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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: LIPITOR ANTITRUST LITIGATION **THIS DOCUMENT RELATES TO:** *All Direct Purchaser Class Actions*	**MDL No. 2332** **Master Docket No. 3:12-cv-2389 (PGS/JBD)**

DECLARATION OF PETER S. PEARLMAN 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, Peter S. Pearlman, senior counsel of the law firm of Cohn Lifland Pearlman Herrmann & Knopf LLP ("CLPHK") and Co-Interim Liaison Counsel for Direct Purchaser Class Plaintiffs ("Plaintiffs" or the "Class"), with Garwin Gerstein & Fisher LLP ("GGF"), Berger Montague PC ("BMPC") and Hagens Berman Sobol Shapiro LLP ("HBSS") (GGF, BMPC and HBSS are collectively

"Co-Lead Counsel") for the Class respectfully submit this declaration in support of Class Counsels'[1] application for:

(1) an award of attorneys' fees totaling 33⅓% of Plaintiffs' settlement with Pfizer (the "Settlement") plus a proportionate amount of any interest accrued since the Settlement was escrowed;

(2) reimbursement of expenses that were incurred in the prosecution of Plaintiffs' claims in accordance with the Order on Procedures and Guidelines for Direct Purchaser Plaintiffs' Counsel's Time and Expense Submissions (the "Time and Expense Order")[2]; and

(3) service awards to each of the class representatives Drogueria Betances, LLC ("Betances"), Rochester Drug Co-Operative, Inc. ("RDC"), Stephen L. LaFrance Holdings, Inc. ("LaFrance"), Professional Drug Company, Inc. ("PDC") and Value Drug Company ("VDC").

Co-Lead Counsel has been involved in all aspects of this litigation from the pre-complaint investigation beginning in 2011 through the filing of the Settlement with the Court (and continuing), and is 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. Plaintiffs allege that Pfizer unlawfully monopolized the market for Lipitor by fraudulently obtaining a patent and listing it in the Food and Drug Administration's ("FDA") Orange Book, asserting that patent through baseless

[1] "Class Counsel" include the firms listed in the chart at pp. 34-35, *infra*.
[2] *See* ECF No. 800.

infringement litigation, filing a baseless Citizen's Petition with the FDA, and also unlawfully conspired with Ranbaxy by entering into a reverse payment agreement. Plaintiffs allege that Pfizer (and Ranbaxy) (collectively "Defendants") violated Sections 1 and 2 of the Sherman Act, delaying the entry of generic Lipitor and causing Plaintiffs to pay supracompetitive prices and incur injury in the form of overcharge damages.

2. On November 9, 2011, certain Class Counsel firms, on behalf of class representative LaFrance, filed the first antitrust lawsuit on behalf of a putative class of direct purchasers challenging Defendants' conduct with respect to Lipitor as violative of the antitrust laws. *See Stephen L. LaFrance Holdings, Inc. and Stephen L. LaFrance Pharmacy, Inc. d/b/a SAJ Distributors v. Pfizer, Inc. et al.*, Case No. 11-cv-7003 (E.D. Pa.). Shortly thereafter, similar direct purchaser complaints were filed by Class Counsel in different districts.

3. Plaintiffs' complaints did not follow, or build upon, any pre-existing government investigation or enforcement action. Rather, Class Counsel filed their respective complaints based upon their own prefiling investigation. Class Counsel's prefiling investigation included, *inter alia*, reviewing and analyzing the market availability of generic versions of Lipitor, including Abbreviated New Drug Applications ("ANDAs") filed with the Food and Drug Administration ("FDA") seeking approval to market generic versions of Lipitor; publicly available

regulatory filings for Lipitor, including Pfizer's Citizen's Petition; publicly available patent litigation records concerning Lipitor; Pfizer's and Ranbaxy's securities filings, including annual and quarterly reports; Pfizer's and Ranbaxy's public statements concerning Lipitor; publicly available materials concerning Lipitor; Pfizer's promotional materials related to Lipitor; and information related to Lipitor product packaging.

4. Class Counsel filed their respective complaints (and the subsequent consolidated amended complaint), 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 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 litigate the case.

5. On April 12, 2012, the United States Judicial Panel on Multidistrict Litigation centralized all then-pending direct purchaser actions in this Court. *See* MDL No. 2332, ECF No. 67.

6. On August 10, 2012, this Court entered a case management order consolidating all direct purchaser cases for all purposes, directing that all indirect purchaser cases be coordinated with the direct purchaser cases for certain purposes, appointing GGF, BMPC and HBSS as Interim Lead Counsel for the Direct

Purchaser Class and CLPHK and Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. ("CBCOBA") as Co-Interim Liaison Counsel for same, and setting a schedule for the filing of consolidated complaints, answers, motions to dismiss and a defense motion to stay discovery pending resolution of motions to dismiss. *See* ECF No. 109.

7. On August 24, 2012, Defendants filed a motion to stay discovery pending resolution of motions to dismiss. *See* ECF No. 128. On September 7, 2012, Class Counsel filed a brief in opposition to Defendants' motion to stay discovery. See ECF No. 143.

8. Three days later, on September 10, 2012, Class Counsel filed a Consolidated Amended Complaint on behalf of all Plaintiffs. *See* ECF No. 149.

9. On September 14, 2012, Defendants filed a second motion to stay. The motion sought a stay of proceedings in their entirety until the Supreme Court decided whether to grant *certiorari* in *In re K-Dur Antitrust Litigation*, 686 F.3d 197 (3d Cir. 2012), which was then one of many district and appellate court decisions addressing the appropriate legal framework under which to analyze reverse payment agreements alleged to violate the antitrust laws. *See* ECF No. 152.

10. On October 9, 2012, Class Counsel filed Plaintiffs' opposition to Defendants' second motion to stay. *See* ECF No. 186. Plaintiffs argued that, *inter alia*, a stay pending Supreme Court review was unwarranted because the reverse

payment agreement at issue was unlawful regardless of what legal framework Plaintiffs' allegations were analyzed under. *Id.*

11. On October 19, 2012, Defendants filed their reply brief in support of their second motion to stay. *See* ECF No. 199.

12. On October 19, 2012, the Court denied Defendants' motion to stay discovery pending resolution of motions to dismiss, on the basis that Plaintiffs only sought limited discovery until motions to dismiss were decided. *See* ECF No. 197.

13. On October 25, 2012, the Court denied Defendants' motion to stay proceedings pending the Supreme Court's decision as to whether to grant *certiorari* in *K-Dur*. *See* ECF No. 213.

14. The parties then proceeded to motion to dismiss briefing.

III. THE FIRST ROUND OF MOTION TO DISMISS BRIEFING AMIDST THE SUPREME COURT'S *ACTAVIS* DECISION

15. On November 16, 2012, Pfizer and Ranbaxy each filed separate motions to dismiss Plaintiffs' complaint. *See* ECF Nos. 244, 246. In briefing totaling approximately 100 pages, Defendants advanced a broad swath of arguments, including that Plaintiffs did not have standing to assert antitrust claims based on theories of patent fraud, that Plaintiffs failed to adequately plead *Walker-Process* fraud, that Plaintiffs' reverse payment theory failed under Federal Circuit law because Ranbaxy's entry date fell "within the scope" of Pfizer's patents, that Plaintiffs' reverse payment theory failed under Third Circuit law because Plaintiffs

were required, but failed, to plead a cash reverse payment, and that Plaintiffs could not demonstrate antitrust injury. *Id.*

16. On January 1, 2013, Class Counsel responded via a 90-page consolidated opposition responding to each of Defendants' motion to dismiss arguments. *See* ECF No. 307. Class Counsel argued, *inter alia*, that Plaintiffs' reverse payment allegations were cognizable under any legal standard for evaluating reverse payment allegations (*i.e.*, that Ranbaxy's entry date went beyond the scope of Pfizer's patent rights and that allegations of a cash reverse payment were not required). *Id.*

17. On February 22, 2013, Pfizer and Ranbaxy filed reply briefing. *See* ECF Nos. 340, 343.

18. On March 25, 2013, the Supreme Court held oral argument in the *Actavis* case, in which the Federal Trade Commission ("FTC") appealed the Eleventh Circuit's dismissal of the FTC's complaint alleging a reverse payment agreement. *See generally FTC v. Actavis, Inc.*, 570 U.S. 136 (2013) (noting date argument held).

19. On May 8, 2013, the Court ordered all parties to address the issue of whether oral argument on Defendants' motions to dismiss should be delayed pending the Supreme Court's anticipated June 2013 decision in *Actavis*. *See* ECF No. 385. After considering the parties' written submissions, which articulated

varying positions but all of which recognized an impending decision in *Actavis*, the Court elected to await the Supreme Court's decision in *Actavis* before deciding the motions to dismiss. *See* ECF No. 397.

20. On June 17, 2013, the Supreme Court issued its landmark *Actavis* decision. *See FTC v. Actavis*, 570 U.S. 136 (2013). Broadly speaking, in *Actavis*, the Supreme Court concluded that the appropriate legal framework for analyzing reverse payment agreements alleged to violate the antitrust laws was the traditional antitrust rule of reason. *Id.* The Supreme Court left it to the lower courts to implement its ruling. *Id.*

21. Following *Actavis*, this Court ordered the parties to submit supplemental briefing on the motions to dismiss in view of *Actavis*, (*see* ECF No. 408), and those submissions were filed on July 12, 2013. *See* ECF Nos. 422, 424, 425. Class Counsel argued that *Actavis* compelled denial of Defendants' motions to dismiss, including because nothing in *Actavis* supported Defendants' "no sack of cash" argument. *See* ECF No. 424. Conversely, Defendants argued that *Actavis* reinforced that Defendants' motions to dismiss should be granted, including because only settlements with "large monetary payments" could be unlawful under *Actavis*. *See* ECF Nos. 422, 425.

22. On July 24, 2013, the Court heard oral argument on the motions to dismiss. *See* ECF No. 432. During argument, the Court posed the question of why,

if *Actavis* was not limited to just cash reverse payments as Defendants posited, Plaintiffs had not previously sought leave to amend their complaint to include more detailed allegations concerning Pfizer and Ranbaxy's settlement of the Accupril litigation, which Plaintiffs alleged to be a reverse payment. *Id.* (Jul. 24, 2013 Tr.) at 58. Class Counsel argued that Plaintiffs' complaint was already sufficiently pled, but reiterated their request (previously made in briefing) for leave to amend if the Court believed that Plaintiffs needed to plead additional facts. *Id.* at 86-87.

23. On August 7, 2013, Class Counsel filed a motion for leave to amend Plaintiffs' complaint. *See* ECF No. 435. In their motion, Class Counsel articulated additional factual allegations supporting Plaintiffs' claim that the Accupril settlement constituted a reverse payment. *Id.* Defendants opposed the motion, arguing, *inter alia*, that amendment would be futile because the Accupril settlement, which Defendants characterized as a lawful compromise of a claim for potential damages specifically sanctioned by *Actavis*, did not qualify as a reverse payment. *See* ECF Nos. 443, 446. Class Counsel filed Plaintiffs' reply brief on August 27, 2013. *See* ECF No. 453.

24. On September 5, 2013, the Court issued its ruling on Defendants' motion to dismiss. *See In re Lipitor Antitrust Litig.*, 2013 U.S. Dist. LEXIS 126468 (D.N.J. Sept. 5, 2013). The Court dismissed all of the claims in Plaintiffs' complaint except for those premised upon Plaintiffs' reverse payment allegations,

and granted Plaintiffs leave to amend their reverse payment claims while declining to decide whether the proposed amendments would be sufficient to survive a subsequent motion to dismiss. *Id.* at *94-97.

25. On October 14, 2013, Class Counsel filed Plaintiffs' Second Amended Consolidated Complaint. *See* ECF No. 472.[3]

IV. THE SECOND ROUND OF MOTION TO DISMISS BRIEFING IN THE AFTERMATH OF *ACTAVIS*

26. On November 26, 2013, Pfizer and Ranbaxy filed a second round of motions to dismiss as to Plaintiffs' amended complaint. *See* ECF Nos. 490, 493. Defendants argued, *inter alia*, that the Accupril settlement—which Plaintiffs argued constituted a reverse payment from Pfizer to Ranbaxy—was a lawful compromise of a damages claim and therefore did not qualify as a reverse payment. *Id.*

27. On January 17, 2014, Class Counsel filed Plaintiffs' opposition. *See* ECF No. 509. Class Counsel argued that there was no legal support for Defendants' argument that a reverse payment need be in cash form, and that crediting Defendants' factual assertions concerning Accupril that fell without Plaintiffs' complaint would require conversion of Defendants' motion to dismiss

[3] For purposes of preserving the issues for appeal, the complaint included allegations other than those concerning the reverse payment agreement. *Id.* at ¶ 2.

into one for summary judgment, and therefore necessitate that Plaintiffs be given a reasonable opportunity to take discovery. *Id.*

28. On February 7, 2014, Defendants filed reply briefing. *See* ECF Nos. 523, 524.

29. On March 6, 2014, the Court held oral argument on the second round of motion to dismiss briefing. *See* ECF No. 532.

30. On September 12, 2014, the Court granted Defendants' motion to dismiss with prejudice and without leave to replead. *See In re Lipitor Antitrust Litig.*, 2014 U.S. Dist. LEXIS 127877 (D.N.J. Sept. 12, 2014). The Court concluded that, *inter alia*, "in a case where a non-monetary payment is alleged…the pleading must demonstrate the reliable foundation showing a reliable cash value of the non-monetary payment through the use of more facts upon which Plaintiff depends." *Id.* at *65. *See also id.* ("In considering the monetary value of a patent infringement claim Plaintiff must allege facts as if Plaintiff was standing in the shoes of the parties at the time of settlement").

31. On October 10, 2014, Class Counsel filed a motion seeking to amend the Court's judgment of dismissal to the extent it denied Plaintiffs an opportunity to replead. *See* ECF No. 583. Class Counsel argued that the Court had dismissed Plaintiffs complaint based on a new, heightened evidentiary standard that Plaintiffs believed was erroneous and were prepared to appeal, but that in any event the

Court should convert its dismissal into one that allowed Plaintiffs to replead in order to meet that new standard. Class Counsel attached a proposed amended complaint, accompanied and supported by a valuation analysis performed by a patent damages and valuation expert. *Id.*

32. On October 27, 2014, Defendants filed their opposition. *See* ECF No. 598. Defendants argued that the Court had not articulated a "new" standard but had merely instead applied existing precedent, and that Plaintiffs' proposed amendment would in any event be futile for reasons previously set forth in prior briefing. *Id.*

33. On November 3, 2014, Class Counsel filed Plaintiffs' reply brief. *See* ECF No. 603.

34. On November 6, 2014, the Court heard oral argument on Plaintiffs' motion to amend and replead. *See* ECF No. 612.

35. On March 17, 2015, the Court denied Plaintiffs' motion. *See In re Lipitor Antitrust Litig.*, 2015 U.S. Dist. LEXIS 38887, at *12 (D.N.J. Mar. 17, 2015). The Court concluded that Plaintiffs' characterization of its opinion as setting forth a new pleading standard was "overstated" and that "it simply applies [] precedent." *Id.* at *13.

V. PLAINTIFFS' APPEAL TO THE THIRD CIRCUIT

36. On October 10, 2014, the same day on which Plaintiffs moved to amend the Court's judgment of dismissal with prejudice so that Plaintiffs could

replead, Class Counsel also filed a Notice of Appeal to the Third Circuit appealing this Court's decision granting Defendants' motions to dismiss. *See* ECF No. 589. The Third Circuit consolidated Plaintiffs' appeal with those of other plaintiff groups, and stayed all appeals pending this Court's decision on the above-referenced motion to amend the judgment to grant Plaintiffs leave to replead. *See In re Lipitor Antitrust Litig.*, Case No. 14-4206, Doc. No. 003111775730.[4]

37. On March 31, 2015, after this Court had ruled on the above-referenced motion, Class Counsel amended their Notice of Appeal to encompass the Court's decision. *See* ECF No. 632.

38. Appellate briefing then commenced. On December 18, 2015, Class Counsel filed an 84-page opening brief (joined in by indirect purchaser plaintiffs) with the Third Circuit seeking reversal of this Court's order dismissing Plaintiffs' complaint. *See In re Lipitor Antitrust Litig.*, Case No. 14-4206, Doc. No. 003112159634. Plaintiffs appealed this Court's dismissal of Plaintiffs' reverse payment allegations and Plaintiffs' *Walker-Process* theories (and thus this Court's consequential limitation on Plaintiffs' damages to the period only after June 2011,

[4] Subsequently, the Third Circuit consolidated all *Lipitor* appeals with all appeals in the *In re Effexor Antitrust Litigation* due to the similarity of the issues presented in both appeals. *See In re Lipitor Antitrust Litig.*, Case No. 14-4206, Doc. No. 003111873534.

on the basis that Pfizer's '995 patent (which expired in June 2011) barred Ranbaxy from entering prior). *Id.*

39. On March 21, 2016, Defendants filed their opposition briefs, totaling nearly 200 pages. *See In re Lipitor Antitrust Litig.*, Case No. 14-4206, Doc. Nos. 003112239469, 003112239531. As an initial matter, Defendants argued for transfer of Plaintiffs' appeal to the Federal Circuit on the basis that Plaintiffs' *Walker-Process* and related claims purportedly required resolving questions of patent law. Defendants also argued that this Court's order of dismissal was appropriate in its entirety and that this Court properly denied Plaintiffs leave to amend. *Id.*

40. On May 31, 2016, Class Counsel filed Plaintiffs' reply brief and opposed transfer to the Federal Circuit. *See In re Lipitor Antitrust Litig.*, Case No. 14-4206, Doc. No. 003112311736.

41. On September 16, 2016, the Third Circuit advised that oral argument would initially be confined only to the issue of whether the appeal should be transferred to the Federal Circuit, with oral argument on the merits to be set forth at a later date if transfer was found unwarranted. *See In re Lipitor Antitrust Litig.*, Case No. 14-4206, Doc. No. 003112401374.

42. On September 26, 2016, the Third Circuit held oral argument on the above-referenced jurisdictional issue.

43. On April 13, 2017, the Third Circuit issued a precedential opinion concluding that Plaintiffs' claims did not arise under patent law, and thus denying Defendants' motion to transfer to the Federal Circuit. *See In re Lipitor Antitrust Litig.*, 855 F.3d 126 (3d Cir. 2017). Oral argument on the merits of the appeal was then scheduled. *See In re Lipitor Antitrust Litig.*, Case No. 14-4206, Doc. No. 003112592686.

44. On May 19, 2017, the Third Circuit held oral argument on the merits.

45. On August 21, 2017, the Third Circuit issued a second precedential opinion, ruling on the merits in favor of Plaintiffs. *See In re Lipitor Antitrust Litig.*, 868 F.3d 231 (3d Cir. 2017). The Third Circuit concluded that Plaintiffs had plausibly pled a reverse payment claim under *Actavis*, and reversed this Court's dismissal of that claim. *Id.* at 253-58. The Third Circuit also concluded that Plaintiffs had plausibly pled *Walker-Process* fraud, and reversed this Court's dismissal of Plaintiffs' *Walker-Process* allegations and related claims (and consequently reversed this Court's limitation on Plaintiffs' damages period). *Id.* at 266-75. The Third Circuit then remanded the case for further proceedings consistent with its opinion. *Id.* at 275.

46. On November 24, 2017, Pfizer filed a petition for writ of *certiorari* to the Supreme Court. *See generally Wyeth LLC v. Rite Aid Corp.*, 583 U.S. 1150 (2018). On February 20, 2018, Pfizer's petition was denied. *Id.*

VII. FACT DISCOVERY AND DISCOVERY MOTION PRACTICE

47. Due to the unique procedural history of this litigation, the discovery and related motion practice that took place occurred in various phases over multiple years, including during mediation and class certification and summary judgment briefing.

48. With respect to discovery requests and responses thereto, Class Counsel served two sets of document requests, three sets of interrogatories and one set of requests for admission on Defendants, and Defendants served one set of document requests on Plaintiffs. Over the course of the litigation, Defendants produced more than ten million pages of documents, which Class Counsel mined during motions to dismiss, fact discovery, mediation, and for purposes of filing Plaintiffs' class certification motion and defending against Defendants' summary judgment motion on causation (although full discovery on causation has not been completed). Plaintiffs also produced documents in response to Defendants' document requests, and, as discussed *infra*, each named plaintiff was deposed prior to class certification briefing.

49. With respect to discovery-related motion practice, extensive briefing occurred on a wide variety of issues.

50. Both aspects of discovery are outlined below.

51. In the initial stages of the litigation, Judge Arpert ordered that discovery on certain discrete categories of documents should proceed until a decision on the then-initial round of motion to dismiss briefing and decision. *See* ECF Nos. 197, 328. A limited amount of document production therefore ensued.

52. On April 26, 2013, following a dispute as to the scope of Defendants' production, Class Counsel filed a motion to compel. *See* ECF Nos. 378, 388. On August 21, 2013, Judge Arpert granted Plaintiffs' motion in part and denied it in part, ordering Defendants to produce certain additional documents. *See* ECF No. 447.

53. Separately, during this time period, the parties also negotiated a Protective Order and ESI Protocol, which were entered by the Court. *See* ECF Nos. 346, 416.

54. As detailed above, for the next several years, the parties were engaged in an additional round of motion to dismiss (and related) briefing resulting in appeal to the Third Circuit, and therefore no further discovery occurred during this time.

55. Following the Third Circuit's 2017 ruling in favor of Plaintiffs on Plaintiffs' appeal of the Court's motion to dismiss ruling and issuance of its mandate, litigation resumed in this Court. On January 5, 2018, pursuant to this Court's directive and in advance of a scheduled Rule 16 conference, the parties

filed a Joint Rule 16 conference report with competing proposals on, *inter alia*, a litigation schedule, privilege log issues and other matters. *See* ECF No. 694.

56. In February 2018, following a Rule 16 conference, Judge Arpert entered orders directing the filing of Defendants' answers, deeming fact discovery opened, and setting a target date for the close of fact discovery. *See* ECF Nos. 708, 710.

57. As discovery proceeded, numerous disputes arose concerning litigation scheduling, Plaintiffs' document productions, Defendants' interrogatory responses, and various issues pertaining to attorney-client privilege. These disputes resulted in extensive motion practice.

58. The first issue briefed concerned the parties' disagreement as to when Defendants should make their election as to whether they would assert a reliance on counsel defense. Relatedly, the parties disagreed on certain privilege logging obligations and the timing of service of privilege logs. As a result, multiple sets of briefing on these issues occurred.

59. During April and May 2018, the parties briefed issues pertaining to privilege logging obligations. *See* ECF Nos. 756-57, 775, 785. Subsequently, the parties resolved the dispute by agreement. *See* ECF No. 825 (Oct. 4, 2018 Tr.) at pp. 9-10.

60. During May and June 2018, the parties briefed the issue of when Defendants would be required to elect whether they would assert a reliance on counsel defense. *See* ECF Nos. 770-71, 787, 794-95.[5]

61. On October 4, 2018, Judge Arpert held oral argument on the motion concerning the timing of Defendants' privilege election. *See* ECF No. 825. On November 27, 2018, Judge Arpert ordered that Defendants were required to make their privilege election on the then-existing date for substantial completion of document production. *See* ECF No. 836.

62. The second issue briefed concerned the scope of Plaintiffs' document production, which Defendants contended was insufficient. In August 2018, the parties briefed whether Plaintiffs should produce certain documents and/or data sought by Defendants concerning market power, "downstream" discovery issues, and assignments. *See* ECF No. 812. On May 23, 2019, Judge Arpert granted in part and denied in part the discovery sought by Defendants. *See* ECF No. 858.

63. Subsequently, in March 2019, the Court issued a judicial notice stating that because the parties "have vigorously litigated and continue to litigate numerous discovery issues" and that the "Court has devoted substantial time to addressing and attempting to resolve these disputes," it was clear that the litigation

[5] Separately, on June 27, 2018, at the request of the Court, the parties presented the Court with a full day in-person "tutorial" at which the parties presented an overview of the case and its various components. *See* ECF No. 802.

"will continue to require intensive case management" that was "untenable" and thus the appointment of a Special Discovery Master might be appropriate. *See* ECF No. 853. The parties filed submissions consenting to the appointment of a Special Discovery Master, (*see* ECF Nos. 855, 860, 862, 868), and on July 10, 2019, Judge Jose L. Linares (Ret.) was appointed Special Discovery Master. *See* ECF No. 877.

64. Additionally, in fall 2019, Judge Arpert set a litigation schedule going through class certification briefing and "Round 1 *Dauberts*," with the remainder of a schedule through trial to be set at a later date. *See* ECF Nos. 899, 902. Under the schedule, the deadline for substantial completion of document production, and the corresponding deadline for Defendants to make their privilege election, was March 18, 2020. *Id.*

65. The third issue briefed concerned the sufficiency of Defendants' interrogatory responses. On January 24, 2020, Class Counsel filed a motion to compel concerning those responses, which was directed to Special Master Linares. *See* ECF No. 925. On February 7, 2020, Defendants filed their opposition briefs. *See* ECF Nos. 930-31. On February 12, 2020, Class Counsel filed Plaintiffs' reply brief. *See* ECF No. 934.

VII. THE MARCH 2020 DISCOVERY STAY AND MEDIATION

66. During a February 26, 2020 status conference, the parties expressed a wide divergence in views concerning whether mediation was appropriate given that

the parties were in the early stages of fact discovery. *See* ECF No. 942 (Feb. 26, 2020 Tr.) at pp. 1-22.

67. On March 2, 2020, the Court issued an order directing the parties to select a mediator. *See* ECF No. 943.

68. On March 10, 2020, Defendants filed a letter with the Court requesting that the Hon. Faith Hochberg (Ret). be appointed as mediator and requesting that discovery be stayed pending mediation. *See* ECF No. 945. On March 11, 2020, Plaintiffs filed a letter with the Court joining in the request that Judge Hochberg be appointed mediator, but making a competing proposal for a two-month stay and requesting that the Court order Defendants to provide Plaintiffs with certain discovery in order to make for an informed mediation. *See* ECF No. 946.

69. Also on March 10, 2020, Special Master Linares issued his opinion on Plaintiffs' motion to compel, directing Defendants to respond to and/or supplement responses to certain of Plaintiffs' interrogatories. *See* ECF No. 944.

70. On March 12, 2020, the Court appointed Judge Hochberg as mediator, issued a two-month stay of discovery with the potential for an extension based on the status of mediation efforts, directed Defendants to comply with Special Master Linares's ruling, and directed Judge Hochberg to adjudicate Plaintiffs' request for further discovery. *See* ECF No. 948.

71. On March 18, 2020, Judge Hochberg issued an Initial Mediation Order setting forth the process and schedule for mediation in view of the then-emerging COVID-19 pandemic,[6] and directing the parties to meet and confer concerning Plaintiffs' request that Defendants produce further discovery for mediation. *See* ECF No. 949.

72. Mediation continued through 2020, with the parties making numerous written submissions to Judge Hochberg and participating in telephonic/Zoom mediation sessions in light of COVID-19. Extensive discussion also occurred, both among Class Counsel and through motion practice, concerning, *inter alia*, the various proposals for a settlement structure and the potential establishment and composition of a settlement committee. *See*, *e.g.*, ECF Nos. 1006, 1016-17, 1021-22.

73. On November 16, 2020, following a status conference concerning these issues, the Court issued an order establishing a settlement committee to negotiate a potentially "global" settlement on behalf of all plaintiff groups. *Id.*

74. On January 11, 2021, following further, extensive discussion among counsel and with the Court during status conferences, the Court issued a second

[6] On March 11, 2020, the World Health Organization formally declared COVID-19 a global pandemic and a national emergency was declared by the United States two days thereafter, resulting in a series of mandatory lockdowns and the imposition of social distancing measures.

order concerning the scope and composition of the settlement committee, directed that the discovery stay remain in place and ordered mediation with Judge Hochberg to continue. *See* ECF No. 1031.

75. In accordance with the Court's order, mediation continued, and from August 2021 through March 2022, the parties submitted extensive, lengthy mediation briefs to Judge Hochberg concerning issues related to liability, causation, market power, and class certification.

76. In January 2022, following a December 7, 2021 status conference with the Court and Judge Hochberg, the parties submitted competing status reports (and responses thereto) to the Court on a variety of issues, including the status of mediation and proposals for resumption of the litigation. Class Counsel requested that, *inter alia*, because mediation had not resulted in any meaningful progress, that the Court lift the discovery stay and implement the previously-ordered scheduling structure which allowed for full fact and expert discovery to conclude prior to briefing on class certification and summary judgment. *See* ECF Nos. 1066, 1073. Conversely, Pfizer requested permission to file a motion for summary judgment on the ground that Plaintiffs could not prove antitrust injury (*i.e.*, causation). *See* ECF Nos. 1068, 1072. Ranbaxy requested that class certification be briefed as a threshold issue before briefing any merits issues. *See* ECF Nos. 1067, 1074.

77. On June 23, 2023, Judge Arpert issued a scheduling order directing certain discovery on issues of causation and class certification, and setting a schedule for class certification and summary judgment briefing. *See* ECF No. 1085 (the "June 23 Order"). *See generally*, Sections IX-X, *infra*.

78. During July 2023, the parties participated in a full day, in-person mediation session with Judge Hochberg in New York City.

79. Thereafter, Class Counsel and Pfizer negotiated a settlement of Plaintiffs' claims against Pfizer. *See* Section XI, *infra*.

VIII. PLAINTIFFS' APPEALS OF JUDGE ARPERT'S SCHEDULING ORDERS

80. On July 7, 2022, Class Counsel appealed the June 23 Order to this Court, requesting that it be vacated and for the discovery stay to be lifted and for the litigation to resume in full. *See* ECF No. 1096. Class Counsel argued that the June 23 order deprived Plaintiffs of the discovery necessary to brief class certification and summary judgment and would only serve to further delay the litigation. *Id.*

81. On July 18, 2022, Defendants filed an opposition, arguing that the June 23 Order afforded time for Plaintiffs to obtain all the requisite discovery needed and would not delay the case. *See* ECF No. 1088.

82. On July 25, 2022, Class Counsel filed Plaintiffs' reply brief, noting that, *inter alia*, two days prior (and just weeks before Plaintiffs' merits experts

reports on causation were due), Ranbaxy unexpectedly produced 2.2 million pages of documents and a 45,000+ entry privilege log. *See* ECF No. 1091. The parties then briefed the issue of whether an extension was warranted in view of Ranbaxy's production. *See* ECF No. 1093.

83. On August 10, 2022, the Court denied Plaintiffs' appeal without prejudice and granted Plaintiffs' permission to refile their appeal once Judge Arpert ruled on Plaintiffs' request for an extension. *See* ECF No. 1103.

84. On September 1, 2022, after Judge Arpert ruled on Plaintiffs' request for an extension by three months, (*see* ECF No. 1107), Class Counsel refiled Plaintiffs' appeal. *See* ECF No. 1114. Opposition and reply briefing were completed by September 26, 2022. *See* ECF Nos. 1120-21.

85. On September 29, 2022, the Court denied both of Plaintiffs' appeals. *See* ECF No. 1124. The parties then proceeded to summary judgment and class certification briefing, and motion practice related thereto.

IX. SUMMARY JUDGMENT

86. From November 2022 through March 2023, the parties served expert reports and took expert depositions related to Defendants' then-forthcoming summary judgment motion on causation.

87. The parties also briefed the time-sensitive issue of whether Plaintiffs would be permitted to file reply expert reports, which Plaintiffs sought leave for

but subsequently withdrew as to their causation (but not class certification) expert, leading to the request being denied as to Plaintiffs' causation expert. *See* ECF Nos. 1158, 1161, 1209.

88. On March 15, 2023, Defendants filed a motion for summary judgment on causation. *See* ECF No. 1183. Defendants' motion was accompanied by 164 statements of undisputed facts and 94 exhibits. *Id.*

89. On May 1, 2023, Class Counsel filed Plaintiffs' causation summary judgment opposition. *See* ECF No. 1217. In addition to opposing Defendants' motion and responding to each of Defendants' statements of undisputed fact, Class Counsel submitted a Rule 56 affidavit attesting that briefing one of the arguments that Defendants advanced as a basis for summary judgment was not possible until the completion of full fact and expert discovery. *Id.*

90. On May 22, 2023, Defendants filed their summary judgment reply brief. *See* ECF No. 1235.

91. On November 27, 2023, the Court held oral argument on Defendants' motion for summary judgment and reserved decision. *See* ECF No. 1323.

92. As of the date of this filing, Defendants' motion for summary judgment remains pending.

X. CLASS CERTIFICATION

93. From January to April 2023, the parties served expert reports and took expert depositions related to class certification.

94. Defendants also deposed each of the five class representatives.

95. The parties also briefed Pfizer's request to compel certain discovery from an absent class member. *See* ECF Nos. 1142, 1146, 1148, 1150, 1151.

96. The parties also briefed the time-sensitive issue of whether Plaintiffs would be permitted to file a class certification reply expert report. After Judge Arpert denied Plaintiffs' request, (*see* ECF No. 1161), Plaintiffs appealed to this Court on February 24, 2023. *See* ECF Nos. 1170-71, 1175, 1179. This Court granted Plaintiffs' appeal on April 14, 2023, permitting Plaintiffs to serve a class certification reply expert report. *See* ECF No. 1209.

97. On May 5, 2023, Class Counsel filed Plaintiffs' class certification motion. *See* ECF No. 1221.

98. On June 5, 2023, Defendants opposed Plaintiffs' class certification motion. *See* ECF No. 1241.

99. On June 30, 3023, Class Counsel filed Plaintiffs' reply brief. *See* ECF No. 1257.

100. On November 27, 2023, the Court heard oral argument and reserved decision. *See* ECF No. 1323.

101. As of the date of this filing, Plaintiffs' motion for class certification of a litigation class remains pending.

XI. THE SETTLEMENT

102. The Settlement was the product of the parties' multi-year attempt to negotiate a settlement of Plaintiffs' claims.

103. The parties initially engaged in mediation in February 2015 with Jonathan Marks of MarksADR, LLC, pursuant to this Court's directive in late 2014. The mediation was unsuccessful.

104. As detailed above, the parties engaged in a second and continuous multi-year mediation with Judge Hochberg starting in March 2020. At all times up through February 7, 2024 – the date that the Settlement was executed – Class Counsel and Pfizer engaged in hard fought, arm's-length negotiations concerning settlement, both as to general structure and specific terms.

105. 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 Pfizer of $93 million into an interest-bearing escrow account for the benefit of the Class, which payment Pfizer has already funded, in exchange for certain releases of claims.

106. In seeking preliminary approval, Class Counsel requested that the Court certify a settlement class, preliminarily approve the proposed Settlement,

approve a proposed form of notice to the Class, approve the appointment of an escrow agent and claims administrator and set a schedule leading up to and including a Fairness Hearing.

107. On March 8, 2024, the Court held a hearing on preliminary approval. *See* ECF No. 1373.

108. Following the hearing, the Court certified a settlement class, granted preliminary approval to the proposed Settlement, approved an escrow agent and the proposed escrow agreement, approved the appointment of an escrow agent and claims administrator, authorized notice to the Class, and set a schedule up through the Fairness Hearing. *See* ECF No. 1374.

109. Thereafter, Pfizer 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 March 23, 2024.

110. Class members have until May 8, 2024 to request exclusion from the Class, 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 requests for exclusion and/or objections have been received by Class Counsel. If any are received between the date of this Declaration and May 8, 2024, Class Counsel will notify the Court and

address any such objections in Plaintiffs' forthcoming submission for final approval of the Settlement, due on May 29, 2024.

XII. SUMMARY OF ATTORNEYS' FEES AND UNREIMBURSED EXPENSES

111. 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.

112. 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" free 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, including significant expert expenses.

113. At all junctures of the litigation, Class Counsel faced a high degree of risk.

114. As an initial matter, as described *supra*, the litigation was filed in a highly unique era of rapidly evolving antitrust law during which a split in authority over the appropriate legal standard for evaluating antitrust challenges to reverse payment agreements led to the Supreme Court granting *certiorari* and issuing its landmark decision in *Actavis*. Moreover, because the Supreme Court specifically left it to lower courts to apply *Actavis*, even after its issuance courts reached differing interpretations, as evidenced by, *inter alia*, the motion to dismiss briefing and resulting appeal in this case.

115. Moreover, 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 in those cases. *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).

116. Thus, Class Counsel were acutely aware of the inherent risks that come with prosecuting a complex antitrust case, particularly one that was filed at a unique point in time with regards to important developments in the substantive law governing the case. Class Counsel were aware that Plaintiffs' claims could have been dismissed in their entirety at the pleading stage (as indeed initially occurred, before the Third Circuit reversed), at summary judgment (again, as Defendants sought), and all times have been aware of the risks of an adverse jury verdict had the settlement with Pfizer not been reached. Class Counsel were also aware that Pfizer would almost 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 Pfizer at trial or if a jury verdict in favor of Plaintiffs were vacated on appeal, Class Counsel's twelve-plus year efforts on behalf of the Class, undertaken on a purely contingent basis at great expense, would have been for naught.

117. Despite the risks outlined above, Class Counsel diligently prosecuted this case for more than twelve years (and continue to do so against Ranbaxy). In doing so, as outlined herein, Class Counsel, *inter alia*: (a) investigated, identified and filed this case; (b) filed multiple complaints and opposed multiple rounds of motions to dismiss amidst rapidly evolving law and the *Actavis* decision; (c) prevailed on an appeal to the Third Circuit: (d) obtained and reviewed a large

volume of documents; (e) engaged in extensive discovery-related motion practice cutting across numerous topics; (f) moved for class certification; (g) opposed an early summary judgment motion; (h) engaged in extensive motion practice concerning the discovery stay, including appeals; (i) engaged in two rounds of mediation, the second of which lasted multiple years; and (j) engaged in extensive negotiations concerning the execution of the Settlement with Pfizer.

118. Litigating this case for more than twelve years has involved significant effort on Class Counsel's part, both in terms of time and monetary expenditures. Both Pfizer and Ranbaxy have been represented by well-known law firms who vigorously defended against Plaintiffs' claims at all junctures.

119. Class Counsel believe that the Settlement with Pfizer represents an excellent result for the Class, particularly given the length of the litigation and its unique procedural history.

120. 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 O.

121. Class Counsel's time and expenses comport with the Court's Time and Expense Order.

Ex.	Firm	Hours	Lodestar Historical	Lodestar Current	Expenses
A	Garwin Gerstein & Fisher LLP	6,008.60	$4,778,079.77	$5,830,691.77	$435,026.63
B	Hagens Berman Sobol & Shapiro LLP	7,418.20	$5,033,750.25	$6,133,001.00	$385,491.81
C	Berger Montague PC	8,138.10	$4,758,258.50	$6,151,344.00	$669,979.32
D	Odom & Des Roches LLC	4,705.40	$2,811,946.50	$3,716,348.50	$328,317.33
E	Faruqi & Faruqi LLP	4,460.00	$2,863,663.50	$3,701,627.00	$269,434.56
F	Smith Segura Raphael & Leger LLP	2,790.90	$1,330,665.00	$1,609,921.00	$265,934.31
G	Taus Cebulash & Landau LLP	369.00	$216,465.00	$285,265.00	$141.42
H	The Radice Law Firm PC	764.30	$425,876.00	$551,962.00	$1,303.39
I	Heim Payne & Chorush LLP	2,047.10	$1,101,504.75	$1,531,340.00	$267,553.90
J	Cohn Lifland Pearlman Herrmann & Knopf LLP	1,670.80	$1,210,380.09	$1,467,125.00	$9,974.51

K	Carella, Byrne, Cecchi, Olstein, Brody & Agnello PC	2,074.40	$1,845,720.00	$2,375,635.00	$67,562.75
L	The Barrett Law Group PA	337.10	$222,910.00	$314,500.00	$14,160.98
M	NastLaw LLC	477.10	$303,740.50	$417,088.00	$5,356.29
N	Gustafson Gluek PLLC	28.20	$15,707.50	$26,260.00	$88.04
O	Roberts Law Firm PC	778.10	$498,094.50	$622,124.50	$30,586.68
	Less litigation fund balance				($829.70)
	TOTAL	**42,067.30**	**$27,416,761.86**	**$34,734,232.77**	**$2,750,082.22**

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

Expense Category	**Amount**
Filing fees	
Deposition and hearing vendors	$41,898.25
Document databases and review platform	$464,815.05
Process servers/subpoena costs	
Experts	$1,332,401.48
Data (used by experts)	$22,266.50
Discovery	$264.29
Mediation/Special Master	$213,106.55
Travel/meals/lodging	
Costs of notice of class certification and settlement	
SUBTOTAL	**$2,074,752.12**

(Less reimbursement from other plaintiff groups for shared expenses)	($14,850.93)
TOTAL	**$2,059,901.18**

123. The expenses paid from the litigation fund throughout the course of the litigation were examined by a Certified Public Account, who determined that all such expenses were supported by receipt, reasonable and non-excessive. *See* Exhibit P annexed hereto.

124. As noted above, the litigation fund has a current balance of $829.70, which, as noted above, has been deducted from the total expenses sought by Class Counsel.

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

126. Class Counsel respectfully request attorneys' fees in the amount of one-third (33⅓%) of the settlement amount plus a proportionate amount of any interest accrued since the settlement was escrowed, and unreimbursed expenses in the amount of $2,750,082.22.

127. Under current billing rates, Class Counsel's lodestar is $34,734,232.77, yielding a negative multiplier of 0.89.

128. Under historical billing rates, Class Counsel's lodestar is $27,416,761.86, yielding a multiplier of 1.13.

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

129. The five class representatives – Betances, RDC, PDC, LaFrance and VDC – all made a significant contribution in prosecuting Plaintiffs' claims against Pfizer 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.

130. 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 Defendants, which resulted in document productions of thousands of pages, 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. Additionally, each class representative was deposed.

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

132. In recognition of their time and efforts expended for the benefit of the Class, Class Counsel request a service award of $100,000.00 for each of the five class representatives.

I, Peter S. Pearlman, on this 24th day of April 2024, declare under penalty of perjury that the above is true and correct.

/s/ Peter S. Pearlman
PETER S. PEARLMAN