

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re Novartis and Par Antitrust Litigation

1:18-cv-04361-AKH

This Document Relates To:

Direct Purchaser Action

**Declaration of Bruce E. Gerstein in Support of
Direct Purchaser Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and
Incentive Awards for the Named Plaintiffs**

I, Bruce E. Gerstein, subject to the penalties of perjury provided by 18 U.S.C. § 1746, hereby declare as follows:

1. I am the managing partner of the law firm Garwin Gerstein & Fisher LLP (“GGF”), lead attorneys for the Direct Purchaser Class Plaintiffs in the above-captioned case. I submit this declaration in support of Direct Purchaser Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses, and Incentive Awards for the Named Plaintiffs.

2. As lead counsel, I have been responsible for all aspects of the prosecution in this case, from investigation, the complaints, litigation strategy, managing discovery, managing experts, all briefing, trial preparation, and settlement.

3. Attorneys at my firm identified this cause of action and, together with co-counsel, thoroughly vetted it. This involved closely scrutinizing publicly available data about drug launch timing, press releases, and regulatory filings. Together with co-counsel, GGF analyzed the facts developed against the legal elements of an antitrust action under *FTC v. Actavis, Inc.*, 570 U.S. 136 (2013).

4. My firm then took the lead, with significant input from co-counsel, in drafting a complaint for Drogueria Betances, LLC, the first complaint in any of the actions coordinated before this Court, and filed it on May 18, 2018. ECF No. 1.

5. Several additional plaintiffs filed complaints including various retailers and end-payors. GGF attorneys led the cross-group effort and worked cooperatively with counsel for these other groups, managing the workload and responsibility across groups, ensuring efficiency and minimizing duplication.

6. GGF attorneys took the leading role in negotiating with Defendants the protective order and ESI protocol governing discovery in this case, and then negotiated with Defendants

the identities of the custodians whose files would be searched, and which search terms would be used.

7. GGF also took a principal role in drafting and coordinating discovery requests served on Defendants (including RFPs and interrogatories), and subpoenas served on non-parties. My firm negotiated during multiple meet and confers for the requested discovery.

8. Where meet and confers failed, GGF contributed to several successful motions to compel key discovery, including discovery about Defendant Novartis's authorized generic launches other than the Exforge authorized generic launch. *See* ECF No. 165 (granting motion). *See also* ECF Nos. 167, 253 (additional discovery motions granted). *See also In re Novartis & Par Antitrust Litig.*, No. 2:19-mc-00149, 2019 U.S. Dist. LEXIS 191606 (E.D. Pa. Nov. 5, 2019) (motion to enforce subpoena substantially granted).

9. Once documents were received, GGF administered a document review platform and organized a review project to make the millions of pages of documents available to reviewers. GGF supervised the document review to ensure it was proceeding efficiently.

10. GGF and co-counsel collaboratively reviewed these documents and composed individual "white papers" to guide their own, and each other's thinking. GGF attorneys were responsible for a white paper focused on the violation and the narrative "story" of this case, comprising several dozen pages, synthesizing the key documentary evidence and serving as a guide for other firms as discovery progressed. GGF's review and white paper uncovered most of the inculpatory evidence referenced in Plaintiffs' class, *Daubert* and summary judgment briefs.

11. My firm organized and managed the litigation during regularly scheduled conference calls with other attorneys that represented the Direct Purchaser Class, including Berger Montague PC; Odom & Des Roches, LLC; Smith Segura Raphael & Leger, LLP; Faruqi

& Faruqi, LLP, Heim Payne & Chorush LLP; Kaplan Fox & Kilsheimer, LLP; Roberts Law Firm, P.A.; and Sperling & Slater, P.C. (collectively, “Class Counsel”). Each of these firms had significant prior experience in litigating complex actions, including actions relating to the brand and generic drug industries. During these regular calls, assignments were carefully coordinated to avoid a duplication of effort. Teams of attorneys from Class Counsel were formed to research and investigate each of the critical aspects of the Direct Purchaser Plaintiff’s case, including the legal elements of necessary to prove Defendants’ liability and the facts necessary to show causation and prove damages.

12. GGF coordinated with these firms to address issues uniquely within the expertise of each firm. My firm focused on antitrust violation issues, taking the depositions of each of the witnesses with the most knowledge of the alleged violation. GGF also played a role in every fact deposition in the case, composing and sharing with co-counsel extremely detailed witness dossiers summarizing the key documents of dozens of witnesses and potential witnesses for use in deposition and trial preparation. GGF also worked with antitrust and other experts, and deposed key defense experts.

13. GGF was primarily involved in assisting antitrust expert Prof. Einer Elhauge, who demonstrated that the NPLA was anticompetitive and who developed a “no payment” causation scenario to provide the jury with economically rational alternatives for Defendants’ conduct in a but-for world. GGF resisted Defendants’ *Daubert* challenge to Prof. Elhauge. GGF also deposed Prof. Elhauge’s counterpart for the Defendants, Dr. Laurence Baker of Stanford University, who opined that the NPLA was not a “reverse payment” agreement and that it was pro-competitive in any event. GGF also assisted in the deposition of defense expert Dr. Mark Robbins as to his opinions about the meaning and intent of the NPLA’s alleged No-AG provision.

14. GGF attorneys were primarily responsible for drafting Plaintiffs' *Daubert* motion challenging Dr. Baker and two other defense experts (Johnson and Robbins) with respect to their opinions about contract interpretation and the Defendants' subjective intent in entering the NPLA. GGF also assisted in developing the evidence other experts relied upon and provided input where necessary.

15. My firm also was involved in both formulating and drafting several of the motions that were critical to advancing Plaintiffs' case. For example, at the August 4, 2021 status conference, in response to arguments I made about the need for certain experts, this Court invited Plaintiffs to submit briefing about whether Defendants had waived the attorney-client privilege. Aug. 4, 2021 Hearing Tr. at 63:25-64:2. Lawyers from my firm aggressively pursued a privilege challenge, bringing to bear their substantial experience with the application of privilege in this District and principally drafting a number of briefs challenging Defendants' privilege claims. *See* ECF Nos. 357–359, 373–374, 432-422, 439. The privilege issue introduced substantial risk for Defendants.

16. My firm also worked with attorneys at Berger Montague PC to formulate the arguments for, and drafting, memoranda in support of Plaintiffs' motion for class certification, including demonstrating that statute of limitations and fraudulent concealment issues would not raise predominantly individualized issues.

17. GGF attorneys also were primarily responsible for the briefs opposing Defendants' two motions for summary judgment, including responding to a voluminous statement of undisputed facts.

18. In addition to formulating the overall case and individual briefing strategies, my firm played the lead role for Plaintiffs in interfacing with the Court. Specifically, GGF attorney

Bruce Gerstein presented arguments on Defendants' motion to dismiss and concerning expert discovery at the August 4, 2021 hearing. GGF attorney Dan Litvin handled all status conferences including any arguments presented.

19. GGF participated fully in the pretrial tasks that were underway at the time of settlement. These included work on, *inter alia*, (a) designating depositions; (b) selecting exhibits; (c) *voir dire* questions; (d) jury instructions; (e) a proposed final pretrial order; and (f) motions *in limine*.

20. Finally, GGF was integrally involved in the proceedings that led to the settlement. GGF took the lead in, *inter alia*: preparing for and conducting settlement negotiations by making assessments regarding Plaintiffs' theories, and Plaintiffs' refutation of Defendants' defenses and presenting those issues to Defendants' counsel during negotiations; negotiating the agreement in principle to settle the Direct Purchaser Class Action for \$126.85 million; negotiating the terms of a memorandum of understanding embodying the basic terms of the settlement; negotiating the terms of the formal settlement and other supporting papers; briefing the preliminary approval motion, and arguing for preliminary approval of the settlement. In addition, GGF will take the lead in drafting the forthcoming papers in support of final approval of the settlement.

21. All attorneys, paralegals and staff at my firm were instructed to keep contemporaneous time records reflecting their time spent on this case and did so.

22. The schedule below reports the time spent by my firm's attorneys, paralegals, and staff in this case from inception until January 31, 2023, and time thereafter related to this settlement only (excluding time related to seeking attorneys' fees). All hourly rates are as of December 31, 2022, except as to former employees, in which case the rate is the person's rate as of the time of departure from the firm (* designates former employee).

| Name | Position | Hours | 2022 Rate (\$/Hour) | Lodestar |
|-------------------|-----------------|-----------------|----------------------------|-----------------------|
| Carl Baker | Paralegal | 1.25 | \$450.00 | \$562.50 |
| Samuel Bonderoff | Partner | 29.00 | \$905.00 | \$26,245.00 |
| Elena K. Chan* | Partner | 0.25 | \$840.00 | \$210.00 |
| Claire Cimino | Paralegal | 794.50 | \$480.00 | \$381,360.00 |
| Deborah Elman | Partner | 264.25 | \$905.00 | \$239,146.25 |
| Bruce Gerstein | Partner | 187.50 | \$1,480.00 | \$277,500.00 |
| Jonathan Gerstein | Partner | 5.50 | \$905.00 | \$4,977.50 |
| Kimberly Hennings | Partner | 7.50 | \$905.00 | \$6,787.50 |
| Dan Litvin | Partner | 3,673.25 | \$905.00 | \$3,324,291.25 |
| Katlyn McGee* | Paralegal | 170.75 | \$350.00 | \$59,762.50 |
| Rimma Neman | Assistant | 41.50 | \$310.00 | \$12,865.00 |
| Joseph Opper | Partner | 627.25 | \$1,300.00 | \$815,425.00 |
| David Rochelson | Partner | 1.25 | \$905.00 | \$1,131.25 |
| Susan Roth | Paralegal | 630.25 | \$480.00 | \$302,520.00 |
| Noah Silverman | Partner | 510.75 | \$1,210.00 | \$618,007.50 |
| Anna Tydniouk | Associate | 63.00 | \$850.00 | \$53,550.00 |
| Apolinar Uriarte | Paralegal | 266.00 | \$450.00 | \$119,700.00 |
| Aakruti Vakharia* | Associate | 361.00 | \$435.00 | \$157,035.00 |
| Avery Wolf* | Intern | 57.25 | \$125.00 | \$7,156.25 |
| TOTAL | | 7,692.00 | | \$6,408,232.50 |

23. My firm has also incurred a total of \$441,230.59 in unreimbursed expenses in connection with the prosecution of the litigation. These expenses were reasonably and necessarily incurred in connection with this litigation and include:

| Expense | Amount (\$) |
|----------------------------------|--------------------|
| Travel/Hotel/Meal Expenses | 2,350.72 |
| Service of subpoenas | 934.10 |
| Filing fees or other court costs | 400.00 |
| Document database vendor | 6,907.02 |
| Court transcripts | 587.06 |
| Litigation fund contributions | 370,000.00 |
| Reproduction Costs (In-house) | 3,928.50 |
| Delivery & Freight | 1,100.89 |
| Computer Research | 45,278.49 |
| Telephone | 4,022.88 |
| Translation | 4,645.04 |
| Document hosting | 1,075.89 |
| TOTAL | 441,230.59 |

24. The expenses incurred in this action are also reflected on the books and records

of my firm. These books and records are prepared from expense vouchers, receipts and other source material and accurately record the expenses incurred.

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

Executed this 23rd day of February, 2023.

/s/Bruce E. Gerstein
Bruce E. Gerstein