law clerk to the Honorable John Minor Wisdom, of the United States Court of Appeals for the Fifth Circuit. His regular areas of practice include business litigation, class action litigation, and antitrust litigation. Along with Mr. Des Roches, Mr. Kelly served as co-lead trial counsel for the class of direct purchasers in *Natchitoches Parish Hospital Service District, et al. v. Tyco Healthcare, et al.* ($32,500,000 settlement three weeks into trial). He is also available for counseling on criminal defense matters.

Chris Letter. Mr. Letter was born in Philadelphia, Pennsylvania on August 30, 1974. He earned a J.D. from Loyola University of New Orleans School of Law in 2007 and received a Bachelor of Arts degree in history from the University of New Orleans in 1998. Mr. Letter is admitted to practice in the Louisiana Supreme Court, the several courts of the State of Louisiana, the United States District Courts in Louisiana, the Fifth Circuit Court of Appeals, as well as admitted *pro hac vice* in various additional federal courts. He actively participates in the firm's antitrust litigation practice.

ASSOCIATES

Annie M. Schmidt. Ms. Schmidt was born in New Orleans, Louisiana on May 11, 1985. She earned a J.D. from Loyola University School of Law in 2010, and received a Bachelor of Arts degree from Spring Hill College in 2007. Ms. Schmidt is admitted to practice before the Louisiana Supreme Court and the several courts of the State of Louisiana. She actively participates in the firm's antitrust litigation practice.

Dan Chiorean. Mr. Chiorean was born in Oradea, Romania in April 1980, and immigrated to the United States at the age of 11. He holds a Bachelor of Science in Industrial and Operations Engineering from The University of Michigan, where he was recognized on the Dean's List and University Honors List. Mr. Chiorean earned his *Juris Doctor* in May, 2012 from Tulane Law School, where he served on Moot Court Board. He joined Odom & Des Roches as an Associate in March, 2014 and is admitted to practice before the Louisiana Supreme Court and the several courts of the State of Louisiana, the United States District Court for the Eastern District of Louisiana, the United States District Court for the Northern District of Georgia, as well as admitted *pro hac vice* in various additional federal courts. Mr. Chiorean is a member of the Louisiana State Bar Association, the New Orleans Bar Association, and the Federal Bar Association. He actively participates in the firm's antitrust litigation practice.

Christopher Stow-Serge. Mr. Stow-Serge was born in Fort Lauderdale, Florida in February of 1985. He earned a Bachelor of Arts degree from Tulane University in 2007 and a

J.D. from Tulane Law School in 2012, where he graduated *magna cum laude*. Mr. Stow-Serge is admitted to practice law in the state courts of Louisiana as well as the U.S. District Court for the Eastern District of Louisiana, the U.S. District Court for the Western District of Louisiana, the U.S. Fifth Circuit Court of Appeals, as well as admitted *pro hac vice* in various additional federal courts. He actively participates in the firm's antitrust litigation practice.

OF COUNSEL

Thomas Maas. Mr. Maas concentrates his practice on complex litigation, antitrust, and intellectual property disputes, and he has broad litigation experience in antitrust, patent, trademark, trade secrets, securities fraud, and other complex commercial cases. He has developed particular experience in the pharmaceutical industry, including antitrust, patent/Hatch-Waxman, and contract litigation, as well as counseling in licensing and M&A transactions. Mr. Maas is highly knowledgeable on the intricacies of Food and Drug Administration (FDA) approval, exclusivity periods under Hatch-Waxman, and the antitrust implications of settlements in pharmaceutical patent litigation. Mr. Maas has represented clients in multiple billion dollar jury trials in the pharmaceutical industry, as well as in a billion dollar merger. He has also co-authored multiple successful appellate briefs before various federal appellate courts, and he is a former licensed pharmacy technician. Mr. Maas also counsels clients in the alcoholic beverage industry on a wide variety of subject matter areas, including trademark disputes and licensing, regulatory issues, financing and restructuring, and distribution and promotional agreements. He acts as lead outside counsel for a popular distilled spirits brand, and he was selected to the Executive Committee for the Distilled Spirits Council of the United States (DISCUS), the country's leading trade organization in the distilled spirits industry. Mr. Maas joined Odom & Des Roches in 2017 as Of Counsel, after ten years of practice with Katten Muchin Rosenman in Chicago.

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