Exhibit D

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 RUSSELL A. CHORUSH IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS FOR THE NAMED PLAINTIFFS

I, Russell A. Chorush, subject to the penalties of perjury provided by 18 U.S.C. § 1746, hereby declare as follows:

1. I am a partner in the law firm Heim, Payne & Chorush, LLP, 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 Service Awards for the Named Plaintiffs.

2. HPC specializes in patent law and was responsible for patent-related aspects of this antitrust litigation. To maximize efficiency and minimize duplication in these class action cases, HPC receives assignments pertaining to patent or scientific issues from lead counsel and avoids or minimizes participation in other areas. I am a registered patent attorney with bachelor's, Master's, and Ph.D. degrees in chemistry. Thus, my skillset lends itself naturally to litigating disputes involving complex scientific issues such as patent disputes. In addition, each of the attorneys in my firm possesses at least an undergraduate degree in science or engineering. Further, the pedigree of the attorneys in my firm is very high, and I graduated valedictorian from my law school, achieved the top score on the bar exam in Texas in 2001, and have received numerous awards for excellence in the practice of intellectual property and antitrust law. In this case, Novartis's relevant patents related to the chemical compounds valsartan and amlodipine besylate, techniques and methods for producing pharmaceutical formulations using these compounds, and methods of treating patients with these formulations for various conditions, including hypertension, diabetes, and hypertension associated with diabetes. Thus, the scientific issues related to Novartis's patents were highly complex from a scientific perspective.

3. The patent-related aspects in this antitrust litigation were also particularly complex from a legal perspective, in part because Novartis had declined to file a patent

infringement lawsuit against Par. As a result, there was no litigation record from which my firm could reconstruct and assess the strength of Novartis's Exforge patents. Instead, HPC was required to develop—sometimes from scratch—the patent defenses that Par likely would have asserted had such litigation been filed and litigated. As a result, HPC treated the patent-related aspects of this case as a patent case within an antitrust lawsuit. To do so, HPC conducted the steps that patent infringement litigants would normally undertake, including (1) drafting requests for production, interrogatories, Rule 30(b)(6) deposition notices, and requests for admission; and (2) preparing for and taking appropriate fact depositions. HPC was also heavily involved in various briefings during the fact discovery period, including Plaintiffs' motion seeking an at-issue waiver that I believe placed significant pressure on Novartis to settle this lawsuit.

4. Although HPC litigated a patent case within an antitrust case, the patent-related aspects of this antitrust case went beyond a typical patent infringement lawsuit because Plaintiffs' causation theories were not limited to proving that Par likely would have prevailed on non-infringement and invalidity defenses in a patent litigation had one been filed. Plaintiffs' causation theories also included the assertion that, absent the challenged license agreement, Novartis and Par would have agreed to a legal resolution of Novartis's patent claims in which Novartis did not compensate Par for delaying generic entry ("the Alternative Settlement Model"). The econometric model used to determine the entry date that reasonable parties in Novartis's and Par's shoes would likely have agreed to in the Alternative Settlement Model utilized as inputs an assessment of how reasonable litigants would have viewed Novartis's likelihood of success in a hypothetical patent lawsuit, the timeframe for the litigation, and the likely expenses. Accordingly, in addition to conducting a patent lawsuit within an antitrust case, HPC also developed these inputs through normal factual and expert discovery mechanisms.

5. Consistent with Plaintiffs' causation theories, Plaintiffs marshaled through expert testimony evidence sufficient not only to demonstrate that Novartis's later expiring patents were invalid and not infringed, but also the patent-related inputs for the Alternative Settlement Model. To do so, HPC was responsible for Plaintiffs' two patent-related experts, Dr. Stephen Byrn and Mr. Glen Belvis. Dr. Stephen Byrn is an expert in pharmaceutical formulation and submitted a 195-page technical expert report—of the same type that Par would have submitted in a patent infringement case had Novartis sued Par—explaining why Novartis's two later-expiring patents were invalid and not infringed. Mr. Belvis is a patent litigator specializing in Hatch-Waxman litigation and assessing various aspects of Hatch-Waxman litigation. He submitted a 247-page report with an extremely detailed analysis of how he arrived at assessments of how a reasonable patent attorney would have assessed Novartis's likelihood of success, likely litigation timing, and likely litigation expenses had Novartis sued Par.

6. In addition to assisting Dr. Byrn and Mr. Belvis in the preparation of their expert reports, HPC was responsible for preparing them for and defending their depositions, as well as for taking or assisting in the taking of the depositions of Novartis's three patent-related rebuttal experts, Mr. Phillip Johnson and Drs. Edmund Elder and Anupam Jena. HPC was responsible for preparing for and taking the deposition of (1) Mr. Johnson, who had submitted a 237-page expert report in response to Mr. Belvis's report; and (2) Dr. Elder, who had submitted a 167-page expert report in response to Dr. Byrn's report. HPC was also responsible for assisting in the deposition of Dr. Anupam Jena, who had submitted a multipurpose 104-page report, partly in rebuttal to Dr. Byrn's report but partly on a separate issue relating to monopoly power.

7. At the *Daubert* and dispositive motions stage, HPC remained responsible for all patent-related aspects of the case, including (1) drafting *Daubert* motions seeking to exclude

certain testimony of Mr. Johnson and Drs. Elder and Jena; (2) opposing *Daubert* motions seeking to exclude certain testimony of Mr. Belvis and Dr. Byrn; and (3) opposing patent-related aspects of Defendants' summary judgment motions. In my view, the quality of HPC's preparation of the fact and expert patent-related aspects of the case is reflected by the fact that Defendants opted not to challenge the reliability of Dr. Byrn's opinions on invalidity and non-infringement and conceded that they were not challenging Mr. Belvis's "qualitative opinion testimony concerning the merits" of the patent defenses Plaintiffs had developed. In addition, Defendants did not even attempt to secure summary judgment that Novartis's patents were valid or infringed.

8. HPC was also heavily involved in the preparation of patent-related aspects of the final pretrial order and motions *in limine*, although the case settled in principle before those were submitted to the Court. This included work identifying trial exhibits, designating relevant factual deposition testimony, drafting jury instructions, and reviewing various aspects of the pretrial order. HPC was also heavily involved in preparing for, attending, and making a brief patent presentation in the mediation that led to the successful resolution of this case.

9. During the course of this litigation, my firm has been involved in various activities on behalf of the Direct Purchaser Class. Chief among those activities were:

- Investigating the case and assisting in the preparation of the complaints, including the amended complaint, in this matter;
- Researching Novartis's Exforge and Exforge HCT Patents;
- Drafting sections of Plaintiffs' opposition to Defendants' motion to dismiss;
- Drafting interrogatories, requests for production, and Rule 30(b)(6) deposition topics as they related to patent issues;
- Reviewing, analyzing, and digesting hundreds of thousands of pages of documents produced by Defendants (and third parties), and participating in all aspects of discovery, including the taking of fact depositions;

- Drafting claim charts for infringement and validity issues pertaining to patents;
- Working with scientific and patent litigation experts concerning aspects of the case relating to patents, assisting experts in the preparation of their reports, and preparing for, taking and defending expert depositions;
- Participating on regularly scheduled teleconferences to explain patent issues and coordinate case strategy;
- Drafting a White Paper relating to patent issues to educate co-counsel on various patent issues related to the case;
- Participating in drafting various briefs and related filings, including: one or more motions to compel; the at-issue waiver motion; the opposition to Defendants' motion for summary judgment; oppositions to *Daubert* motions; affirmative *Daubert* motions; affirmative motions *in limine*; oppositions to motions *in limine*; and various pretrial submissions, including jury instructions;
- Attending and participating various conferences and in mediation; and
- Preparing for trial, including designating deposition testimony, selecting exhibits and assisting in the assembly of the trial exhibit list; preparing the final pretrial order, and preparing to conduct direct and cross examinations.

10. 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.

11. The schedule below reports the time spent by my firm's attorneys, paralegals, and staff in this case from inception until July 4, 2022 and time thereafter related to this settlement only. This does not include time relating to this motion. All rates are 2022 hourly rates, 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	Rate ($/Hour)	Lodestar ($)
Russell A. Chorush	Partner	1,418.50	1,000.00	$1,418,500.00
J. Boone Baxter	Partner*	1,338.40	475.00	$635,740.00
Wills B. Collier	Associate	70.20	415.00	$29,133.00
Carlos I. Ruiz	Associate*	1,146.00	335.00	$383,910.00
Kyle S. Ruvolo	Associate	1,284.75	290.00	$372,577.50
Michael B. Dunbar	Associate	89.55	275.00	$24,626.25
Carrie J. Anderson	Paralegal*	38.80	250.00	$9,700.00
Amber L. Branum	Paralegal	324.00	215.00	$69,660.00
Suzie L. Wilson	Paralegal	0.25	250.00	$62.50
Angie A. McGinnis	Paralegal*	5.30	250.00	$1,325.00
Ericka Torres	Assistant	0.50	205.00	$102.50
Natasha M. Baudoin	Assistant*	30.50	205.00	$6,252.50
TOTAL		**5,746.75**		**$2,951,589.25**

12. I am extremely proud of the efficiency with which my firm handled the patent-related aspects of this antitrust case. According to the 2019 Report of the Economic Survey compiled by the American Intellectual Property Law Association, the median cost of ANDA litigation through appeal for more than $25 million is at risk is $5 million. As explained above, because no patent litigation relating to Exforge ensued between Novartis and Par, the task in this case involved litigating patent infringement and validity issues largely from scratch. My firm, however, billed less than $3 million, well below the AIPLA median. While this comparison somewhat overstates my firm's efficiency given that this antitrust case did not progress through

appeal, it nevertheless settled shortly before trial after the vast majority of all pre-trial work had been completed. Moreover, as explained above, the patent-related tasks in this antitrust case extended beyond those that would normally be performed in a patent infringement case. Accordingly, I believe that my firm's ability to complete the work done for the amount billed is a testament to the productivity and proficiency with which my firm handled the patent issues in the case.

13. My firm has also incurred a total of $410,515.92 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 ($)
Filing fees/court costs	$875.00
Litigation fund assessment	$370,000.00
Postage/air express/messengers	$2,703.43
Outside Copy Services	$3,099.59
Database User Fees	$3,677.70
Legal Research	$15,177.77
Travel/hotel/meals	$13,664.88
Miscellaneous	$1,317.55
Total:	**$410,515.92**

14. 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.

15. Pursuant to 28 U.S.C. § 1746, 1 declare under penalties of perjury that the foregoing is to the best of my knowledge true and correct.

Executed this 17th day of February, 2023.

/s/ Russell A. Chorush
Russell A. Chorush