

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

**IN RE SUBOXONE (BUPRENORPHINE
HYDROCHLORIDE AND NALOXONE)
ANTITRUST LITIGATION**

MDL No. 2445

Master File No. 2:13-MD-2445-MSG

THIS DOCUMENT RELATES TO:

All Direct Purchaser Class Actions

**DECLARATION OF BRUCE E. GERSTEIN IN SUPPORT OF CLASS COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES, AND SERVICE AWARDS FOR THE CLASS REPRESENTATIVES**

I. INTRODUCTION

I, Bruce E. Gerstein, managing partner of the law firm of Garwin Gerstein & Fisher LLP (“GGF”), and co-lead counsel for Direct Purchaser Class Plaintiffs (“Plaintiffs” or the “Class”), respectfully submit this declaration in support of Class Counsel’s¹ application for:

- (1) an award of attorneys’ fees totaling 33⅓% of the settlement with Indivior (the “Settlement”) net of: (a) unreimbursed expenses; and (b) service awards to the class representatives, plus a proportionate amount of any interest accrued since the settlement was escrowed (the “Settlement”);
- (2) reimbursement of expenses that were incurred in the prosecution of Plaintiffs’ Claims; and
- (3) service awards to class representatives Burlington Drug Company, Inc. (“BDC”), Rochester Drug Co-Operative, Inc. (“RDC”), and Meijer, Inc. and Meijer Distribution, Inc. (“Meijer”).

As co-lead counsel, GGF has been involved in all aspects of this litigation from the pre-complaint investigation and filing of Plaintiffs’ initial complaint in December 2012 through the

¹ “Class Counsel” include the firms listed in paragraph 83, *infra*.

filing of the Settlement with the Court (and continuing). I am therefore fully familiar with the litigation, the most significant aspects of which are outlined below for the Court's convenience.

II. COMMENCEMENT OF THE CASE AND INITIAL PROCEEDINGS

1. Class Counsel began investigating this case in August of 2012. Class Counsel's pre-filing investigation included, *inter alia*, reviewing and analyzing the market availability of generic versions of Suboxone, including pending ANDAs for Tablets and Film; publicly available regulatory filings for Suboxone Tablets and Film, including Indivior's 2009 Citizen Petition related to Subutex, Indivior's September 2012 Citizen Petition relating to Suboxone and generic manufacturer Amneal's October 2012 response to the Citizen Petition; Indivior's annual reports; Indivior's promotional materials related to Suboxone Tablets and Film; information related to Suboxone product packaging; information related to Indivior's Risk Evaluation and Mitigation Strategies ("REMS") for Suboxone; information related to unintended pediatric exposures to Suboxone, and abuse, misuse and diversion of Suboxone; the various medical treatment options for opioid addiction; and information regarding the scope and effects of the Drug Abuse Treatment Act of 2000 ("DATA 2000") which allowed for Suboxone to be prescribed by physicians.

2. On December 21, 2012, certain Class Counsel firms, on behalf of BDC, filed the first antitrust lawsuit on behalf of a putative class of direct purchasers challenging Indivior's conduct regarding the prescription pharmaceutical product, Suboxone, which treats opioid addiction, as violative of the antitrust laws. *See Burlington Drug Co., Inc. v. Reckitt Benckiser Group plc, et al.*, Case No. 2:12-cv-282 (D. Vt.). Shortly thereafter, similar direct purchaser complaints (filed by counsel for RDC and Meijer) and indirect purchaser class complaints were filed in different districts. On June 6, 2013, the United States Judicial Panel on Multidistrict

Litigation centralized all then-pending actions in this District and assigned them to this Court. *See* MDL No. 2445, ECF No. 60.

3. Class Counsel were not assisted by any outside entities, including governmental enforcement agencies, in their pre-complaint investigations and filing of the initial complaint. Class Counsel filed their December 2012 complaint in the District of Vermont – *prior to* FDA issuing its decision on Indivior’s September 25, 2012 Citizen Petition and *prior to* Class Counsel’s knowledge of any government agency investigation into the misconduct alleged in this case. Indeed, the FDA’s referral of Indivior to the Federal Trade Commission (“FTC”), which in turn led to an FTC investigation, occurred in late February 2013, while the Department of Justice (“DOJ”) did not file indictments against Indivior and two high-ranking executives until April 2019. *See, e.g., U.S. v. Indivior Inc.*, 19-cr-00016-JPJ-PMS, ECF No. 3 (W.D. Va.). Moreover, the filing of an initial complaint by the 35 plaintiff-states and the District of Columbia, and an amended complaint adding 6 plaintiff-states, were filed in September and November 2016, respectively, years after the filing of Class Counsel’s initial complaint. *See* ECF No. 309.

4. On August 7, 2013, the Court appointed GGF, Faruqi & Faruqi LLP (“FF”) and Hagens Berman Sobol Shapiro LLP (“HBSS”) as Interim Co-Lead Counsel for the Direct Purchaser Class and GGF as Interim Liaison Counsel for same. *See* ECF No. 44.

5. On August 15, 2013, Class Counsel filed a Consolidated Amended Complaint on behalf of Plaintiffs. *See* ECF No. 47. Plaintiffs alleged that Indivior engaged in various acts and practices as a part of an overall scheme to coerce a switch of the Suboxone market from Suboxone Tablets to Suboxone Film and delay the market entry of less-expensive generic versions of Suboxone Tablets, in violation of Section 2 of the Sherman Act. *Id.*

6. Class Counsel filed this case, on a fully contingent basis, with the real risk of nonpayment and without the assurance of liability that often confers when a private civil action follows guilty pleas in an earlier-filed governmental action. Class Counsel took that risk knowing it could take years to fully prosecute the case and that millions of dollars and tens of thousands of attorney hours would be required to properly resource the case.

III. INDIVIOR'S MOTION TO DISMISS

7. On September 16, 2013, Indivior filed a motion to dismiss Plaintiffs' claims. *See* ECF Nos. 55. Broadly, Indivior contended that each aspect of its conduct was independently lawful, and that Plaintiffs' claims therefore failed whether viewed individually or as part of a broader scheme. *Id.* Indivior also contended that Plaintiffs' could not adequately plead antitrust injury (*i.e.*, causation) and that Plaintiffs failed to sufficiently define a relevant market. *Id.*

8. Plaintiffs responded on October 15, 2013. *See* ECF No. 67.

9. On September 17, 2014, the Court held oral argument. *See* ECF No. 95.

10. On December 3, 2014, this Court largely denied Indivior's motion to dismiss. *See* ECF No. 97.

IV. DOCUMENT AND DEPOSITION DISCOVERY

11. On October 2, 2013, while the parties were briefing Indivior's motion to dismiss, the Court ordered Indivior to produce limited discovery, including documents submitted to and from the FDA and FTC and certain categories of internal promotional and safety-related documents concerning Suboxone Tablets and Suboxone Film. *See* ECF No. 63.

12. As a result of that document production, Class Counsel sought, and were granted, leave to amend Plaintiffs' complaint based on newly discovered information which augmented

Plaintiffs' claims in various ways, and to add allegations concerning market power. *See* ECF Nos. 132, 150.

13. On March 17, 2015, following the parties' Rule 16 conference with the Court, full discovery then commenced. *See* ECF No. 143.

14. With the commencement of full discovery, Class Counsel served discovery related to all aspects of the cases, including the violation, causation and damages. Fact discovery proceeded for several years due to the complexity of the multi-pronged nature of the anticompetitive scheme alleged.

15. Class Counsel served document requests on Indivior and document subpoenas on over a dozen third parties, resulting in an enormous volume of produced documents – constituting approximately 6.7 million pages (approximately 1,300,000 documents) – that Class Counsel had to review to develop the record to build Plaintiffs' case and rebut Indivior's many defenses. Class Counsel did so by creating subject-matter teams which analyzed particular groups of documents and created scores of work product memoranda. Class Counsel also ascertained what types of expert testimony would be required.

16. Class Counsel then identified and deposed numerous fact witnesses on a wide variety of topics. In total, Class Counsel took the lead in deposing 33 fact witnesses, and defended Indivior's depositions of plaintiff fact witnesses.² The depositions, all of which required extensive preparation, are listed below:

#	Name	Party	Date(s)	Posture
1	Andry, Gerald	Third Party	Jan. 23, 2018	Took
2	Ashby, Brad	Indivior	Jul. 31, 2018	Took
3	Baxter, Timothy	Indivior	Apr. 13, 2023	Took
4	Brown, Douglas	Third Party	Aug. 1, 2018	Took

² Class Counsel also attended additional depositions of witnesses who testified on topics that were relevant to Plaintiffs' claims, but were questioned primarily by other plaintiff groups.

5	Cairns, Graham	Indivior	Jun. 29, 2018	Took
6	Clark, Napoleon	Third Party	May 8, 2018	Took
7	Clissold, Dave	Third Party	Apr. 11, 2018	Took
8	Crossley, Mark	Indivior	Aug. 29, 2023	Took
9	Doud, Lawrence	Plaintiff	Aug. 29, 2017	Defended
10	Edwards, Candice	Third Party	Oct. 5, 2017	Took
11	Gopu, Kishore	Third Party	Feb. 21, 2018	Took
12	Higgen, Michelle	Third Party	Jun. 20, 2018	Took
13	Jadeja, Janek	Third Party	Sep. 14, 2017 & Oct. 3, 2017	Took
14	Kendall, Keith	Third Party	Aug. 30, 2018	Took
15	Kinard, Robin	Third Party	Aug. 1, 2019	Took
16	Luce, Jim	Third Party	Aug. 30, 2018	Took
17	Marks, Lee	Indivior	Jul. 20, 2018	Took
18	Mitiguy, John	Plaintiff	Jan. 18, 2018	Defended
19	McLeod, Suzanne	Third Party	Jan. 23, 2018	Took
20	Murelle, Lenn	Third Party	Jul. 11, 2018	Took
21	Patel, Alpesh	Third Party	Aug. 31, 2017	Took
22	Pastore, Jill	Third Party	Feb. 21, 2018	Took
23	Paulson, Matt	Plaintiff	Oct. 11, 2017	Defended
24	Philo, Rob	Indivior	Nov. 8, 2017	Took
25	Pollack, Robert	Third Party	Aug. 7, 2018	Took
26	Powers, Richard	Indivior	Sep. 12, 2017	Took
27	Preziosi, Frank	Indivior	Oct. 12, 2017 & May 3, 2018	Took
28	Reinhardt, Sandra	Third Party	Jan. 24, 2018	Took
29	Reuter, Nicholas	Indivior	May 15, 2018	Took
30	Schmidt, Michael	Indivior	Jun. 19, 2018	Took
31	Schobel, Mark	Third Party	Aug. 22, 2018	Took
32	Seeger, Vicki	Indivior	Mar. 22, 2023	Took
33	Taylor, Kellie	Third Party	Aug. 4, 2017	Took
34	Thaxter, Sean	Indivior	Mar. 28, 2023	Took
35	Weston, Patti	Indivior	Apr. 24, 2018	Took
36	Yang, Ju	Indivior	Apr. 4, 2023	Took

17. Plaintiffs also responded to document requests and interrogatories served by Indivior.

18. During expert discovery, the parties exchanged a total of 15 expert reports (not including rebuttal reports). Consequently, Plaintiffs took 7 depositions of Indivior experts, and

defended 8 depositions of Plaintiffs’ experts. As with fact depositions, all required extensive preparation, and are listed below:

#	Name	Party	Date(s)	Posture
1	Berndt, Ernst	Plaintiffs	Feb. 1, 2019 & May 30, 2019	Defended
2	Bradshaw, Sheldon	Indivior	Apr. 24, 2019	Took
3	Curtis, Dolores	Indivior	Apr. 19, 2019	Took
4	Fleischer, Nicholas	Indivior	Apr. 15, 2019 & Jan. 7, 2020	Took
5	Geller, Robert	Indivior	May 14, 2019	Took
6	Jaskot, Deborah	Plaintiffs	Feb. 1, 2019	Defended
7	Jewell, Nicholas	Plaintiffs	Feb. 12, 2019	Defended
8	Kwait, Andrew	Indivior	May 21, 2019	Took
9	Lamb, Russell	Plaintiffs	Oct. 30, 2018, Jan. 17, 2019 & Jun. 12, 2019	Defended
10	Murelle, Lenn	Indivior	May 9, 2019	Took
11	Normann, Parker	Indivior	Apr. 23, 2019	Took
12	Tso, Yvonne	Plaintiffs	Feb. 26, 2019	Defended
13	Verscharen, Robert	Plaintiffs	Jan. 24, 2019	Defended
14	Westreich, Laurence	Plaintiffs	Feb. 20, 2019	Defended
15	Zettler, Patti	Plaintiffs	Mar. 1, 2019 & May 21, 2019	Defended

V. DISCOVERY-RELATED MOTION PRACTICE

19. Motion practice related to discovery occurred.

20. First, Class Counsel filed two motions to compel against Indivior. Plaintiffs’ first motion sought to compel Indivior to produce transactional sales data relevant to Plaintiffs’ damages claims, which was denied. *See* ECF Nos. 400, 419. Plaintiffs’ second motion to compel stemmed from Plaintiffs’ previous motion to exclude a document that was only disclosed to Plaintiffs for the first time during expert discovery, wherein Indivior’s experts relied on the document, with the Court denying Plaintiffs’ motion on the grounds that the untimely production was not done in bad faith but permitting Plaintiffs to conduct discovery pertaining to the document. *See* ECF No. 543. After Indivior asserted privilege and refused to provide a privilege

log, Class Counsel filed a motion seeking to compel Indivior to produce such documents on grounds of privilege waiver during Plaintiffs' previous motion to exclude. The motion was denied. *See* ECF Nos. 567, 595.

21. Second, Class Counsel filed two motions to compel against third-party Actavis, one of the earliest sellers of generic Suboxone Tablets, which were granted in part. *See* ECF Nos. 257, 289, 461, 471.

22. Third, Class Counsel opposed Indivior's motion seeking to compel Plaintiffs to produce so-called "downstream" discovery. *See* ECF Nos. 178, 185, 197. Indivior's motion was denied on the basis the discovery sought was irrelevant to Plaintiffs' damages claims. *See* ECF No. 198.

23. Fourth, after the parties reached impasse concerning the depositions of certain witnesses who intended to invoke their Fifth Amendment rights, Class Counsel opposed Indivior's motion to "temporarily defer" the depositions of those witnesses during the DOJ criminal investigation into Indivior's marketing of Suboxone. *See* ECF No. 359. As a result, the Court established a protocol for the depositions of such witnesses. *See* ECF No. 393.

VI. EXPERTS

24. Class Counsel retained 8 experts as set forth below:

#	Expert	Summary of Subject Matter
1	Ernst Berndt	The economic effects of Indivior's misconduct
2	Deborah Jaskot	The regulatory frameworks governing FDA approval of generic pharmaceutical products and the filing of Citizen Petitions with the FDA, and the ability of generic Suboxone Tablet manufacturers to obtain FDA approval
3	Nicholas Jewell	Indivior's lack of statistical support for its claims that Suboxone Tablets were less safe than Suboxone Film
4	Russell Lamb	Relevant antitrust market, Indivior's monopoly power, anticompetitive effects of Indivior's conduct, class-wide impact and damages

5	Yvonne Tso	The effects of Indivior's misconduct on managed care organizations
6	Robert Verscharen	The Hatch-Waxman regulatory scheme, state substitution laws, and the workings of therapeutic substitution
7	Laurence Westreich	The field of addiction medicine, Indivior's lack of scientific evidence to support its promotional safety claims relating to Suboxone Film, Indivior's statements to prescribers concerning Suboxone Film including with the market withdrawal of such
8	Patricia Zettler	Indivior's involvement with the FDA-required Single Shared Rems System for buprenorphine products and the effects thereof, FDA regulations concerning the marketing and promotion of prescription drugs, and Indivior's lack of scientific evidence to support its promotional safety claims relating to Suboxone Film

25. Each of these experts was deposed by Indivior and defended by Class Counsel.

See supra, at ¶ 18.

26. Similarly, Indivior retained 7 experts as set forth below:

#	Expert	Responsive to (Name of Plaintiffs' Expert)
1	Sheldon Bradshaw	Jaskot, Zettler
2	Dolores Curtis	Berndt, Jewell, Lamb, Westreich
3	Nicholas Fleischer	Jaskot
4	Robert Geller	Jewell, Westreich
5	Andrew Kwait	n/a
6	Lenn Murrelle	Jewell, Westreich
7	Parker Normann	Berndt, Lamb, Tso

27. Class Counsel deposed each of Indivior's experts. *Id.*

28. That the parties collectively retained 15 experts in this litigation demonstrates the breadth and complexity of the case. For example, Class Counsel was required to secure expert testimony demonstrating, *inter alia*: (1) that Indivior used various deceptive and coercive acts to switch the market from Suboxone Tablets to Suboxone Film, including making false and misleading statements that Suboxone Film was safer than Suboxone Tablets, in violation of FDA regulations requiring that Indivior have the scientific data necessary to support such claims; (2)

whether various studies did, or did not, demonstrate that Suboxone Film was safer than Suboxone Tablets; (3) that Indivior's abuses of the FDA regulatory procedures regarding REMS and Citizen Petitions delayed entry of generic competition; (4) the significance of managed care coverage in the pharmaceutical market, and how Indivior manipulated managed care coverage to implement its scheme; (5) the medical and psychological issues involved in treating opioid-addicted patients; (6) the mechanics of therapeutic substitution at the pharmacy level; and (7) to proffer economic expert evidence of the anticompetitive effects of the challenged conduct and economic modeling of class-wide impact and damages.

VII. CLASS CERTIFICATION

29. Class certification was hotly contested. On September 18, 2018, Class Counsel filed a motion seeking certification of the direct purchaser Class. *See* ECF No. 475.

30. On November 16, 2018, Indivior opposed class certification and contemporaneously filed a *Daubert* motion to exclude Plaintiffs' class certification expert. *See* ECF Nos. 486, 489.

31. On January 11, 2019, Class Counsel filed their reply brief in support of class certification and their opposition to Indivior's related *Daubert* motion. *See* ECF Nos. 503, 504.

32. On January 29, 2019, Indivior filed its reply brief in support of its class-related *Daubert* motion, and a surreply in opposition to class certification. *See* ECF No. 509.

33. The Court heard oral argument on class certification and on Indivior's related *Daubert* motion on September 3, 2019. *See* ECF No. 579.

34. On September 27, 2019, the Court granted the motion for class certification and denied Indivior's *Daubert* motion. *See* ECF Nos. 587, 588.

35. Indivior appealed this Court’s decision to the Third Circuit Court of Appeals, contending that Plaintiffs could not satisfy Rule 23’s predominance and adequacy requirements, the latter of which was grounded upon Indivior’s argument that BDC was an inadequate class representative. Additionally, Indivior’s appeal also involved challenges to the merits of the Class’s claims, thereby necessitating that Class Counsel defend not just the grant of class certification and a related *Daubert* motion, but also merits issues.

36. From January through June 2020, the parties engaged in appellate briefing. On July 28, 2020, following argument, the Third Circuit unanimously affirmed this Court’s grant of class certification in a precedential opinion. 967 F.3d 264 (3d Cir. 2020).

VIII. SUMMARY JUDGMENT AND *DAUBERT* BRIEFING

37. During the pendency of Indivior’s class certification appeal, the parties first briefed “Phase I” *Daubert* motions, *i.e.*, motions directed primarily to non-economic expert opinions that would not be impacted by the Third Circuit’s resolution of the appeal. *See* ECF No. 612 (Order).

38. In April 2020, Class Counsel filed Phase I *Daubert* motions related to certain opinions of two of Indivior’s experts (*see* ECF No. 623), and Indivior filed both an omnibus *Daubert* motion seeking to preclude any of Plaintiffs’ experts from testifying that Indivior’s safety claims concerning Film were “false,” “misleading” or the like, and a separate omnibus *Daubert* motion directed to certain opinions offered by six of Plaintiffs’ experts. *See* ECF No. 619.

39. In August 2020, subsequent to the Third Circuit’s affirmance of class certification, the Court set a schedule for the remaining *Daubert* (“Phase II”) motions and summary judgment motions. *See* ECF No. 644.

40. Just a few days later, Indivior moved to disqualify RDC as a class representative and opposed Class Counsel's motion to approve notice to the class of the pendency of this action and the grant of class certification. *See* ECF Nos. 645, 66.

41. On September 28, 2020, Indivior filed Phase II *Daubert* motions related to certain opinions offered by two of Plaintiffs' economic experts, and on October 19, 2020 Plaintiffs' filed their oppositions. *See* ECF Nos. 656, 670. During this time period, the parties continued to brief Indivior's motion to disqualify RDC. *See, e.g.*, ECF No. 663.

42. On November 24, 2020, the Court issued a 96-page opinion ruling on the "Phase I" *Daubert* motions. *See* ECF No. 677.

43. Shortly thereafter, on January 21, 2021, the Court denied Indivior's motion to disqualify RDC from serving as a class representative, and approved the notice of the certification of a direct purchaser class. *See* ECF No. 683.³

44. On February 19, 2021, the Court ruled on the balance of the parties' *Daubert* motions. *See* ECF No. 685.

45. On March 8, 2021, the parties filed lengthy summary judgment motions. Prior to these motions, in early 2016, Indivior had moved for partial summary judgment on all so-called "delay" claims, *i.e.*, claims that Indivior acted to delay the approval of commercialization of generic Suboxone Tablets, which Class Counsel successfully opposed on grounds of prematurity, resulting in Indivior's motion being denied without prejudice. *See* ECF No. 244.

46. Class Counsel's filed a motion for partial summary judgment as to the relevant antitrust market and Indivior filed two summary judgment motions (one seeking to dismiss all of

³ Indivior renewed its motion to disqualify RDC in April 2021. *See* ECF No. 735. Class Counsel successfully opposed Indivior's renewed motion, which was denied in February 2022. *See* ECF No. 790.

Plaintiffs' claims and one challenging, *inter alia*, Plaintiffs' damages calculations and the validity of Plaintiff Meijer's assignment). *See* ECF Nos. 699, 701. The parties briefed all three motions through May 2021.

47. While summary judgment motions in antitrust cases are, by their nature, inherently complex, the breadth of the motions and the volume of supporting materials in this litigation made them particularly so. While Plaintiffs' motion for partial summary judgment on relevant market was straightforward and accompanied by a relatively small number of statements of undisputed facts and exhibits (*i.e.*, under 20 apiece), Indivior's sweeping motions were accompanied by 288 statements of undisputed fact and 329 exhibits (few of which pertained only to other plaintiff groups). Accordingly, to adequately oppose Indivior's motion directed to all claims, Plaintiffs not only had to respond to Indivior's statements of undisputed fact, but also file their own affirmative statements of undisputed fact (numbering 286) and related exhibits (numbering 460), again few of which pertained only to other plaintiff groups. Indeed, the Court remarked upon the volume of materials at oral argument, observing that it was "enormous" and that "it's been a pretty big project putting all this together." *See* Dec. 2, 2021 Tr. at pp. 8-10.

48. On August 22, 2022, in an 87-page opinion, the Court denied both of Indivior's summary judgment motions. *See* ECF Nos. 812, 813. The Court subsequently denied Plaintiffs' motion for partial summary judgment as to the relevant antitrust market on August 30, 2023. *See* ECF Nos. 937, 938.

IX. MOTION PRACTICE RELATING TO THE FIFTH AMENDMENT INVOCATIONS OF NUMEROUS DEFENSE WITNESSES

49. Extensive motion practice occurred as a result of numerous defense witnesses stating that they would invoke their Fifth Amendment rights if they were to be deposed.

50. As noted above, in May 2017, Indivior moved to “temporarily defer” the depositions of 9 such witnesses in view of the then-ongoing criminal investigation by the DOJ, Class Counsel opposed the motion, and the Court resolved the motion by establishing a protocol to ascertain whether the witnesses should be deposed, with Plaintiffs having the right to request to depose (or re-depose) witnesses after the conclusion of the DOJ investigation. *See* ECF No. 393. Class Counsel followed this protocol, which resulted in no depositions going forward at that time due to the witnesses’ maintenance of their Fifth Amendment invocations.

51. In December 2022, after the DOJ investigation resulted in several indictments and guilty pleas, the Court ordered Plaintiffs to subpoena the witnesses, and if they continued to refuse to testify, to file a written challenge to such invocation(s). *See* ECF No. 850.

52. In January 2023, Plaintiffs subpoenaed these 9 witnesses. Four of the witnesses agreed to be deposed, and Class Counsel deposed those individuals in March and April 2023. Those witnesses were Indivior’s former CEO, Chief Medical Officer, Global Head of Regulatory Affairs, and Director of Medication Utilization during the relevant period of time. The remaining 5 witnesses maintained their invocations, resulting in Plaintiffs filing a motion to compel their testimony on the basis that each of the 5 witnesses were centrally involved in events that were issues in the litigation and had not demonstrated a legitimate risk that their testimony might lead to incrimination. *See* ECF No. 879. Each witness opposed the motion, and on July 19, 2023, after oral argument, the Court found that each witness justified their invocations and denied Class Counsel’s motion. *See* ECF No. 915.

53. As a result of the Court’s ruling on the motion to compel, Class Counsel filed a motion requesting that, to mitigate the prejudice to Plaintiffs resulting from Indivior’s intention to introduce evidence at trial relating to these witnesses despite Class Counsel’s inability to

depose them, the Court admit their Fifth Amendment invocations as evidence, instruct the jury that it was permitted to draw adverse inferences from those invocations and preclude Indivior from offering evidence relating to those witnesses. *See* ECF No. 941. That motion remained pending at the time the settlement-in-principle was reached. *See infra*, at ¶ 59.

X. TRIAL PREPARATION

54. Class Counsel were fully prepared to try this case. On December 13, 2022, the Court held a hearing to address, *inter alia*, depositions of witnesses who had previously invoked the Fifth Amendment and the setting of a trial date, with Class Counsel informing the Court that they were ready to try the case soon and that “[h]aving the trial over both parties’ heads is very, very important. We [don’t] want to do anything to delay it.” Dec. 13, 2022 Tr. at 38:23-25. Three days later, on December 16, 2022, the Court set a trial date of September 18, 2023 with an accompanying pretrial schedule. *See* ECF No. 852.⁴

55. Because a settlement-in-principle was not reached until 3.5 weeks (25 days to be precise) before trial was set to commence, Class Counsel engaged in significant trial preparation beginning in January 2023, which required thousands of hours of work by dozens of attorneys and support staff. Class Counsel and Indivior exchanged witness lists, exhibit lists and exhibits, deposition designations, proposed fact stipulations, proposed Rule 1006 summaries, proposed jury instructions, proposed verdict forms, proposed jury questionnaires, and served objections to same, with the parties engaging in meet and confers concerning the above items and numerous others.

⁴ Subsequently, the trial date was pushed later by a few weeks to October 30, 2023. *See* ECF No. 912.

56. As noted above, during this time period, Plaintiffs also took the depositions of 4 former Indivior employees who had previously invoked their Fifth Amendment right but now represented that they were willing to testify. *See supra*, at ¶ 52.

57. Additionally, due to his late identification on Indivior's trial witness list, Plaintiffs also took the deposition of Indivior's current CEO, Mark Crossley, which occurred on August 29, 2023. *Id.* Class Counsel made the tactical decision to depose Mr. Crossley, as opposed to moving to strike him from Indivior's trial witness list, since he previously served as Indivior's CFO during a portion of the time period relevant to this case.

58. The parties also filed numerous other pretrial motions covering various topics.

59. As noted above, pursuant to a schedule set by the Court, the parties filed two sets of motions specifically relating to evidence concerning the criminal and False Claims Act proceedings against Indivior and the trial implications of the Fifth Amendment invocations of numerous former Indivior employees. Briefing on those motions occurred from September 1 through September 22, 2023, and were pending at the time a settlement-in-principle was reached. *See* ECF Nos. 941, 942, 952, 953, 959, 960.

60. On September 7, 2023, Class Counsel filed a trial presentation motion requesting that the Court preclude Indivior from offering live testimony from any witness who Indivior refused to make available to Plaintiffs live during Plaintiffs' case-in-chief, and to authorize live trial testimony via contemporaneous video transmission (*e.g.*, Zoom). *See* ECF No. 947. Indivior filed its opposition to Plaintiffs' motion on September 21, 2023, (*see* ECF No. 957), and that motion was pending at the time a settlement-in-principle was reached.

61. Between August 23, 2023 and September 26, 2023, Indivior filed four pretrial motions. Two of those motions sought to preclude certain individuals on Plaintiffs' witness list

from testifying at trial, the third motion sought leave to take a trial deposition of one of Indivior's fact witnesses who was allegedly unavailable for trial due to occupational commitments, and the fourth sought leave to supplement certain data and serve an updated expert declaration concerning such data. *See* ECF Nos. 933, 939, 940, 970. One of the above motions was withdrawn as moot, and the other three were either pending or near the completion of briefing at the time a settlement-in-principle was reached.

62. On September 22, 2023, Class Counsel and Indivior filed their respective pretrial memoranda and a total of 42 motions *in limine* (21 per side). *See* ECF Nos. 961 through 965. On the day that the settlement-in-principle was reached, the deadline for oppositions to motions *in limine* was just 2 days away, and Class Counsel was therefore actively preparing for filing oppositions. Class Counsel was simultaneously engaging in meet-and-confers with Indivior in advance of the October 13, 2023 deadline for the filing of joint and contested jury instructions/verdict forms, and preparing for the October 19, 2023 pretrial conference with the Court, at which Class Counsel was preparing to, *inter alia*, argue motions *in limine*, other pending pretrial motions and objections to exhibits and witnesses.

63. Throughout this time period, Class Counsel also issued trial subpoenas to numerous witnesses (some of which resulted in negotiations with counsel for those witnesses), prepared witness examination outlines, reviewed and culled deposition videos for use during trial, worked with their experts regarding trial testimony and associated presentations via demonstratives, prepared the opening statement and associated demonstratives, and worked with jury consultants (including conducting a full day mock jury focus session).

64. As detailed below, the parties reached a settlement-in-principle on October 4, 2023.

X. MEDIATION AND SETTLEMENT

65. The agreement-in-principle that resulted in the proposed Settlement was the parties' third attempt to negotiate a settlement of Plaintiffs' claims.

66. The first mediation attempt occurred in the summer of 2015, and was unsuccessful.

67. The second mediation attempt occurred in the fall of 2017, and was also unsuccessful.

68. The third and final mediation, over which this Court presided as mediator by the agreement of all parties and their counsel, commenced in January 2023 and lasted approximately ten months, ultimately culminating in the parties' agreement to a settlement-in-principle on October 4, 2023. From October 4, 2023 through October 25, 2023 – the date that Class Counsel filed the proposed Settlement with the Court – Class Counsel and Indivior engaged in lengthy, hard-fought negotiations concerning certain terms of the settlement.

XI. THE SETTLEMENT

69. On October 25, 2023, Class Counsel filed a motion for preliminary approval of the proposed Settlement. The Settlement provides for one immediate cash payment by Indivior of \$385 million into an interest-bearing escrow account for the benefit of the Class, which payment Indivior has already funded, in exchange for certain releases of claims.

70. In seeking preliminary approval, Class Counsel requested that the Court preliminarily approve the proposed Settlement, approve a proposed form of notice to the Class, approve the appointment of a claims administrator and set a schedule leading up to and including a Fairness Hearing.

71. On October 30, 2023, the Court granted preliminary approval to the proposed Settlement, approved an escrow agent and the proposed escrow agreement, approved the appointment of a claims administrator, authorized notice to the Class, and set a schedule up through the Fairness Hearing. *See* ECF No. 984.

72. Thereafter, Indivior deposited the settlement fund into the approved interest bearing escrow account, and Co-Lead Counsel posted all relevant documents on their websites, including the notice to the Class, which was duly mailed by the claims administrator on November 20, 2023.

73. Class members have until January 12, 2024 to object to the Settlement or any of its terms and/or to Class Counsel's request for attorneys' fees, reimbursement of expenses and service awards for the class representatives. As of the date of this Declaration, no objections have been received by Class Counsel. If any are received between the date of this Declaration and January 12, 2024, Class Counsel will promptly notify the Court and address any such objections in Plaintiffs' forthcoming submission for final approval of the Settlement, due on February 2, 2024.

XII. SUMMARY OF ATTORNEYS' FEES AND UNREIMBURSED EXPENSES

74. Class Counsel are nationally reputed law firms with decades of experience representing direct purchaser classes in antitrust cases, many of which involved the same class members as here.

75. Antitrust cases are well known to be complex, and jury trials can involve a high degree of risk. Prosecuting pharmaceutical antitrust cases requires a mastering of not just antitrust law, but also an understanding of intricate FDA regulations governing the approval of brand and generic prescription pharmaceutical products, antitrust economics for purposes of

establishing a relevant market and evaluating the contours of monopoly power, the development of one or more causation models to demonstrate a “but for world” devoid of the anticompetitive behavior and the development of one or more damages models to calculate damages to class members. Such cases, as here, require substantial attorney (and support staff) hours and substantial out-of-pocket cash outlays, particularly for the retention of expert witness services.

76. Moreover, in the instant case, in order to develop a factual record to demonstrate an antitrust violation, Class Counsel had to master the treatment landscape surrounding opioid addiction, as well as FDA regulations specifically governing: (a) the comparative marketing and promotion of pharmaceutical products, and (b) safety issues concerning buprenorphine products used to treat opioid addiction.

77. At all junctures of the litigation, Class Counsel faced risk. A number of pharmaceutical antitrust cases have been dismissed at summary judgment or lost at trial after significant outlays of time and money by Class Counsel. *See, e.g., In re Wellbutrin XL Antitrust Litig.*, 868 F.3d 132 (3d Cir. 2017) (affirming summary judgment in favor of defendants); *In re Nexium (Esomeprazole) Antitrust Litig.*, 842 F.3d 34 (1st Cir. 2016) (upholding jury verdict for defendant); *In re Opana ER Antitrust Litig.*, Case No. 1:14-cv-10150 (N.D. Ill. Aug. 22, 2022), ECF No. 1067 (jury verdict for defendant); *In re HIV Antitrust Litig.*, Case No. 19-cv-02573 (N.D. Cal. Jun. 30, 2023) (jury verdict for defendant); *Louisiana Wholesale Drug Co., Inc. v. Sanofi-Aventis*, Case No. 07-cv-07343 (S.D.N.Y. Nov. 20, 2008) (jury verdict for defendant).

78. Class Counsel also faced the risk of Indivior’s sometimes perilous financial condition.

79. Thus, Class Counsel were acutely aware of the inherent risks that come with prosecuting a complex antitrust case to trial. Class Counsel were aware that Plaintiffs’ claims

could have been dismissed in their entirety at the pleading stage (as Indivior sought), at summary judgment (again, as Indivior sought), or through an adverse jury verdict. Class Counsel were also aware that Indivior would certainly appeal, potentially even to the Supreme Court, a jury verdict in favor of Plaintiffs. Consequently, absent the proposed Settlement, if a jury had found in favor of Indivior at trial or if a jury verdict in favor of Plaintiffs were vacated on appeal, Class Counsel's decade-long efforts on behalf of the Class, undertaken on a purely contingent basis at great expense, would have been for naught.

80. Despite the risks outlined above, Class Counsel diligently prosecuted this case for more than a decade. In doing so, as outlined herein, Class Counsel: (a) investigated, identified and filed this case; (b) opposed dismissal on the pleadings; (c) obtained and reviewed an enormous volume of documents; (d) took or defended 48 fact and expert depositions; (e) retained and submitted reports from 8 experts; (f) engaged in extensive discovery-related motion practice cutting across numerous topics; (g) obtained class certification; (h) moved for and opposed *Daubert* motions; (i) moved for an opposed summary judgment; (j) engaged in extensive trial preparation efforts; (k) engaged in three rounds of mediation; and (l) engaged in extensive negotiations concerning the execution of a settlement agreement that embodied the parties' agreement-in-principle.

81. Litigating this case has involved significant effort on Class Counsel's part, both in terms of time and monetary expenditures. Indivior was represented by two large, well-known law firms who vigorously defended against Plaintiffs' claims at all junctures.

82. Class Counsel believe that the Settlement with Indivior represents an outstanding result for the Class by any measure.

83. The following chart summarizes the aggregate time and necessary expenses (including litigation fund contributions) of all of Class Counsel, as set forth in more detail in the individual firm declarations of Class Counsel, annexed here as Exhibits A through I.

Ex.	Firm	Hours	Lodestar	Expenses
A	Garwin Gerstein & Fisher LLP	19,259.65	\$18,432,228.50	\$1,241,864.54
B	Faruqi & Faruqi LLP	29,041.70	\$22,134,207.00	\$994,251.78
C	Hagens Berman Sobol & Shapiro LLP	12,380.50	\$8,070,967.00	\$1,194,925.88
D	Berger Montague PC	16,066.30	\$10,251,132.52	\$1,076,436.96
E	Odom & Des Roches LLC	16,569.65	\$10,062,603.75	\$1,191,296.97
F	Smith Segura Raphael & Leger LLP	11,740.80	\$6,269,766.50	\$1,178,152.26
G	Taus Cebulash & Landau LLP	3,408.10	\$2,484,223.50	\$384,336.80
H	The Radice Law Firm PC	2,831.80	\$1,588,023.00	\$25,030.00
I	Sperling & Slater LLC	969.55	\$801,248.25	\$354,188.16
	Less litigation fund balance			(\$108,256.99)
	TOTAL	112,268.05	\$80,094,400.22	\$7,532,226.36

84. The expenses paid from the litigation fund were as follows:

Expense Category	Amount
Local counsel fees (Initial Complaint)	\$3,977.90
Deposition and hearing vendors	\$180,465.61
Document databases and review platform	\$826,222.59
Process servers/subpoena costs	\$3,950.30
Experts	\$6,270,084.50
Data (used by experts)	\$38,547.16
Mediation	\$7,138.45
Trial support	\$114,172.88
Costs of notice of class certification	\$2,000.00
Reimbursement from other plaintiff group for shared expenses	(\$634,794.35)
TOTAL	\$6,811,765.04

85. The litigation fund has a current balance of \$108,256.99, which, as noted above, has been deducted from the total expenses sought by Class Counsel.

86. The above expenses were all reasonably incurred and necessary to the representation of the Class.

87. Class Counsel respectfully request attorneys' fees in the amount of \$125,672,591.21 (or one-third or 33⅓% of the settlement amount net of unreimbursed expenses and service awards to the class representatives), plus a proportionate amount of any interest accrued since the settlement was escrowed. The requested attorneys' fees are therefore calculated by subtracting \$7,532,226.36 in unreimbursed expenses and \$450,000 in service awards from the \$385,000,000 settlement fund and multiplying the difference by one-third. Based on Class Counsel's lodestar of \$80,094,400.22, the requested fee represents a multiplier of 1.57.

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

88. The three class representatives – BDC, RDC and Meijer – all made a significant contribution in prosecuting Plaintiffs' claims against Indivior for the benefit of all class members. The class representatives each actively protected the Class's interests by filing suit on behalf of the Class and undertaking all of the responsibilities involved in being a named plaintiff, including monitoring the progress of the case and responding to discovery requests.

89. Discovery was a significant burden to the class representatives in this case. Specifically, each class representative executed broad document searches and collections based on keywords negotiated with Indivior, which resulted in document products of thousands of pages of documents, as well as purchase and chargeback data. These discovery efforts required that employees of the class representatives take time away from their regular job functions in order to comply.

90. Each of the class representatives was also deposed. *See, supra* at ¶ 16.

91. The class representatives were required to expend time and effort that was not compensated over the decade-plus that Class Counsel prosecuted Plaintiffs' claims.

92. In recognition of their time and efforts expended for the benefit of the Class, Class Counsel request a service award of \$150,000 for each class representative.

I, Bruce E. Gerstein, on this 29th day of December 2023, declare under penalty of perjury that the above is true and correct.

/s/ Bruce E. Gerstein
BRUCE E. GERSTEIN