UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Novartis and Par Antitrust Litigation	**1:18-cv-04361-AKH**
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 at the law firm of Garwin Gerstein & Fisher, LLP ("GGF"), and lead counsel for Direct Purchaser Plaintiffs ("Plaintiffs"), respectfully submit this declaration in support of Class Counsel's[1] application for:

(1) an award of attorneys' fees totaling 33 ⅓% of Plaintiffs' settlement with the Novartis Defendants[2] (the "Settlement");

(2) reimbursement of expenses that were incurred in the prosecution of Plaintiffs' claims; and

(3) service awards to the named class representatives Drogueria Betances, LLC ("Betances"), Rochester Drug Co-Operative, Inc. ("RDC"), FWK Holdings, LLC ("FWK") and KPH Healthcare Services, Inc., a/k/a Kinney Drugs, Inc. ("KPH").

GGF has been involved in all material aspects of this litigation from the pre-complaint investigation and filing of Plaintiffs' initial complaint in May 2018 through the filing of the Settlement with the Court (and continuing), and 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 the spring of 2018. On May 16, 2018, certain Class Counsel firms, on behalf of Betances, filed the first antitrust lawsuit on behalf of a putative class of direct purchasers challenging Novartis's conduct regarding the prescription pharmaceutical product Exforge, which treats hypertension, as violative of the

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[1] "Class Counsel" include the firms listed in paragraph 61, *infra*.

[2] Novartis Defendants are Novartis Pharmaceuticals Corporation and Novartis AG (collectively "Novartis"). Prior to being dismissed with prejudice on January 6, 2023 (ECF No. 594), Par Pharmaceutical, Inc. ("Par") was also a Defendant in this litigation. Novartis and Par may be collectedly referred to as "Defendants" herein.

antitrust laws. *See* ECF No. 1. Counsel for RDC, FWK and KPH followed with complaints that were consolidated with the Betances action. ECF No. 59.

2. Plaintiffs alleged that Novartis and Par Pharmaceutical, Inc. ("Par") violated the antitrust laws by entering into a reverse payment license agreement (the "Novartis-Par License Agreement" or "NPLA"). Plaintiffs alleged that the NPLA contained a "No-AG" agreement, that is, an agreement by Par to delay launching its generic Exforge in competition with Novartis's brand Exforge for two and a half years in exchange for Novartis's agreement not to launch an authorized generic for six months after Par's delayed entry. ECF No. 41 (Consol. Am. Compl.) ¶¶ 6, 11. Plaintiffs alleged that the NPLA ran afoul of *FTC v. Actavis*, *Inc.*, 570 U.S. 136 (2013).

3. As part of their investigation, Class Counsel analyzed the sequencing of entry of brand, generic and authorized generic ("AG") Exforge and discovered that Novartis's authorized generic Exforge launched on March 31, 2015, just over 180 days after Par's September 30, 2014 generic Exforge launch. Other companies' generic versions of Exforge launched at the same time as Novartis's AG. Class Counsel determined through independent research and analysis that Par's launch date was the result of a negotiated license agreement between Novartis and Par. ECF No. 1 ¶¶ 106, 131. Class Counsel then analyzed Novartis's licensed patents: the 5,399,578, 6,294,197 and 6,395,728 patents. As to the 5,399,578 patent, Class Counsel determined that it expired on September 21, 2012, and could not have prevented Par's entry after that date. Class Counsel next analyzed Novartis's 6,294,197 and 6,395,728 patents, as well as Par's generic product, and determined that it was unlikely that Par's product infringed those patents. *Id*. ¶¶ 75-90. Based on FDA documents, Class Counsel also determined that there appeared to be no regulatory impediment to Par launching generic Exforge earlier than it did. Based on these facts, *i.e.*, the existence of an agreement, the timing of Novartis's AG launch about 181 days after Par's

generic launch, and the apparent non-infringing nature of Par's generic, Class Counsel concluded that the NPLA was likely a "No-AG" reverse payment agreement that was unlawful under *Actavis* and caused the Class to suffer overcharges. Class Counsel's complaints were filed without the aid of a preceding government action and no other private plaintiffs unearthed this case before Class Counsel's investigation. To Class Counsel's knowledge, no government enforcement agency or other lawyers investigated the misconduct alleged in the complaint before Class Counsel did.

4. 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 civil case follows criminal or civil indictments or guilty pleas in an earlier government action. Class Counsel took that risk knowing it could take years to fully prosecute and millions of dollars and tens of thousands of attorney hours to properly resource.

5. Subsequently, various groups of opt-out retailers and end-payors filed actions in this district. The claims of those entities are not covered by the Settlement.

6. On August 13, 2018, this Court entered a Case Management Order that consolidated all direct purchaser actions for all pretrial proceedings and set an aggressive schedule through trial. ECF No. 59.

III. DEFENDANTS' MOTION TO DISMISS

7. On September 17, 2018, Novartis and Par filed a motion to dismiss. ECF No. 86. Defendants argued that the portion of the NPLA requiring Novartis to delay selling authorized generic in competition with Par once Par entered was subject to the rule of reason rather than *per se* unlawful. *Id*.

8. Plaintiffs responded on October 24, 2018. ECF No. 101.

9. On March 27, 2019, the Court held argument on Defendants' Motion to Dismiss. ECF No. 150.

10. On August 15, 2019, the Court issued its opinion determining that Plaintiffs' claims would proceed under the rule of reason. ECF No. 193.

IV. DOCUMENT AND DEPOSITION DISCOVERY

11. With the commencement of discovery, Class Counsel served discovery related to all aspects of the case, including violation, causation and damages. Plaintiffs engaged in lengthy meet and confers to obtain responsive documents.

12. Plaintiffs served document requests on Defendants resulting in the production of 384,074 documents (2,497,417 pages) Class Counsel had to sort through to develop the evidence necessary to prosecute the case, including through depositions and expert opinions.

13. Plaintiffs also served twenty subpoenas for documents and deposition testimony on third parties as necessary, primarily on causation and damages issues. Plaintiffs subpoenaed Alembic Pharmaceuticals Inc.; Aurobindo Pharma USA Inc.; Baker Botts LLP; Haug Partners LLP; Ivagen Pharmaceuticals Inc.; Latham & Watkins LLP; Lupin Pharmaceuticals, Inc.; Lupin Limited; Mylan Pharmaceuticals Inc.; Novel Laboratories Inc.; PriceWaterhouseCoopers LLC; Rothwell, Figg, Ernst & Manbeck P.C.; Sandoz Inc.; Syneos Health LLC; Synthon Pharmaceuticals Inc., Teva Pharmaceuticals USA; Torrent Pharma Inc.; Trigen Laboratories LLC, White & Case LLP, and Wilson Sonsini Goodrich & Rosati.

14. Plaintiffs received 49,026 documents (450,970 pages) from these third parties that also had to be analyzed.

15. In addition to the voluminous document productions, Defendants and certain third parties produced hundreds of thousands of lines of transactional sales data, reflecting sales,

credits, returns, chargebacks, and price adjustments, which was analyzed and utilized in, *inter alia*, the Plaintiffs' expert's damages calculations.

16. Class Counsel, in subject-matter teams, analyzed all such productions, creating a variety of work product memoranda.

17. In addition to document requests, Class Counsel served requests for admissions and two sets of interrogatories on Defendants, which also covered a wide variety of topics and also required lengthy meet and confers to resolve.

18. Class Counsel identified and then deposed numerous fact and expert witnesses. In total, Plaintiffs took nineteen fact depositions and five expert depositions on a wide variety of topics. Plaintiffs also defended four fact and ten expert depositions. Because of the COVID-19 pandemic, Plaintiffs took and defended each deposition remotely, via Zoom, in accordance with the Stipulated Order Regarding Remote Depositions (ECF No. 270). The depositions, all of which required extensive preparation, are listed below:

#	Name	Party	Date(s)	Type	Posture
1	Eric Dammeyer	Novartis	Sept. 22, 2020	Fact	Took
2	David Catalano	Novartis	Oct. 7, 2020	Fact	Took
3	James Bueck	Par	Oct. 8, 2020	Fact	Took
4	Carla Calabro	Par	Oct. 21, 2020	Fact	Took
5	Brandon Rockwell	Par	Nov. 4, 2020	Fact	Took
6	Juan Hernandez	Betances	Nov. 5, 2020	Fact	Defended
7	Robert Campanelli	Par	Nov. 10, 2020	Fact	Took
8	Brian Goff	Novartis	Nov. 13, 2020	Fact	Took
9	Jason Splain	Teva	Nov. 19, 2020	Fact	Took
10	David Mitchell	Mylan	Nov. 20, 2020	Fact	Took
11	Paul Campanelli	Par	Nov. 24, 2020	Fact	Took
12	Tom Kolschowsky	FWK	Dec. 2, 2020	Fact	Defended
13	Janis Picurro	Par	Dec. 3, 2020	Fact	Took
14	Duncan McKechnie	Novartis	Dec. 7, 2020	Fact	Took
15	Chad Gassert	Par	Dec. 8, 2020	Fact	Took
16	Stephen Rubino	Novartis	Dec. 16, 2020	Fact	Took
17	Dominick Pagnotta	RDC	Dec. 16, 2020	Fact	Defended
18	John Derstine	Teva	Dec. 22, 2020	Fact	Took
19	John Kovaleski	Teva	Jan. 6, 2021	Fact	Took

#	Name	Party	Date(s)	Type	Posture
20	Lawrence Brown	Par	Jan. 7, 2021	Fact	Took
21	Gregory Ferraro	Novartis	Jan. 7, 2021	Fact	Took
22	Charles Aquilina	KPH	Jan. 7, 2021	Fact	Defended
23	Peter Waibel	Novartis	Jan. 8, 2021	Fact	Took
24	Donald Allen	Plaintiffs	Oct. 27, 2021	Expert	Defended
25	Jay R. Thomas	Plaintiffs	Oct. 28, 2021	Expert	Defended
26	Martha Starr	Plaintiffs	Nov. 3, 2021	Expert	Defended
27	Luis Molina	Plaintiffs	Nov. 5, 2021	Expert	Defended
28	Arthur Schwartzbard	Plaintiffs	Nov. 8, 2021	Expert	Defended
29	Edmund Elder	Defendants	Nov. 9, 2021	Expert	Took
30	Anupam Jena	Defendants	Nov. 12, 2021	Expert	Took
31	Jeffrey Leitzinger	Plaintiffs	Nov. 16, 2021	Expert	Defended
32	Phillip Johnson	Defendants	Dec. 2, 2021	Expert	Took
33	Stephen Byrn	Plaintiffs	Dec. 3, 2021	Expert	Defended
34	Glen Belvis	Plaintiffs	Dec. 6, 2021	Expert	Defended
35	Mark Robbins	Defendants	Dec. 13, 2021	Expert	Took
36	Bernice Tao	Plaintiffs	Dec. 16, 2021	Expert	Defended
37	Einer Elhauge	Plaintiffs	Dec. 20, 2021	Expert	Defended
38	Laurence Baker	Defendants	Dec. 21, 2021	Expert	Took

V. DISCOVERY-RELATED MOTION PRACTICE

19. Plaintiffs were successful in obtaining the discovery they needed with minimal Court intervention, as the Court observed. Jan. 6, 2023 Hearing Tr. 23:20-24; *id*. 24:3-5. However, on some occasions, Plaintiffs had to move to obtain necessary discovery, and were largely successful.

20. First, by Order dated June 6, 2019, the Court granted Plaintiffs' motion to compel Novartis to produce documents reflecting each instance it launched authorized generics of drugs other than Exforge to use as a benchmark against the circumstances of its Exforge AG launch. ECF No. 165.

21. Second, on June 18, 2019, the Court granted Plaintiffs' motion to compel the production of Defendants' sales data through December 2017, which was relevant to Plaintiffs' expert's damages calculations. ECF No. 167.

22. Third, Plaintiffs pursued forecasting documents and transaction data from non-party Alembic through motion practice in the United States District Court for the Eastern District of Pennsylvania and largely prevailed. *In re Novartis & Par Antitrust Litig.*, No. 2:19-mc-00149, 2019 U.S. Dist. LEXIS 191606 (E.D. Pa. Nov. 5, 2019).

23. Finally, the Court granted Plaintiffs' motion to compel non-party Lupin Limited and Lupin Pharmaceuticals, Inc.'s compliance with a document subpoena, which were important for causation purposes. ECF No. 253.

24. At the Court's suggestion (Aug. 4, 2021 Hearing Tr. at 63:25-64:2), Plaintiffs submitted a privilege waiver/preclusion motion, arguing that Novartis placed legal advice "at issue" by asserting defenses that relied on subjective beliefs implicating legal advice. ECF No. 359. These issues included Defendants' subjective beliefs concerning the exclusionary potential of their patents, interpretation of the NPLA, and whether Defendants could have reached an alternative procompetitive settlement instead of the allegedly unlawful NPLA. *Id*.

25. Defendants clearly intended to inject their subjective beliefs on these and other issues to defend this case, and Plaintiffs kept the pressure on them by supplementing their privilege motion and opposing Defendants' experts and statements of undisputed material fact on the grounds that Defendants were attempting to use privilege as a sword and a shield in contravention of *United States v. Bilzerian*, 926 F.2d 1285 (2d Cir. 1991) and other binding precedent. *See* ECF Nos. 357–359, 373–374, 432-422, 439.

26. Plaintiffs' privilege motion was pending as of the settlement and had the potential to deprive Novartis of key defenses at trial.

VI. EXPERTS

27. Plaintiffs retained ten experts as set forth below:

#	Expert	Summary of Subject Matter
1	Donald S. Allen	Manufacturing aspects of authorized generic Exforge launch.
2	Glen P. Belvis	A reasonable practitioner's ex ante assessment of the likely outcome of potential patent litigation between Novartis and Par.
3	Stephen R. Byrn	Infringement and invalidity of Novartis's patents. Technological background concerning those patents.
4	Einer Elhauge	An alternative "no-payment" entry date that would have been financially rational for both Novartis and Par; pro-competitive justifications; whether the NPLA caused delay; whether the No-AG term was necessary to the NPLA.
5	Jeffrey J. Leitzinger	Class-wide impact and damages.
6	Luis A. Molina	Novartis's willingness and financial incentives to launch authorized generic Exforge simultaneously with Par's generic launch.
7	Arthur Schwartzbard	Clinical aspects of Exforge and its interchangeability with other treatments.
8	Martha A. Starr	Relevant antitrust market and Novartis' market power.
9	Bernice Tao	Regulatory aspects of earlier generic drug approval for Par and other generic manufacturers in a "but for" world.
10	Jay R. Thomas	The Hatch-Waxman Act.

28. As set forth above at ¶ 18, each of these experts was also deposed and defended by Class Counsel.

29. Defendants also proffered five experts:

#	Defendants' Expert	Responded To (Names of Plaintiffs' Experts)
1	Edmund Elder	Belvis, Byrn
2	Anupam Jena	Byrn, Schwartzbard
3	Phillip Johnson	Belvis, Byrn, Elhauge, Thomas
4	Mark Robbins	Elhauge, Starr, Molina, Allen, Tao, Belvis
5	Laurence Baker	Elhauge, Starr, Leitzinger

30. Plaintiffs deposed all five of Defendants' experts.

31. The need for ten experts illustrates the unique complexity of this case, requiring Class Counsel to:

a. master various complexities of patent law to show the likelihood that Par would have been able to defeat Novartis in litigation had it launched generic Exforge without a license;

b. master the biopharmaceutical aspects of hypertension;

c. master several challenging areas of FDA drug regulation;

d. master pharmaceutical manufacturing procedures and timing, as well as Novartis and Par's internal forecasting and manufacturing planning documents;

e. analyze and opine concerning the relevant antitrust market and whether Novartis possessed market power;

f. develop a defensible multi-input economic model to determine the earlier entry date in a hypothetical license agreement between Novartis and Par absent a No-AG term; and

g. develop economic modeling of classwide impact and damages from delayed generic entry.

VII. CLASS CERTIFICATION

32. Class certification was heavily briefed and hotly contested in this case. ECF Nos. 493, 494, 497, 504, 510. In conjunction with preliminary approval, Novartis dropped its opposition to class certification and the Court certified the Class. ECF No. 595.

VIII. SUMMARY JUDGMENT AND *DAUBERT* BRIEFING

33. Class Counsel faced a combined total of 221 pages of summary judgment and *Daubert* briefing over an extremely compressed period.

34. Specifically, Defendants filed two motions for summary judgment with accompanying memoranda, reply memoranda, a 273-paragraph statement of facts containing 108 exhibits, and a reply to Plaintiffs' response to Defendants' statement of facts that contained legal argument seeking to strike aspects of Plaintiffs' response. ECF Nos. 538-540, 556-558. Defendants' first motion for summary judgment argued that the "continuing violation" doctrine did not apply because the NPLA's 2012 execution was the allegedly unlawful conduct, and

Plaintiffs did not sue until 2018. While Defendants' motion was pending, the issue of the application of the continuing violation doctrine to purchasers was presented to the Court of Appeals for the Second Circuit in *Litovich v. Bank of America*, case No. 21-2905. The outcome of the appeal in *Litovich*, which is pending a decision, introduced significant risk for Plaintiffs. Defendants also argued that even if the continuing violation doctrine applied, Plaintiffs could not satisfy the elements of fraudulent concealment to toll the running of the statute of limitations and thus Plaintiffs' claims were time barred as to damages incurred before May 2014. The first motion for summary judgment had the potential to eliminate or substantially reduce Plaintiffs' recovery. Defendants' second motion for summary judgment argued that Plaintiffs could not prove causation or damages. Defendants argued that Plaintiffs' theory — that Defendants would have entered into a lawful agreement without a reverse payment and with earlier Par entry — was speculative and unsupported. Although Class Counsel believe that their causation theories were well-supported, a victory was not certain.

35. Defendants also filed six *Daubert* motions challenging aspects of opinions from almost all of Plaintiffs' experts. ECF No. 405 (Belvis, Byrn); ECF No. 394 (Elhauge); ECF No. 401 (Molina, Allen); ECF No. 396 (Schwartzbard); ECF No. 395 (Tao); ECF No. 393 (Thomas); ECF Nos. 440-443, 449, 451 (replies). Defendants' *Daubert* motions were accompanied by declarations with 33 exhibits (ECF Nos. 393-1, 394-1, 395-1, 396-1, 401-1, 405-1).

36. Class Counsel had just three weeks to respond to the *Daubert* motions and just five weeks to respond to the summary judgment motions. ECF No. 379 (schedule).

37. Plaintiffs' *Daubert* opposition briefing totaled 96 pages. ECF Nos. 421–423, 425, 435, 436. Plaintiffs also sought to exclude a limited subset of Defendants' expert opinions, including aspects of opinions relating to Novartis's patents and precluding Defendants' experts

from opining on Defendants' state of mind and contractual interpretation. ECF Nos. 404, 406, 407, 410.

38. Class Counsel responded with a combined 74 pages in opposition to Defendants' summary judgment motions and responded in 193 pages to Defendants' 273-paragraph statement of facts, including with 27 additional exhibits (ECF Nos. 550-552). Plaintiffs also sought leave to respond to Defendants' arguments seeking to strike Plaintiffs' response to Defendants' statement of facts. ECF No. 560.

39. All of these motions were pending during trial preparation and when the Settlement was finalized and submitted to the Court.

IX. TRIAL PREPARATION

40. Class Counsel were fully prepared to try this case and the Court put the parties on a tight schedule following summary judgment briefing. Specifically, the parties were to file motions *in limine* on October 28, 2022, oppose motions *in limine* on November 11, 2022, attend a final pretrial conference on December 8, 2022, and begin trial on January 9, 2023. ECF No. 379. To meet these deadlines, Class Counsel exchanged with counsel for Novartis proposed jury instructions and verdict forms, joint stipulated facts, *voir dire* forms, and a joint proposed pretrial order. Class Counsel also prepared an extensive exhibit list, deposition designations, witness lists, and multiple motions *in limine*. Deadlines for these tasks were just after the successful mediation (the Parties agreed upon exchange deadlines for pretrial events not specifically covered by the Court's schedule).

41. Ultimately, the parties reached agreement on a settlement in principle on October 6, 2022.

X. MEDIATION AND SETTLEMENT

42. The Parties engaged in settlement discussions on October 6, 2022, in Boston, MA, retaining Eric D. Green of Resolutions, LLC, one of the nation's preeminent mediators.

43. As part of that process, Class Counsel provided Mr. Green with voluminous submissions. The final mediation session lasted a full day, with each side presenting the strengths of its case and pointing out its opponents' weaknesses. Following these presentations, intensive negotiations culminated in an arm's-length resolution.

XI. THE SETTLEMENT

44. On December 28, 2022, Class Counsel filed a fully executed settlement agreement with Novartis with the Court. ECF No. 587-1. The Settlement provides for the payment by Novartis of $126.85 million into an interest-bearing escrow account for the benefit of all Class members, which payment Novartis already has funded.

45. In their Motion for Preliminary Approval (ECF No. 588), Class Counsel requested that the Court preliminarily approve the settlement, certify the Class, approve notice to the Class, and set a schedule leading up to and including a Fairness Hearing. In preparation for filing that motion, Class Counsel entered into an escrow agreement with a proposed escrow agent for maintenance of the settlement fund and engaged a proposed claims administrator to assist with the notice process. Class Counsel's request for preliminary approval was also posted on the GGF website.

46. On January 6, 2023, the Court concluded that that the Settlement with Novartis was arrived at by arm's-length negotiations by highly experienced counsel after years of litigation and fell within the range of possibly approvable settlements, and preliminarily approved it. ECF No. 595. Concurrently, the Court appointed an escrow agent and claims administrator, approved a form of notice to the class, and set a schedule. *Id.* The Court also

certified the Class. *Id*. As the Court stated at the January 6, 2023 hearing, this is an "exceedingly good settlement[.]" Jan. 6, 2023 Hearing Tr. 7:11-15. As the Court observed, the settlement recovery of $126.85 million would be approximately 85% of Plaintiffs' conservative damages estimate.[3] Jan. 6, 2023 Hearing Tr. 3:17 - 7:5; ECF No. 494-5, Second Supp. Leitzinger Rpt. at Ex. 19A.

47. Thereafter, Novartis deposited the settlement fund into an escrow account that is earning interest for the benefit of the Class, and the claims administrator duly mailed the written notice to Class members on January 23, 2023.

48. Class members have until March 9, 2023, to opt out or object to the settlement or any of its terms and/or to Class Counsel's request for attorneys' fees, unreimbursed expenses and service awards for the class representatives. As of the date of this Declaration, no opt-outs or objections have been received. If any are received between the date of this Declaration and March 9, 2023, the Court will promptly be notified, and such objections will be addressed in Plaintiffs' upcoming submission for final approval of the Settlement, due on March 30, 2023.

XII. SUMMARY OF ATTORNEYS' FEES AND UNREIMBURSED EXPENSES

49. Class Counsel are highly skilled and nationally respected law firms and have over two and a half decades of extensive experience prosecuting and trying pharmaceutical antitrust cases (including cases challenging reverse-payment settlements of patent litigation) on behalf of many of the same class members.

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[3] As set forth in Plaintiffs' memorandum of law in support of their motion for preliminary approval (ECF No. 588 at 26), Plaintiffs had less conservative estimates that would require Plaintiffs to prove that the Novartis-Par License Agreement was fraudulently concealed. This issue was subject to a pending motion for summary judgment, and the Court expressed skepticism. Jan. 6, 2023 Hearing Tr. 3:25 - 4:5.

50. Antitrust cases tend to be risky and complex. Delayed generic entry antitrust cases, which Class Counsel have decades of experience prosecuting, require an understanding of intricate FDA regulations and the drug application approval process; expertise in patent law and patent litigation, including substantive analyses of patents and patent infringement allegations; economic expertise to evaluate the contours of monopoly power, which sometimes includes analysis of the relevant market; the development of factual evidence and an economic model to demonstrate a "but-for world" devoid of the alleged anticompetitive behavior; and the calculation of damages to the Class caused by the alleged misconduct. These cases also require substantial attorney (and support staff) hours and substantial expenses and costs.

51. At all junctures of this litigation, Class Counsel faced substantial risk. A number of previous reverse-payment cases have been dismissed after significant outlays of time and expenses by Class Counsel because of intervening judicial decisions.

52. For instance, in 2010, over the Honorable Rosemary S. Pooler's dissent, the Second Circuit, *en banc*, affirmed a district court's grant of summary judgment in favor of defendants in a case alleging a $400 million cash reverse payment concerning the drug Cipro, because of the then-emerging "scope-of-the-patent" test. *See Ark. Carpenters Health & Welfare Fund v. Bayer AG*, 604 F.3d 98 (2d Cir.), *reh'g denied*, 625 F.3d 779 (2d Cir. 2010). Three years later, after denying *certiorari* in *Cipro*, the Supreme Court issued its opinion in *FTC v. Actavis, Inc.*, 570 U.S. 136 (2013), enabling a later-filing group of Cipro indirect purchasers to reach settlements in California state court worth hundreds of millions of dollars. *See In re Cipro Cases I & II*, 348 P.3d 845 (Cal. 2015), *on remand*, 2018 Cal. App. Unpub. LEXIS 3258, at *3 (Cal. Ct. App. May 14, 2018) (settlement described). The Cipro direct purchasers made no recovery despite the expenditure of significant time and money by Class Counsel.

53. Even after *Actavis* was decided, dismissals of other cases at the Rule 12 and Rule 56 stages quickly revealed that *Actavis* was no panacea for the risk these cases present. *See In re Wellbutrin XL Antitrust Litig.*, 133 F. Supp. 3d 734 (E.D. Pa. 2015) (granting the defendants' summary judgment motion in reverse payment case); *In re Actos End Payor Antitrust Litig.*, 2015 WL 5610752 (S.D.N.Y. Sept. 22, 2015) (pre-answer dismissal in reverse payment case); *In re Effexor XR Antitrust Litig.*, 2014 WL 4988410 (D.N.J. Oct. 6, 2014) (same); *In re Lipitor Antitrust Litig.*, 46 F. Supp. 3d 523 (D.N.J. 2014) (same); *In re Loestrin 24 Fe Antitrust Litig.*, 45 F. Supp. 3d 180 (D.R.I. 2014) (same); *In re Lamictal Direct Purchaser Antitrust Litig.*, 18 F. Supp. 3d 560 (D.N.J. 2014) (same). Some of these dismissals were affirmed in whole or part, while others were reversed. *See, e.g.*, *In re Wellbutrin XL Antitrust Litig.*,, 868 F.3d 132 (3d Cir. 2017) (affirming summary disposition of product hop case).

54. Getting to a jury was no guarantee of success in these cases, either. *E.g.*, *In re Opana ER Antitrust Litig.*, No. 1:14-cv-10150 (N.D. Ill. Aug. 22, 2022), ECF No. 1067 (granting judgment after trial following jury verdict for defendant in a reverse payment case); *In re Nexium (Esomeprazole) Antitrust Litig.*, 842 F.3d 34, 39 (1st Cir. 2016) (upholding jury verdict "that although the plaintiffs had proved an antitrust violation in the form of a large and unjustified reverse payment from AstraZeneca to Ranbaxy, the plaintiffs had not shown that they had suffered an antitrust injury that entitled them to damages"). *See also La. Wholesale Drug Co. v. Sanofi-Aventis*, 2009 U.S. Dist. LEXIS 77206, at *3 (S.D.N.Y. Aug. 28, 2009) (jury concluded that defendant's petitioning of FDA was not "objectively baseless").

55. Thus, Class Counsel were acutely aware not only of the inherent risks that come with prosecuting a complex antitrust case and bringing it towards trial, but also of the additional

risks of litigating such a case in an area of law that is newly developing subsequent to the issuance of a landmark Supreme Court decision such as *Actavis*.

56. Plaintiffs' claims could have been dismissed in their entirety at any time, particularly in view of the rapidly evolving law, which forced Class Counsel to continuously refine their case theories and strategies. And, absent the settlement with Novartis, if a jury had found in favor of Novartis at trial, Class Counsel's lengthy and protracted efforts, undertaken at great time and expense on behalf of the Class, would have been for naught. Even if successful before a jury, appellate and Supreme Court risks would remain.

57. Despite the risks outlined above, Class Counsel diligently prosecuted this case for almost five years. In doing so, Class Counsel: (a) investigated, identified, and brought this case (*supra* ¶¶ 1-4); (b) obtained and reviewed a voluminous amount of documents (*supra* ¶¶ 11-16); (c) took or defended 38 depositions (*supra* ¶¶ 18, 28, 30); (d) retained and submitted reports from ten experts (*supra* ¶ 27); (e) briefed and argued extensive discovery motions pertaining to numerous topics, most significantly, on issues pertaining to privilege (*supra* ¶¶ 19-25); (f) briefed class certification (*supra* ¶ 32); (g) moved for and opposed *Daubert* motions (*supra* ¶¶ 33, 35-37); (h) opposed two summary judgment motions (*supra* ¶¶ 33-34, 36-38); (i) substantially prepared for trial (*supra* ¶ 40); and (j) engaged in extensive negotiations concerning the execution of a settlement agreement that embodied the Parties' agreement in principle (*supra* ¶¶ 42-43).

58. Litigating this case has involved significant effort on Class Counsel's part, both in terms of time and resources spent. Class Counsel had to constantly formulate and refine their theories of liability, causation and damages both in response to legal developments and in

anticipation of arguments that Defendants were likely to raise — and often did raise — throughout the stages of the litigation.

59. Defendants were represented by some of the country's leading law firms who vigorously defended Defendants against Plaintiffs' claims at all junctures.

60. Class Counsel believe that the Settlement with Novartis represents an outstanding outcome for the Class, on a risk-adjusted basis and otherwise.

61. The following chart summarizes the aggregate time and necessary and incidental expenses (including litigation fund contributions) of all Class Counsel, as set forth in more detail in the separate firm declarations of Class Counsel, appended here as Exhibits A through J:

Ex.	Firm Name	Hours	Lodestar	Expenses
A	Berger Montague PC	9,644.50	$5,939,523.00	$422,040.55
B	Faruqi & Faruqi, LLP	5,106.10	$3,272,318.00	$362,141.07
C	Garwin Gerstein & Fisher LLP	7,692.00	$6,408,232.50	$441,230.59
D	Heim Payne & Chorush LLP	5,746.75	$2,951,589.25	$410,515.92
E	Odom & Des Roches	9,339.25	$5,714,893.75	$393,164.48
F	Smith Segura Raphael & Leger LLP	2,990.30	$1,903,630.00	$384,750.09
G	Kaplan Fox & Kilsheimer LLP	1,053.70	$467,004.50	$56,357.66
H	Roberts Law Firm US, PC	548.00	$401,981.50	$7,591.52
I	Sperling & Slater, LLC	227.25	$179,428.25	$12,587.48
J	Law Office of Alfred G. Yates Jr. P.C.	1,000.75	$690,517.50	$0
	Less litigation fund balance			($16,872.10)
	TOTALS	**43,348.60**	**$27,929,118.25**	**$2,473,507.26**

62. Detailed law firm time records are submitted under seal as Exhibits K-T hereto.

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

LITIGATION FUND DISBURSEMENTS	
Expense Category	**Amount**
Bank charges for litigation fund itself	$309.75
Deposition and hearing vendors (incl. transcripts, reporter, video)	$47,935.05
Document databases and review platforms	$75,885.10
Process Servers	$1,124.00
Experts	$2,015,430.81

Drug sales data (used by experts)	$117,309.55
Costs paid to subpoena recipients	$23,820.00
Mediation	$15,400.00
Reimbursements from End Payors and Retailers for Shared Expenses	$(94,086.36)
TOTAL	**$2,220,000.00**

64. The other expenses of each firm, combined, were as follows:

FIRM DISBURSEMENTS FOR LITIGATION EXPENSES	
Expense Category	**Amount**
Travel/Hotel/Meal Expenses	$29,989.21
Service of process	$4,418.27
Filing fees or other court costs	$7,078.83
Document database vendor	$59,441.75
Court transcripts	$5,116.01
Deposition transcripts	$3,671.70
Consulting/Expert fees	$3,300.00
Litigation fund contributions	$2,220,000.00
Reproduction Costs	$30,066.44
Postage	$5,339.13
Delivery & Freight	$1,227.23
Computer Research	$38,832.02
Outside Contractor	$495.00
Telephone	$5,467.48
Publication	$114.10
Translation Services	$4,645.04
Miscellaneous	$2,117.10
Document Hosting	$2,200.89
Legal research	$66,859.16
TOTAL	**$2,490,379.36**

The litigation fund has a current balance of $16,872.10, which amount has been deducted from the total expenses sought by Class Counsel.

65. These expenses were all reasonably incurred and necessary to the representation of the Class.

66. Class Counsel respectfully request attorneys' fees in the amount of $41,325,497.58 (or 33 ⅓%) of the settlement amount (including an equal percentage of any interest accrued since the settlement amount was escrowed), net of reimbursed expenses and service awards granted by the Court pursuant to the accompanying motion. The 33 ⅓% fee is therefore calculated by subtracting $2,473,507.26 in expenses and $400,000 in service awards from the $126,850,000 settlement and multiplying the difference by 1/3. Based on Class Counsel's lodestar of $27,929,118.25, the requested $41,325,497.58 fee represents a multiplier of 1.48 ($41,325,497.58 divided by $27,929,118.25).

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

67. The four class representatives — Betances, RDC, KPH and FWK — all made a significant contribution in prosecuting Plaintiffs' claims against Defendants for the benefit of all class members. The class representatives each actively protected the Class's interests by filing the suit on behalf of the Class and undertaking all the responsibilities involved in being a named plaintiff, including monitoring the progress of the case and responding to discovery requests.

68. Discovery was a significant burden to the class representatives in this case. Specifically, in accordance with the ESI order, each class representative executed broad document searches and collections based on keywords negotiated with Defendants, which resulted in document productions of tens of thousands of pages, as well as purchase and chargeback data.

69. These discovery efforts required that employees of the class representatives take time away from their regular job functions in order to comply.

70. Each of the class representatives was also deposed and may have testified at trial.

71. The class representatives were required to expend time and effort that was not compensated over the several years that Class Counsel pressed Plaintiffs' claims.

72. In recognition of their time and effort expended for the benefit of the Class, Class Counsel request a service award of $100,000.00 for each class representative.

I, Bruce E. Gerstein, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the above is true and correct.

/s/ Bruce E. Gerstein
BRUCE E. GERSTEIN