

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE INTUNIV ANTITRUST
LITIGATION

This Document Relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**MEMORANDUM OF LAW IN SUPPORT OF THE DIRECT PURCHASER CLASS
PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS'
FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS**

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I. INTRODUCTION

After seven-and-a-half years of hard-fought litigation, the direct purchaser class plaintiffs have settled their claims against Shire. Class counsel discovered, investigated, and filed this case in 2016, alleging that two pharmaceutical companies entered an unlawful agreement to stymie competition and maintain supracompetitive prices for Intuniv, Shire’s \$327-million-per-year pediatric ADHD drug. And class counsel have since prosecuted this case zealously, securing voluminous and complex discovery concerning the structure and impact of the defendants’ settlement, defeating multiple rounds of Rule 12 and 56 motions, withstanding challenges to all 11 of the class’s experts, securing certification of the direct purchaser class, and diligently preparing (multiple times) for trial. Class counsel’s efforts have secured a \$58 million cash recovery for the class—a fair outcome that will provide a certain and immediate benefit to all class members. Class counsel now respectfully seek reimbursement for unreimbursed out-of-pocket litigation expenses, attorneys’ fees, and service awards for class representatives.

Class counsel request reimbursement from the settlement fund for \$795,204.50 in litigation expenses incurred since October 1, 2020.¹ The majority of these expenses were expert fees totaling \$281,082.48, which is not unexpected given the number of experts, the complexity of the legal and factual issues, and the advanced stage of the case. The remaining expenditures included charges for document databases and legal research, deposition costs, court filing fees, travel-related costs, and other reasonably incurred litigation expenses.

Class counsel also seek an award of attorneys’ fees equal to one-third of the settlement, net of litigation expenses and administration costs, in the amount of \$19,056,607.76. A one-third

¹ Direct purchaser class counsel sought, and the Court granted, reimbursement from the Actavis settlement fund for reasonable litigation expenses incurred through September 30, 2020. *See* Decl. of Lead Counsel Thomas M. Sobol in Supp. of Direct Purchaser Class Pls.’ Mot. for Award of Attys.’ Fees, Reimbursement of Expenses & Service Awards for the Class Reps. ¶ 76 (“Sobol Decl.”) (filed herewith).

fee (net of litigation expenses and administration costs) is reasonable and warranted by the complex nature of the case, the degree of risk assumed by class counsel, and the beneficial result to the class. The requested fee is also commensurate with the fees typically awarded in complex pharmaceutical antitrust cases, both within and outside this district.² A lodestar cross-check confirms the reasonableness of the award, which is far less than class counsel’s lodestar.

Finally, class counsel ask that the Court approve \$60,000 in service awards for the class representatives—\$50,000 to Meijer Inc. and Meijer Distribution, Inc. (“Meijer”) and \$10,000 to QK Healthcare, Inc. (“QKH”)—in recognition of their participation and the time and effort they expended prosecuting this action on behalf of the class (or, in QKH’s case, ensuring its conclusion).

I. BACKGROUND

A. The direct purchasers alleged that the defendants violated federal antitrust law and imposed overcharges on the class.

On December 30, 2016, the direct purchaser plaintiffs filed a complaint against Shire, the manufacturer of the ADHD drug Intuniv, and Actavis, the first company to launch a generic version of Intuniv.³ The complaint, built from the ground up based on class counsel’s individual research and independent investigation,⁴ described in detail the regulatory background, competitive landscape, the patent litigation, and the structure and impact of the defendants’ settlement deal and alleged that the defendants had engaged in an unlawful anticompetitive scheme to impede and delay the launch of generic drugs that would compete with Intuniv and gut

² See *infra* Section II.A.2.e & Appendix A.

³ See Decl. of Lead Counsel Thomas M. Sobol in Supp. of Direct Purchaser Class Pls.’ Mot. for Award of Attys.’ Fees, Reimbursement of Expenses & Service Awards for the Class Reps. ¶ 2 (“Sobol Decl.”) (filed herewith). Subsequent amended complaints were filed on March 1, 2017, and April 2, 2019. *Id.* ¶ 3.

⁴ Sobol Decl. at ¶ 2. Unlike some antitrust cases, class counsel undertook independent investigation and analysis to develop the case and draft the complaint. It did not follow on the heels of a government investigation or lawsuit.

Shire's profits. The complaint survived both Actavis's and Shire's motions to dismiss.⁵

B. The case required extensive and complex discovery.

The complex nature of this case required extensive discovery of the defendants, plaintiffs, and five third parties. The defendants and non-parties produced nearly 700,000 pages of documents and hundreds of thousands of lines of data, which class counsel reviewed and analyzed.⁶ Class counsel prepared for and deposed 16 fact witnesses.⁷

Class counsel retained experts across numerous fields to better explain this complex case to the jury and to analyze the voluminous evidentiary record. These experts included three economists to opine on market power, the relevant market, and the overcharges the plaintiffs incurred as a result of the defendants' acts, and a patent expert to explain the underlying patent litigation to the jury and opine on how it would have resolved had the parties not entered into an illegal settlement.⁸ Collectively, plaintiffs' experts produced 21 opening and/or rebuttal reports elucidating the key contractual, regulatory, economic, patent, and medical issues in this case—foundational issues the jury would need to understand to render its verdict.⁹

C. Class counsel secured class certification, successfully obtained partial summary judgment, and defeated defendants' summary judgment motions.

Class certification briefing spanned more than six months and hundreds of pages in briefing (including exhibits) and expert submissions.¹⁰ The direct purchasers moved for class certification on November 1, 2018, and submitted their final brief in support on April 8, 2019.¹¹

⁵ *Id.* ¶ 4.

⁶ *Id.* ¶ 11.

⁷ *Id.* ¶ 19.

⁸ *Id.* ¶ 23.

⁹ *Id.*

¹⁰ *Id.* ¶¶ 27–28.

¹¹ *Id.* ¶ 27–28.

The defendants attacked class certification on numerous grounds, nearly all of which the Court dismissed. The Court certified a class of 48 direct purchasers of Intuniv on September 24, 2019, and appointed Rochester Drug Co. (RDC) as the class representative.¹²

On September 6, 2019, the direct purchasers moved for partial summary judgment on (1) market power, and (2) whether Shire/Actavis were ready and able to launch a generic Intuniv.¹³ The direct purchasers also filed four *Daubert* motions to exclude the opinions and testimony of five defense experts.¹⁴ The defendants filed their own motion for summary judgment and seven *Daubert* motions to exclude the opinions and testimony of nine of the direct purchasers' experts, all of which class counsel vigorously opposed.¹⁵

On September 10, 2020, and September 21, 2020, the Court issued opinions on the parties' *Daubert* and summary judgment motions.¹⁶ The Court granted, at least in part, the plaintiffs' motions concerning five defense experts and limited the testimony of a fifth, significantly streamlining expert testimony.¹⁷ The Court denied the defendants' motions and granted the direct purchasers' motion for summary judgment on whether Shire and Actavis were ready and able to launch generic Intuniv¹⁸—to class counsel's knowledge, the first time a reverse payment plaintiff secured a summary judgment win on this issue.

¹² *Id.* ¶ 28.

¹³ *Id.* ¶ 33.

¹⁴ *Id.* ¶ 31.

¹⁵ *Id.* ¶¶ 31, 33.

¹⁶ *Id.* ¶¶ 32, 34.

¹⁷ *Id.* ¶ 32.

¹⁸ *Id.* ¶ 34.

D. Class counsel prepared for trial as Shire tried to decertify the class.

During the fall of 2019 and winter of 2020, the parties prepared for a July 2020 trial.¹⁹

On March 12, 2020, RDC filed for Chapter 11 bankruptcy protection and, on April 3, 2020, the defendants moved to decertify the class based on RDC's bankruptcy filing.²⁰

On April 10, 2020, the plaintiffs filed an omnibus motion *in limine* with 26 motions.²¹ The parties also began designating fact witness testimony—an arduous process necessitated by the plaintiffs' inability to compel many of the witnesses' appearance at trial—and preparing, exchanging, and objecting to trial exhibit lists.²² Class counsel drafted detailed (and hotly contested) jury instructions, verdict forms, and other pretrial submissions.²³

In May 2020, the Court continued the July 2020 trial date indefinitely due to the COVID-19 pandemic; no new trial date was set.²⁴

On July 8, 2020, the Court denied the defendants' motion to decertify—a reacknowledgement of the strength of the direct purchaser class—but held that RDC was no longer an adequate class representative.²⁵ With the plaintiffs and the Court adamant the litigation stay the course, the direct purchasers quickly moved for a new proposed class representative, Meijer, to intervene. On July 24, 2020, the Court granted the plaintiffs' motion.²⁶

E. The direct purchasers settled their claims against Actavis.

On August 19, 2020, Actavis informed the Court that the direct purchasers and Actavis

¹⁹ *Id.* ¶ 35.

²⁰ *Id.* ¶ 42.

²¹ *Id.* ¶ 39.

²² *Id.* ¶¶ 37–39.

²³ *Id.* ¶ 40.

²⁴ *Id.* ¶ 41.

²⁵ *Id.* ¶ 42.

²⁶ *Id.*

had reached a \$19.9 million settlement. Class counsel sought, and this Court awarded, a fee award totaling one-third of the settlement amount for their work during the litigation. The settlement also covered all of counsel's expenses through September 30, 2020.²⁷

F. The parties litigated arbitrability and the appointment of class representatives.

On August 28, 2020, Shire moved to compel Meijer to arbitrate its claims.²⁸ On September 8, 2020, the direct purchasers moved the court to appoint Meijer as class representative.²⁹ On January 29, 2021, the Court denied the motion to appoint Meijer as class representative and ordered Meijer to submit its claims to an arbitrator to determine arbitrability.³⁰

On July 8, 2022, BI-LO, moved to intervene as class representative.³¹ On March 15, 2023, the Court granted BI-LO's motion and allowed Shire a period of discovery to assess BI-LO's adequacy.³² On April 5, 2023, Shire served BI-LO with expansive written discovery requests and a Rule 30(b)(6) deposition notice. BI-LO served responses and objections, produced almost 4,000 pages of documents, and designated a 30(b)(6) witness who sat for a two-day deposition.³³ Class counsel moved swiftly to appoint BI-LO and RDC as class representatives.³⁴

G. Shire sought more discovery as trial preparations began again.

On June 29, 2023, the Court set a new trial date of February 26, 2024.³⁵ Shire moved for

²⁷ *Id.* ¶ 54. Counsel for the direct purchasers seek reimbursement for expenses incurred from October 1, 2020, through the signing of the settlement agreement with Shire. Counsel does not seek reimbursement for any expenses prior to October 1, 2020, as those were covered in the Actavis settlement award of fees. *See* Order Granting Final Approval of Actavis Settlement ¶ 17, ECF No. 551.

²⁸ *Id.* ¶ 43.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* ¶ 46.

³² *Id.* ¶ 49.

³³ *Id.* ¶ 50.

³⁴ *Id.* ¶ 51.

³⁵ *Id.*

leave to take limited discovery on absent class members; a month later, Shire moved to compel arbitration and dismiss BI-LO's complaint.³⁶ Class counsel diligently opposed both motions.³⁷

From November 2023 through January 2024, class counsel engaged in extensive trial preparation. Class counsel drafted examinations for live witnesses, including experts, designated deposition testimony for 15 witnesses, and proposed trial exhibits. The parties exchanged, objected to, and negotiated deposition designations and thousands of proposed exhibits. While class counsel did not have to start from scratch, much of the work done in preparation for a 2020 trial had to be revisited. Experts who had last worked on the case in 2020 had to re-familiarize themselves with the facts and prepare their testimony,³⁸ a key fact witness who had become unavailable to testify live at trial had to be deposed in London,³⁹ and jury instructions and other pretrial submissions had to be updated to reflect changes in the law.⁴⁰ By the end of January 2024, after class counsel invested thousands of hours of work, the direct purchasers were well prepared to try their claims to a jury.

H. One month shy of trial, a series of orders significantly complicated the case and indefinitely delayed trial.

On January 22, 2024, the Court denied the direct purchasers' request to appoint RDC as class representative and stayed BI-LO's claims pending a decision from the arbitrator on whether they should be subject to arbitration. In the same Order, the Court allowed Shire's motion to conduct limited discovery on absent class members on the issue of arbitrability.⁴¹

³⁶ *Id.* ¶ 53.

³⁷ *Id.*

³⁸ *Id.* ¶ 64.

³⁹ *Id.* ¶ 55.

⁴⁰ *Id.* ¶ 62.

⁴¹ *Id.* ¶ 65.

In response, Shire submitted extensive requests for production and interrogatories on absent class members.⁴² While seeking a protective order limiting the scope of the discovery,⁴³ class counsel also mobilized to respond to the voluminous discovery and coordinate responses, document review, discovery negotiations, and productions for all 44 absent class members.⁴⁴

I. Class counsel secured a \$58 million settlement.

On November 9, 2023, the parties attended a mediation guided by the Honorable Layn R. Phillips.⁴⁵ Negotiations continued after the mediation with the ongoing assistance of Judge Phillips. Ultimately, the parties negotiated terms that reflected both the ongoing risks (and delay) of continuing litigation against the merits of the claims. The settlement, which provided \$58 million to the direct purchaser class in exchange for the dismissal of their claims against Shire with prejudice, was the culmination of vigorous, years-long negotiations between the parties.⁴⁶

II. ARGUMENT

A. The requested one-third fee is reasonable and warranted.

Counsel who succeed in creating a common fund for the benefit of a class are entitled to reasonable attorneys' fees from that fund.⁴⁷ Courts are afforded wide discretion in awarding attorneys' fees.⁴⁸ "In addition to 'ensuring that class counsel is fairly compensated,' the district court must also function as 'a quasi-fiduciary to safeguard the corpus of the fund for the benefit

⁴² *Id.* ¶ 66.

⁴³ *Id.* ¶ 66 n.62.

⁴⁴ *Id.* ¶ 67.

⁴⁵ *Id.* ¶ 68.

⁴⁶ *Id.*

⁴⁷ *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 245 (D. Mass. 2022) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

⁴⁸ *Id.* (citing *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995)).

of the plaintiff class.”⁴⁹

1. The percentage-of-the-fund methodology is the preferred method for calculating reasonable attorneys’ fees.

District courts may calculate attorneys’ fees using either the percentage-of-the-fund (“POF”) or lodestar method.⁵⁰ Under the POF method, “counsel may be awarded a reasonable percentage of the common fund,” typically “in the range of 20–30%.”⁵¹ Under the lodestar method, “the court ‘determine[s] the number of hours reasonably expended multiplied by a reasonable hourly rate for attorneys of similar skill within that geographic area’” and may subject that calculation “to a multiplier or discount for special circumstances, plus reasonable disbursements.”⁵²

The First Circuit has found that the POF method has “distinct advantages” over the lodestar method because it is “less burdensome to administer,” “enhances efficiency,” and “better approximates the workings of the marketplace.”⁵³ For these reasons, “the weight of the caselaw” favors the POF method for determining reasonable attorneys’ fees.⁵⁴ But, whatever the method used, “the touchstone of the inquiry is reasonableness,”⁵⁵ and “the goal . . . is to compensate plaintiffs’ counsel fairly for the labor provided, taking into account the risks they

⁴⁹ *Id.* (quoting *In re Fidelity/Micron Sec. Litig.*, 167 F.3d 735, 736 (1st Cir. 1999)).

⁵⁰ *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995).

⁵¹ *Bezdek v. Vibram USA, Inc.*, 79 F. Supp. 3d 324, 349 (D. Mass. 2015) (citing *Thirteen Appeals*, 56 F. 3d at 305, 307) (quoting *Latorraca v. Centennial Techs., Inc.*, 834 F. Supp. 2d 25, 27–28 (D. Mass. 2011)).

⁵² *Id.* at 350 (quoting *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 77 (D. Mass. 2005), and *In re Compact Disc. Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 215–16 (D. Me. 2003).

⁵³ *Thirteen Appeals*, 56 F.3d at 307; *see also Bussie v. Allamerica Fin. Corp.*, No. 97-cv-40204, 1999 WL 342042, at *2 (D. Mass. May 19, 1999) (the POF method more “appropriately aligns the interests of the class with the interests of class counsel”).

⁵⁴ *New Eng. Carpenters Health Benefits Fund v. First DataBank, Inc.*, No. 05-cv-11148, 2009 WL 3418628, at *1 (D. Mass. Oct. 20, 2009) (collecting authorities).

⁵⁵ *Bezdek*, 79 F. Supp. 3d at 350 (citing *Fidelity/Micron*, 167 F.3d at 738).

faced during the representation.”⁵⁶

2. A one-third fee is reasonable and warranted.

While the First Circuit has not prescribed a particular test for evaluating the reasonableness of a fee award, courts in this circuit often consider the following factors set forth by the Second and Third Circuits: (1) the complexity of the litigation; (2) the risks posed by the litigation; (3) the size of the fund; (4) the experience, skill, and efficiency of the attorneys; (5) the amount of time and expense devoted to the litigation by class counsel; (6) the awards in similar cases; and (7) public policy considerations, if any.⁵⁷ Each of these factors supports the requested fee here.

a. Class counsel assumed significant risk prosecuting this action.

Antitrust class actions are “arguably the most complex action[s] to prosecute,” as the “legal and factual issues involved are always numerous and uncertain in outcome.”⁵⁸ Even the most meritorious and exceptionally prosecuted antitrust cases present a risk in a legal arena whose litigation “history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.”⁵⁹

⁵⁶ *Ranbaxy*, 630 F. Supp. 3d at 245.

⁵⁷ See, e.g., *In re Neurontin Mktg. & Sales Pracs. Litig.*, 58 F. Supp. 3d 167, 170 (D. Mass. 2014); *In re Solodyn Antitrust Litig.*, No. 14-md-2503, 2018 WL 7075880, at *2 (D. Mass. July 18, 2018); *In re Puerto Rican Cabotage Litig.*, 815 F. Supp. 2d 448, 457–58 (D.P.R. 2011) (citing *Goldberger v. Integrated Res.*, 209 F.3d 43, 50 (2d Cir. 2000)); accord *In re Lupron Mktg. & Sales Pracs. Litig.*, No. 01-cv-10861, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005); *Relafen*, 231 F.R.D. 52 at 79 (listing similar factors).

⁵⁸ *In re Optical Disk Drive Prods. Antitrust Litig.*, No. 10-md-2143, 2016 WL 7364803, at *4 (N.D. Cal. Dec. 19, 2016) (quoting *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004)), *vacated on other grounds*, 959 F.3d 922 (9th Cir. 2020); see also *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775, 2015 WL 5918273, at *6 (E.D.N.Y. Oct. 9, 2015); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 743 (E.D. Pa. 2013).

⁵⁹ *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (quoting *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998)).; see also *In re Superior Beverage/Glass Container*

This case was no exception; indeed, the novel issues it presented introduced unique challenges in an already notoriously difficult area of law. Unraveling a complex scheme orchestrated by sophisticated pharmaceutical manufacturers to artificially raise prices required a substantial investment of time and resources from the outset. The defendants chose to structure their alleged anticompetitive behavior through a patent litigation settlement and commercial licensing agreement, requiring the direct purchasers to investigate the merits of complex pharmaceutical patents and utilize economic expertise to establish how a commercial licensing deal functioned in this market to disincentivize competition and impact prices. Meanwhile, establishing causation for their injuries required the direct purchasers to show how, absent such unlawful conduct, other sophisticated competitors would have overcome interlocking regulatory requirements to bring their pharmaceutical products to market sooner. Finally, to establish damages for the jury, the direct purchasers would have to explain complex economic modeling of what fair prices would have looked like in different versions of a lawful, competitive world.

Further compounding the risk here was the evolving nature of the relevant case law during the pendency of the case. As the parties litigated the merits, lower courts' interpretation and application of the pivotal 2013 Supreme Court *Actavis* decision was still in its infancy—requiring class counsel to continually adjust their strategy. For example, in 2018, the First Circuit announced in *In re Asacol Antitrust Litigation* that plaintiffs must demonstrate a mechanism for “manageably remov[ing] uninjured persons from the class in a manner that protects the parties’ rights.”⁶⁰ And in 2022, the *In re Opana ER Antitrust Litigation* reverse payment case was tried to

Consol. Pretrial, 133 F.R.D. 119, 127 (N.D. Ill. 1990) (“The ‘best’ [antitrust] case can be lost and the ‘worst’ case can be won, and juries may find liability but no damages. None of these risks should be underestimated.”).

⁶⁰ 907 F.3d 42, 53–54 (1st Cir. 2018).

a jury, creating new law governing jury instructions and verdict slips in generic delay cases.⁶¹

Class counsel stayed abreast of these developments and continually adjusted their legal strategy to best serve the class.

Changes in the law governing arbitration also created significant obstacles for the direct purchasers, even as they secured substantive victories on the merits of their claims. Class counsel grappled with decisions like *Morgan v. Sundance, Inc.*, which held that under the Federal Arbitration Act “prejudice is not a condition of finding that a party, by litigating too long, waived its right to stay litigation or compel arbitration,”⁶² and *Smith v. Spizzirri*, which held that “[w]hen a federal court finds that a dispute is subject to arbitration, and a party has requested a stay of the court proceeding pending arbitration, the court does not have discretion to dismiss the suit on the basis that all the claims are subject to arbitration.”⁶³ Both decisions presented significant challenges here, threatening the direct purchasers’ ability to proceed as a class.⁶⁴ By the time of the Shire settlement, arbitration issues had derailed the direct purchasers’ path to trial and posed a real threat that the Court would decertify the class. And even if the direct purchasers managed to overcome these hurdles—which would likely have taken years of additional litigation and costs—there was no guarantee that they would have prevailed at trial.

b. Despite such risk, class counsel achieved a sizeable result for the class.

While the settlement may amount to a fraction of the direct purchasers’ alleged damages, it is a sizeable result considering the real risk that the direct purchasers would recover nothing.

⁶¹ See e.g., Pls.’ Post-Trial Mot. for Judgment as Matter of Law or New Trial at 22–34, *In re Opana ER Antitrust Litig.*, No. 14-cv-10150 (N.D. Ill. July 27, 2022), ECF No. 1048.

⁶² 596 U.S. 411, 419 (2022).

⁶³ 601 U.S. 472, 475–76 (2024).

⁶⁴ Shire’s motion to compel BI-LO to arbitrate its claims was filed after the *Morgan* decision issued and before *Smith*. See Sobol Decl. ¶ 53.

The Court's order denying BI-LO's and RDC's motion to be appointed class representatives, requiring that BI-LO submit its claims to an arbitrator, and granting Shire's motion for absent class member discovery significantly shifted the landscape of the litigation. As the Court acknowledged, the ruling "will be costly, and cause further delay in getting this case to trial to reach a long-awaited resolution for the direct purchasers." The Court therefore "encourage[d] the parties, in the interests of all concerned, to think about alternate paths to resolve this matter in the nearer term."⁶⁵ Class counsel heeded this advice. The \$58 million settlement fund secured by class counsel provides direct purchaser class members a cash recovery that is substantial, immediate, and certain and avoids the uncertainties and delays of continued litigation.⁶⁶

c. Class counsel's experience, skill, and efficiency secured the best possible recovery for the class.

The recovery obtained in this case is directly attributable to the experience, skill, and dedication of class counsel. Class counsel are leaders in pharmaceutical antitrust litigation: over the last 20 years, one or more of class counsel has served as court-appointed lead counsel, co-lead counsel, or a member of the steering committee in nearly every pharmaceutical antitrust action litigated across the country. The area of law is highly specialized, requiring knowledge of unique legal, regulatory, scientific, and industry-specific facts implicating patent law, antitrust law, and FDA regulations. Class counsel used their specialized knowledge and years of experience to develop novel legal theories that aligned with, but meaningfully advanced, the reverse payment doctrine, and developed a trial-ready record to support those theories—all while litigating against skillful defense counsel, navigating an ever-changing legal landscape, and

⁶⁵ Mem. & Order. at 25–26, ECF No. 710.

⁶⁶ See *Bezdek*, 79 F. Supp. 3d at 348 (recognizing that "the plaintiffs faced significant hurdles in pursuing the litigation to trial" that suggested settling before trial "might present a better outcome").

confronting unexpected hurdles. The favorable settlement reached with Shire, which guarantees compensation for all class members and avoids the costs and uncertainties of continued litigation, is the direct result of these efforts.

d. Class counsel invested the substantial time and money required to successfully prosecute this case.

Class counsel have collectively expended 63,449.3 hours prosecuting this case on a contingent-fee basis and incurred \$795,204.50 in unreimbursed, out-of-pocket litigation expenses—a significant investment by any measure. But class counsel had every incentive to work efficiently, and the time and money invested was necessary and reasonable given the complexity of the issues, the skill of defense counsel, and the fact that class counsel prepared rigorously for a twice-rescheduled trial.⁶⁷

e. Courts in this district and elsewhere routinely approve one-third fee awards in generic delay cases.

Courts in this district have almost uniformly approved one-third fee awards in generic delay pharmaceutical antitrust cases. In approving a one-third fee in *In Relafen Antitrust Litigation*, Judge Young noted the “highly technical and complex” legal and factual issues implicated in such cases and the enormous investment of time and “all-out effort” required to

⁶⁷ Class counsel’s hours are similar to those expended in similar cases that settled at late stages. *See, e.g., In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, No. 13-md-2445, 2024 WL 815503, at *12–18 (E.D. Pa. Feb. 27, 2024) (awarding fees totaling 32% of the net settlement fund in generic delay case settled just before trial in which class counsel invested more than 112,000 hours); Final Approval Order at 6, *In re Opana ER Antitrust Litig.*, No. 14-cv-10150 (N.D. Ill. Nov. 30, 2022), ECF No. 1085 (36% fee awarded to class counsel who expended almost 66,000 hours litigating the case through a settlement at the start of trial).

litigate them.⁶⁸ The *Prograf*,⁶⁹ *Asacol*,⁷⁰ *Solodyn* courts⁷¹ similarly approved attorney one-third fees, as did this Court for the earlier Actavis settlement.⁷²

Further, as shown in Appendix A, courts nationwide have overwhelmingly approved one-third fees for direct purchaser class counsel in generic delay cases.⁷³ And the few cases in which courts awarded less are readily distinguishable from this case. *Namenda* and *Provigil*, for example, involved settlements of \$512 million and \$750 million and still resulted in fee awards in excess of \$100 million.⁷⁴ And the lower fee awards in *Aggrenox* and *Paxil* were attributable to the fact that they settled at early phases of the litigations.⁷⁵

f. Public policy considerations support the requested fee.

Awarding a one-third fee promotes the “significant societal interest in obtaining redress for prescription drug consumers whose harms could not, given the cost of litigation, be pursued

⁶⁸ 231 F.R.D. 52 at 80–82 (noting the “highly technical and complex issues with regard to pharmaceutical pricing and distribution, health insurance and federal regulation and preemption issues” involved in generic delay class action antitrust cases).

⁶⁹ Final Approval Order at 7–8, *In re Prograf Antitrust Litig.*, No. 11-md-2242 (D. Mass. May 20, 2015), ECF No. 678.

⁷⁰ *In re Asacol*, 1:15-cv-12730, 2017 WL 11475275, at *4 (D. Mass. Dec. 7, 2017).

⁷¹ *Solodyn*, 2018 WL 7075881, at *2.

⁷² ¶ 17, ECF No. 551. The only exception in this district is *Ranbaxy*, in which the court awarded fees totaling 20% of the net settlement fund. 630 F. Supp. 3d at 248. But the *Ranbaxy* court concluded that it was appropriate to “adjust significantly downward the attorneys’ fees due, in part, to the extent to which th[e] litigation was the successor of a civil settlement and criminal plea agreement into which Ranbaxy entered with the federal government in 2013.” *Id.* at 247. The court was also influenced by the “magnitude of attorneys’ fees” sought and the high lodestar multiplier. *Id.* at 247–48. None of these factors militate against a one-third award here.

⁷³ See *infra* Appendix A (listing fees awarded in 39 settlements of such cases over the last 20 years, 27 (70%) of which were one-third of the net or gross settlement fund).

⁷⁴ See *In re Namenda Direct Purchaser Antitrust Litig.*, No. 15-cv-7488, 2020 WL 3170586, at *5–6 (S.D.N.Y. June 15, 2020); Order Granting Final Judgment, *King Drug Co. of Florence v. Cephalon, Inc. (Provigil)*, No. 06-cv-1797, 2015 WL 12843830, at *6 (E.D. Pa. Oct. 15, 2015).

⁷⁵ See *In re Aggrenox Antitrust Litig.*, No. 14-md-02516, 2017 WL 11636126, at *4 (D. Conn. Dec. 21, 2017); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp. (Paxil)*, No. 03-cv-4578, 2005 WL 1213926, at *5–6, *14 (E.D. Pa. May 19, 2005).

on an individual basis.”⁷⁶ This case was brought to compensate purchasers of an overpriced children’s ADHD medication. While these cases are complex, they redress the “all too real” competitive harm that reverse payment settlements inflict on consumers.⁷⁷ As the FTC has acknowledged, “private antitrust enforcement [is] essential to protect competition, markets, and consumers.”⁷⁸ Private litigants have long worked alongside the FTC to “shape the contours of antitrust law,” and have played “a vital role in the evolution of the law around [reverse payment] settlements.”⁷⁹ Compensating class counsel for their significant investment of time and resources and assumption of risk in cases like this one ensures that they continue to do so—and that the public benefits as a result.

3. A lodestar cross-check confirms the reasonableness of a one-third fee.

Even when the POF method is used to calculate attorneys’ fees, courts in this circuit frequently apply a lodestar crosscheck, under which a lodestar multiplier is calculated based on the total hours worked and compared to multipliers for awards in similar cases, as a check on the reasonableness of the fee award.⁸⁰ When the multiplier is too great, courts may “consider reducing [the] award calculated under the percentage of the fund method,”⁸¹ but a “low multiplier [] indicates the relative closeness of the attorneys’ fee calculated under the lodestar

⁷⁶ *Lupron*, 2005 WL 2006833, at *6.

⁷⁷ Remarks of FTC Comm’r Terrell McSweeney, Am. Antitrust Inst. Private Antitrust Enforcement Conf. (Dec. 2, 2014), https://www.ftc.gov/system/files/documents/public_statements/602971/mcsweeney_-_aai_remarks_12-02-14.pdf.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See, e.g., *Ranbaxy*, 630 F. Supp. 3d at 246; *Solodyn*, 2018 WL 7075880, at *2; *Asacol*, 2017 WL 11475275, at *4; *Bezdek*, 79 F. Supp. 3d at 350–52; *Puerto Rican Cabotage*, 815 F. Supp. 2d at 465; *Relafen*, 231 F.R.D. 52 at 81–82.

⁸¹ *Puerto Rican Cabotage*, 815 F. Supp. 2d at 465.

method and the percentage of the fund method.”⁸²

A lodestar cross-check here confirms that a one-third fee is eminently reasonable. Class counsel’s lodestar at current billing rates⁸³ is \$46,455,784.40.⁸⁴ The requested \$19,056,607.76 fee (one-third of the settlement fund, net of litigation expenses and administration costs) amounts to a multiplier of 0.41; including the fees awarded from the Actavis settlement only slightly increases the multiplier to 0.54. A negative lodestar multiplier is “more than a reasonable number given the difficult circumstances of this case, the time and resources invested, the experience and skill of [c]lass [c]ounsel, and the result achieved for the [c]lass.”⁸⁵

B. The expenses for which class counsel seek reimbursement are reasonable.

“[L]awyers whose efforts succeed in creating a common fund for the benefit of a class are entitled not only to reasonable fees, but also to recover from the fund, as a general matter, expenses, reasonable in amount, that were necessary to bring the action to a climax.”⁸⁶ The reasonableness of expenses is judged by the legitimate needs, size, and complexity of a case.⁸⁷

Class counsel here have incurred \$795,204.50 in unreimbursed, out-of-pocket litigation expenses since October 1, 2020.⁸⁸ The largest of these expenses was for expert fees (totaling \$281,082.48), which is reasonable considering the number of experts, the complexity of the legal

⁸² *Id.*

⁸³ While class counsel believe their billing rates are in line with the “prevailing hourly rate[s] in Boston for attorneys of comparable skill, experience, and reputation,” *Walsh v. Boston Univ.*, 661 F. Supp. 2d 91, 110 (D. Mass. 2009) (quoting *Parker v. Town of Swansea*, 310 F. Supp. 2d 376, 388 (D. Mass. 2004)), they did not make any downward adjustments to billing rates in light of the already negative multiplier.

⁸⁴ See Sobol Decl. ¶ 72.

⁸⁵ *Solodyn*, 2018 WL 7075881, at *2.

⁸⁶ *In re Fidelity/Micron Secs. Litig.*, 167 F.3d 735, 737 (1st Cir. 1999); accord *In re Nineteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 982 F.2d 603, 606 (1st Cir. 1992).

⁸⁷ See *In re San Juan Dupont Plaza Hotel Fire Litig.*, 111 F.3d 220, 233–38 (1st Cir. 1997).

⁸⁸ Class counsel’s litigation expenses from inception through September 30, 2020, were reimbursed from the Actavis settlement fund. See Order Granting Final Approval of Actavis Settlement ¶ 17, ECF No. 551 (granting class counsel’s request for reimbursement of reasonable litigation expenses totaling \$2,165,475.18).

and factual issues, the multiple rounds of trial preparations, and the advanced stage of the case. The remaining expenditures included charges for document databases and legal research, deposition costs, court filing and transcript fees, deposition costs, travel-related costs, and other reasonably incurred litigation expenses. Detailed summaries of these expenses are provided in the accompanying Sobol declaration and the exhibits thereto.

All expenses for which class counsel seek reimbursement were reasonable and necessary and of the type routinely charged to fee-paying clients. Class counsel avoided duplication of expert fees and other shared costs by contributing to a litigation fund from which common expenses were paid. Further, after the Shire settlement, lead counsel retained an independent accounting firm to review all litigation fund and individual firm expenditures to ensure each of the charges was reasonable, conformed to the limitations set forth by lead counsel, and was supported by an invoice, receipt, or other acceptable form of documentation. The accounting firm, in consultation with lead counsel, eliminated or made downward adjustments to any expense that did not conform to the expense limitations and requirements set forth by lead counsel, were unnecessary or excessive, or lacked sufficient documentation.⁸⁹

In addition to the litigation fund and firm expenses for which class counsel seek reimbursement now, class counsel has incurred \$4,972.23 to date for settlement-related costs and estimates that it will incur \$30,000 in additional expenses to complete administration.⁹⁰ Class counsel have not included these administration costs in the total expenses for which they seek reimbursement here but will instead ask the Court to approve payment of these costs, expected to

⁸⁹ Sobol Decl. ¶ 79 & Ex. 10.

⁹⁰ Sobol Decl. ¶ 81. Administration costs have been and will continue to be incurred for A.B. Data, the Court-appointed settlement administrator, and Econ One, the economic firm that class counsel retained to review settlement claims and supporting documentation and calculate *pro rata* shares of the settlement fund.

total \$34,972.23, from the net settlement fund in their motion to distribute.

C. Service awards are appropriate to compensate the class representatives for the services they provided.

“Because a named plaintiff is an essential ingredient of any class action, an incentive award can be appropriate to encourage or induce an individual to participate in the suit.”⁹¹ Courts routinely approve service awards “to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.”⁹² To assess the reasonableness of a service award, courts consider the risk assumed by the class representative, the notoriety and personal difficulties encountered, the amount of time and effort invested, the duration of the litigation, and the personal benefit (or lack thereof).⁹³

Class counsel respectfully request that the Court award \$50,000 to Meijer and \$10,000 to QKH in recognition of their service to the class. Meijer stepped up as a class representative in 2020, after the Court held that RDC’s bankruptcy rendered it inadequate, and its participation allowed the class action to proceed.⁹⁴ Meijer invested significant time and effort responding to 15 interrogatories, produced 9,500 documents in response to the defendants’ requests, and provided a witness for a 30(b)(6) deposition.⁹⁵ QKH agreed to serve as a class representative to ensure that the direct purchasers’ settlement with Shire was fair and reasonable and could be finalized and approved by the Court.⁹⁶ Both assumed the risk inherent in putting their names on a

⁹¹ *Puerto Rican Cabotage*, 815 F. Supp. 2d at 468 (quoting *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 292 F. Supp. 2d 184, 189 (D. Me. 2003); see also *Lupron*, 2005 WL 2006833, at *7 (“Incentive awards are recognized as serving an important function in promoting class action settlement.”)).

⁹² *Puerto Rican Cabotage*, 815 F. Supp. 2d at 468 (quoting *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002)).

⁹³ *Id.* at 468–69 (quoting *Swack v. Credit Suisse First Boston, LLC*, No. 02-cv-11943, 2006 WL 2987053, at *4 (D. Mass. Oct. 4, 2006)).

⁹⁴ See Sobol Decl. ¶ 70.

⁹⁵ *Id.*

⁹⁶ *Id.* ¶ 71.

lawsuit against important suppliers with no guarantee of any personal benefit in order to ensure a recovery for the class. Class counsel ask that the Court reward their contributions with a \$50,000 service award to Meijer and a \$10,000 service award to QKH. Both are well within the range of service awards that courts in this district have approved in comparable cases⁹⁷ and constitute less than 2% of the net recovery to the class.

III. CONCLUSION

For the foregoing reasons, class counsel respectfully request that the Court (1) award class counsel attorneys' fees of one-third of the settlement fund, net of litigation expenses and administrative costs, totaling \$19,056,607.76, plus any interest on that amount that may accrue prior to distribution; (2) approve class counsel's request for reimbursement of their reasonable litigation expenses incurred since October 1, 2020, totaling \$795,204.50; and (3) approve service awards of (i) \$50,000 for Meijer, Inc and Meijer Distribution, Inc., and (ii) \$10,000 for QK Healthcare, Inc.

Dated: August 22, 2024

Respectfully submitted,

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⁹⁷ See, e.g., *Ranbaxy*, 630 F. Supp. 3d at 248 (awarding \$80,000 service award to Meijer); *Solodyn*, 2018 WL 7075881, at *2 (awarding \$90,000 to each of two direct purchaser class representatives); *Asacol*, 2017 WL 11475275, at *4 (awarding \$100,000 to each of four class representatives).

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document was served by filing it on the Court's CM/ECF system, which will deliver notification of filing to all counsel of record.

Dated: August 22, 2024

/s/ Thomas M. Sobol
Thomas M. Sobol

APPENDIX A

Attorneys' Fee Awards in Direct Purchaser Generic Delay
Pharmaceutical Antitrust Cases⁹⁸

	Date	Case	Settlement Amount	Fee Awarded (%)
1.	06/28/24	<i>In re Effexor XR Antitrust Litig.</i> , No. 11-cv-5479 (D.N.J.), ECF No. 746	\$39.5	\$13M (33.33%)
2.	06/12/24	<i>In re Lipitor Antitrust Litig.</i> , No. 12-cv-2389 (D.N.J.), ECF No. 1424	\$93M	\$31M (33.33%)
3.	02/27/24	<i>In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.</i> , No. 13-md-2445, 2024 WL 815503 (E.D. Pa.)	\$385M	\$120.65M (32%)
4.	01/19/24	<i>In re HIV Antitrust Litig.</i> , No. 19-cv-2573 (N.D. Cal.), ECF No. 2170	\$246.75M	\$75M (30.4%)
5.	07/26/23	<i>In re Novartis & Par Antitrust Litig. (Exforge)</i> , No. 18-cv-4361 (S.D.N.Y.), ECF No. 635	\$126.85M	\$42.15M (33.33%)
6.	11/03/22	<i>In re Opana ER Antitrust Litig.</i> , No. 14-cv-10150 (N.D. Ill.), ECF No. 1085	\$145M	\$50.53M (36%)
7.	09/19/22	<i>In re Ranbaxy Generic Drug Application Antitrust Litig.</i> , 630 F. Supp. 3d 241 (D. Mass.)	\$340M	\$68M (20%)
8.	02/03/22	<i>In re Glumetza Antitrust Litig.</i> , No. 19-cv-5822, 2022 WL 327707 (N.D. Cal.)	\$453.85M	\$49.69M (10.95%)
9.	12/09/20	<i>In re Intuniv Antitrust Litig.</i> , No. 16-cv-12653, 2020 WL 8373393 (D. Mass.)	\$19.9M	\$5.91M (33.33%)
10.	10/07/20	<i>In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.</i> , No. 18-md-2819, 2020 WL 6193857 (E.D.N.Y.)	\$51.25M	\$16.43M (32.07%)
11.	09/01/20	<i>In re Loestrin 24 Fe Antitrust Litig.</i> , No. 13-md-2472, 2020 WL 5203323 (D.R.I.)	\$120M	\$38.68M (30.57%)
12.	06/15/20	<i>In re Namenda Direct Purchaser Antitrust Litig.</i> , No. 15-cv-7488, 2020 WL 3170586 (S.D.N.Y.)	\$750M	\$69.54M (9.27%)

⁹⁸ In *Suboxone*, *HIV*, *Exforge*, *Opana*, *Intuniv*, *Restasis*, *Loestrin*, *Lidoderm*, and *Celebrex*, the fee was determined by first deducting case expenses and then awarding one-third of the remaining settlement amount. In all other cases listed in the above chart, the fee award was determined based on the gross settlement amount, with expenses deducted second.

13.	09/20/18	<i>In re Lidoderm Antitrust Litig.</i> , No. 14-md-2521, 2018 WL 11375216 (N.D. Cal.)	\$166M	45M (27.11%)
14.	07/18/18	<i>In re Solodyn Antitrust Litig.</i> , No. 14-md-2503, 2018 WL 7075881 (D. Mass.)	\$72.5M	\$24.16M (33.34%)
15.	04/18/18	<i>In re Celebrex (Celecoxib) Antitrust Litig.</i> , No. 14-cv-351, 2018 WL 2382091 (E.D. Va.)	\$94M	\$30.72M (32.68%)
16.	10/05/17	<i>In re K-Dur Antitrust Litig.</i> , No. 01-cv-1652 (D.N.J.), ECF No. 1057	\$60M	\$20M (33.34%)
17.	12/19/17	<i>In re Aggrenox Antitrust Litig.</i> , No. 14-md-2516 (D. Conn.), ECF Nos. 707-1, 740	\$146M	\$29.2M (20%)
18.	12/07/17	<i>In re Asacol Antitrust Litig.</i> , No. 15-cv-12730, 2017 WL 11475275 (D. Mass.)	\$15M	\$5M (33.33%)
19.	10/08/15	<i>King Drug Co. of Florence, Inc. v. Cephalon, Inc. (Provigil)</i> , No. 06-cv-1797 (E.D. Pa.), ECF No. 870	\$512M	\$140.8M (27.5%)
20.	05/20/15	<i>In re Prograf Antitrust Litig.</i> , No. 11-md-2242 (D. Mass.), ECF No. 678	\$98M	\$32.67M (33.34%)
21.	01/20/15	<i>In re Prandin Direct Purchaser Antitrust Litig.</i> , No. 10-cv-12141 (E.D. Mich.), ECF No. 68	\$19M	\$6.33M (33.32%)
22.	08/06/14	<i>In re Neurontin Antitrust Litig.</i> , No. 02-cv-1830 (D.N.J.), ECF No. 114	\$191M	\$63.33M (33.33%)
23.	09/06/14	<i>Mylan Pharm., Inc. v. Warner Chilcott plc</i> , No. 12-cv-3824 (E.D. Pa.), ECF No. 665	\$15M	\$5M (33.33%)
24.	06/30/14	<i>In re Skelaxin (Metaxalone) Antitrust Litig.</i> , No. 12-md-2343, 2014 WL 2946459 (E.D. Tenn.)	\$73M	\$24.33M (33.33%)
25.	06/14/13	<i>In re Flonase Antitrust Litig.</i> , No. 08-cv-3149 (E.D. Pa.), ECF No. 496	\$150M	\$50M (33.33%)
26.	11/07/12	<i>In re Wellbutrin XL Antitrust Litig.</i> , No. 08-cv-2431 (E.D. Pa.), ECF No. 485	\$37.5M	\$12.5M (33.33%)
27.	05/31/12	<i>Rochester Drug Co-Op., Inc. v. Braintree Labs., Inc.</i> , No. 07-cv-142 (D. Del.), ECF No. 243	\$17.25M	\$5.75M (33.33%)
28.	01/12/12	<i>In re Metoprolol Succinate Antitrust Litig.</i> , No. 06-cv-52 (D. Del.) ECF No. 194	\$20M	\$6.67M (33.35%)
29.	11/28/11	<i>In re DDAVP Direct Purchaser Antitrust Litig.</i> , No. 05-cv-2237 (S.D.N.Y.), ECF No. 113	\$20.25M	\$6.75M (33.33%)

30.	11/21/11	<i>In re Wellbutrin SR Antitrust Litig.</i> , No. 04-cv-5525 (E.D. Pa.), ECF No. 413	\$49M	\$16.33M (33.33%)
31.	08/11/11	<i>Meijer, Inc. v. Abbott Labs.</i> , No. 07-cv-5985 (N.D. Cal.), ECF No. 514	\$52M	\$17.33M (33.33%)
32.	01/31/11	<i>In re Nifedipine Antitrust Litig.</i> , No. 03-mc-223 (D.D.C.), ECF No. 333	\$35M	\$11.67M (33.34%)
33.	01/25/11	<i>In re Oxycontin Antitrust Litig.</i> , No. 04-md-1603 (S.D.N.Y.), ECF No. 360	\$16M	\$5.33M (33.31%)
34.	04/23/09	<i>In re TriCor Direct Purchaser Litig.</i> , No. 05-340, 2009 U.S. Dist. LEXIS 133251 (D. Del.)	\$250M	\$83.33M (33.33%)
35.	04/20/09	<i>Meijer, Inc. v. Barr Pharm., Inc.</i> , No. 05-cv-2195 (D.D.C.), ECF No. 210	\$22M	\$7.33M (33.32%)
36.	11/08/05	<i>In re Remeron Direct Purchaser Antitrust Litig.</i> , No. 03-cv-85 (D.N.J.), ECF No. 185	\$75M	\$25M (33.33%)
37.	05/20/05	<i>Stop & Shop Supermarket Co. v. Smithkline Beecham Corp. (Paxil)</i> , No. 03-cv-4578, 2005 U.S. Dist. LEXIS 9705 (E.D. Pa.)	\$100M	\$20M (20%)
38.	04/19/05	<i>In re Terazosin Hydrochloride Antitrust Litig.</i> , No. 99-md-1317 (S.D. Fla.), ECF No. 1557	\$74M	\$24.17M (32.41%)
39.	11/30/04	<i>N. Shore Hematology-Oncology Assoc., P.C. v. Britol-Myers Squibb Co.</i> , No. 04-cv-248 (D.D.C.), ECF No. 30	\$50M	\$16.33M (32.66%)

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE INTUNIV ANTITRUST
LITIGATION

This Document Relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF LEAD COUNSEL THOMAS M. SOBOL IN SUPPORT OF
DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES,
AND SERVICE AWARDS FOR THE CLASS REPRESENTATIVES**

I, Thomas M. Sobol, hereby declare as follows:

1. I am a member of the bar of the Supreme Judicial Court of the Commonwealth of Massachusetts, various federal courts, and the United States Supreme Court. I am the managing partner of the Boston office of Hagens Berman Sobol Shapiro LLP, and, along with my partner, Lauren Barnes, am lead counsel for the direct purchaser class in this matter. I provide this declaration in support of Direct Purchaser Class Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the work performed that resulted in the \$58 million cash settlement in this case. Several firms contributed to this result, and each had a substantial role in one or more issues in the case. I describe that work in the aggregate here. Each class counsel firm has also submitted a declaration describing its individual contributions to the case.

I. WORK PERFORMED BY DIRECT PURCHASER CLASS COUNSEL

2. This action was a years-long, complex litigation that required class counsel to address intertwined legal issues spanning several areas of law, along with technical financial and manufacturing information, drug formulation issues, and antitrust economics. Class counsel—plaintiffs' class action and antitrust firms with decades of experience prosecuting and trying

pharmaceutical antitrust class actions—were challenged by skilled lawyers representing well-resourced defendants Shire and Actavis. Class counsel overcame the defendants’ voluminous motions to dismiss and motions for summary judgment, prevailed on a motion for partial summary judgment, successfully certified a class of direct purchasers, and marshalled the extensive documentary, deposition, and expert evidence necessary to prevail at a trial in which few of the defendants’ current and former employee witnesses could be compelled to testify. The novel issues raised in this action have yielded instructive decisions clarifying this district’s application of the Supreme Court’s *FTC v. Actavis, Inc.* decision to Hatch-Waxman settlement agreements like the one challenged in this case. The substantial investment of time and expense by class counsel is a testament to the unique challenges presented by the case.

A. Class counsel independently investigated the facts and filed the first complaint.

3. On December 30, 2016, after a diligent factual investigation, class counsel filed the direct purchaser complaint in this matter.¹ Class counsel alleged that the defendants, two large pharmaceutical companies, violated federal antitrust laws by engaging in a wrongful anticompetitive scheme to delay market entry of less expensive, AB-rated generic versions of Shire’s brand name prescription drug Intuniv by negotiating and entering into a pay-for-delay patent litigation settlement. Class counsel undertook independent investigation and analysis to develop the case, which, unlike some antitrust cases, did not follow on the heels of a government investigation or lawsuit.

¹ ECF No. 1. Class counsel filed amended consolidated complaint on March 10, 2017, and April 2, 2019, respectively. *See* ECF Nos. 140, 247.

B. Class counsel defeated the defendants' motions to dismiss.

4. On April 10, 2017, the defendants moved to dismiss the direct purchasers' complaint.² The defendants argued that, unlike other challenged no-AG reverse payment agreements, the patent litigation settlement agreement at issue here contained neither an express nor implicit no-AG agreement.³

5. Class counsel filed oppositions to the defendants' motions to dismiss on May 10, 2017.⁴ Class counsel spent substantial time verifying its pre-complaint research, making sure the theories and cases relied upon remained good law, and took a fresh look at the claims in light of the defendants' arguments. On October 10, 2017, the Court denied the defendants' motions to dismiss.⁵

C. Class counsel engaged in extensive discovery efforts.

1. Class counsel served written discovery requests; negotiated the case schedule, discovery protocols, and protective order; and analyzed voluminous documentary evidence.

6. On July 18, 2017, class counsel served the plaintiffs' initial disclosures,⁶ identifying more than 70 individuals associated with Shire and/or Actavis who had knowledge of relevant facts.

7. In preparation for the September 28, 2017 Rule 16 conference,⁷ class counsel pushed the litigation forward by taking on the initial drafting of the discovery protocols. Class counsel drafted and sent defense counsel a proposed ESI protocol, protective order, discovery

² ECF Nos. 50, 53.

³ ECF Nos. 50, 52.

⁴ ECF Nos. 59, 60.

⁵ ECF No. 92.

⁶ ECF No. 87-1 at 3.

⁷ ECF No. 76 at 1.

report, and scheduling order for discussion. Class counsel also negotiated the number of discovery requests allowed per party and ESI search terms and protocols with the defendants.

8. On September 22, 2017, after back-and-forth discussions with the defendants and mutual compromises by both parties, the parties filed the proposed protocols (ESI protocol, protective order, discovery report, and case schedule),⁸ along with letters from the parties outlining where disputes remained.⁹

9. Following the Rule 16 conference, the Court entered an initial scheduling order, setting a trial date for September 16, 2019.¹⁰ On October 19, 2017, class counsel filed a revised proposed ESI protocol, protective order, 502(d) order, and joint stipulation regarding discovery limits.¹¹ The Court endorsed these shortly thereafter.¹²

10. On November 2, 2017, after exhausting the information in the public record concerning the scope of the defendants' anticompetitive conduct, class counsel served their First Requests for Production of Documents (RFPs) on the defendants. On November 6, 2017, class counsel served their first set of interrogatories on the defendants.

11. On July 30, 2018, class counsel served a second set of interrogatories on each defendant. On September 24, 2018, class counsel served requests for admission on each defendant to establish the authenticity and admissibility of the defendants' documents. On October 24, 2018, class counsel served a second set of RFPs.

⁸ ECF No. 87.

⁹ ECF Nos. 74, 88, 89.

¹⁰ ECF No. 94.

¹¹ ECF No. 97.

¹² ECF Nos. 98–101.

12. The defendants and subpoenaed non-parties produced more than 700,000 pages of documents and hundreds of thousands of lines of sales data—all which class counsel had to substantively review.

2. Class counsel formed issue teams to streamline discovery.

13. To tackle these productions, class counsel divided into issue teams. The primary teams were (1) agreements (reverse payments); (2) patent (invalidity and infringement, likelihood of patent litigation success); (3) causation (earlier generic and authorized generic entry), and (4) economics (e.g., Shire's market power, class certification, damages).

14. Class counsel assigned lawyers with relevant subject-matter expertise to each team and then oversaw the work conducted by each team. Each subject-matter team searched for and analyzed the documents relevant to its subject matter and drafted white papers that would serve as the backbone for deponent and exhibit selection. Teams began circulating their white papers internally in April and May 2018. Team members also identified what expert testimony was needed, interviewed and selected qualified experts, and supported those experts in the development of their reports.

15. Organizing into issue teams permitted the direct purchasers to have a core set of lawyers conducting a thorough factual and legal analysis of each relevant area, responsible for working up and understanding that aspect of the case in detail, moving the case forward on many fronts simultaneously.

16. Class counsel also established a weekly task list and set up weekly check-in calls for the full plaintiffs' team. This task list and the weekly calls formed the backbone of the case and provided a highly efficient means for class counsel to keep the variety of trains moving on each of their tracks, with coordination across firms and teams as appropriate. While focused, the individual teams were not silos. Rarely did one issue team's work and research concern only that

team. Given the interlocking nature of the claims and defenses, frequently counsel worked across teams to, for example, prepare for depositions, coordinate with experts, etc. The weekly calls also enabled team members to share developments, identify potential problems or struggles and get input and help from others. The cross pollination that occurred on these check-ins proved invaluable as the case progressed.

3. Class counsel sought evidence relevant to causation, damages, and market power from ten non-parties.

17. Class counsel served ten subpoenas¹³ on non-parties with information pertinent to the case, including (1) manufacturers of generic Intuniv (other than defendant Actavis), whose information and data was relevant to causation and damages, and (2) other manufacturers of ADHD products, whose information concerned market power analysis. Class counsel successfully obtained documents and declarations from non-parties that were necessary to support direct purchasers' claims and expert analysis.

4. Class counsel responded to 69 interrogatories and produced nearly 100,000 pages of class-representative documents to the defendants.

18. Class counsel, working with class representatives, spent substantial time responding to the defendants' discovery requests. Class counsel responded to 69 interrogatories over five years (the first set in February 2018; the last set in August 2023) and reviewed hundreds of thousands of pages of documents for relevance and responsiveness. In the end, class counsel produced more than 95,500 pages of class representatives' documents to the defendants.

¹³ On November 13, 2017, class counsel served subpoenas on Actavis Laboratories FL, Inc. f/k/a Watson Laboratories, Inc., Actavis Pharma, Inc. f/k/a Watson Pharma, Inc., Anchen Inc, Anda, Inc., Impax Laboratories, Inc., Mylan Pharmaceuticals, Inc., Sandoz Inc., Supernus Pharmaceuticals, Inc., Teva Pharmaceuticals USA, Inc., and TWi Pharmaceuticals USA, Inc.

5. Class counsel deposed 16 fact witnesses and defended class representatives' depositions.

19. Class counsel, after months of intensive document review and analysis, researching and drafting of white papers, initial expert work, and numerous strategy decisions concerning trial issues, began taking fact depositions in August 2018.

20. Between August 8, 2018, and November 6, 2018, class counsel deposed 16 witnesses and defended the depositions of class representatives.

Deponent	Date	Responsible Attorney	Topic(s)
Jennifer Wu	8/8/2018	Kristie LaSalle	Project Manager at Actavis from 2006 to 2018. Managed Actavis' effort to become launch ready with generic Intuniv by October 2012. Ms. Wu testified that 1) generic Intuniv was very important to Actavis from the beginning, even before they knew they were FTF; 2) Actavis was launch ready by October 2012; 3) launch ready meant they could have gone to market if management would have given the green light; and 4) their launch ready quantities were sufficient to cover several months of demand.
Douglas Booth	8/10/2018	David Nalven	Actavis Chief Executive Officer from 2008 to 2012, Mr. Boothe testified, <i>inter alia</i> , regarding Actavis's willingness to launch at risk as early as October 2012, when it received final FDA approval, and no later than November 15, 2012.
Alicia Badali	8/30/2018	Kristie LaSalle	Ms. Badali joined Shire as a material analyst in 2011. Ms. Badali was questioned about her involvement and planning of a potential Intuniv AG launch as well as the decisions regarding how to use previously manufactured AG lots after Shire's settlement with Actavis.
Napoleon	9/5/2018	John Radice	Mr. Clark was Executive Director of

Deponent	Date	Responsible Attorney	Topic(s)
Clark			Marketing at Actavis from 2011 to August 2016, then Vice President of Marketing at Teva after the acquisition. He was designated as a 30(b)(6) witness by Actavis to testify on forecasting, pricing issues, and Actavis's understanding of the effects of Shire launching an authorized generic.
Paul Bisaro	9/11/2018	Thomas Sobol	Mr. Bisaro was the CEO of Watson at the time it was acquired by Actavis and remained CEO of Actavis until 2014. His testimony concerned settlement discussions between Actavis and Shire regarding Intuniv and approval of settlement terms.
Andrea Sweet	9/12/2018	Lauren Barnes	Ms. Sweet served as Director of Intellectual Property at Actavis between December 2009 and December 2012. Her testimony concerned her role overseeing Hatch-Waxman litigation, managing outside litigation counsel, and her responsibilities pertaining to Intuniv.
David Banchik	9/20/2018	Thomas Sobol	Mr. Banchik served as Shire's 30(b)(6) witness on several topics related to the settlement negotiations and patents.
Tatjana May	9/21/2018	Thomas Sobol	Ms. May, Shire's general counsel from 2001 to 2015, served as Shire's 30(b)(6) witness on several topics. Her testimony largely concerned her responsibilities over legal and intellectual property matters, including oversight responsibility and hands-on involvement in the settlement negotiations of Hatch-Waxman patent litigation, particularly the April 25, 2013 settlement between Shire and Actavis.
David Buchen	9/21/2018	David Nalven	Mr. Buchen served as general counsel for Watson before its merger with Actavis and at Actavis post-merger. Mr. Buchen testified to the negotiations behind the 2013 settlement between Shire and Actavis.

Deponent	Date	Responsible Attorney	Topic(s)
John Miller	10/3/2018	John Radice	Mr. Miller was Shire's head of Finance for the ADHB Business Unit during the relevant time period. Shire designated Mr. Miller a 30(b)(6) witness to testify on forecasting and impact of generics on Intuniv, actual and forecasted profits for Intuniv, impact of Actavis-Shire agreement on forecasts for Intuniv, financial value of royalties, and forecasts for launching an AG.
Leonard Fasullo	10/9/2018	David Nalven	Mr. Fasullo held numerous positions at Shire related to the business strategy, supply chain strategy, and fulfillment of initiatives with regard to Intuniv. He testified as to these topics and as to his knowledge as the Intuniv product strategy leader from 2010 to 2014.
Gary Sender	10/17/2018	Clark Craddock	Mr. Sender was the Senior Vice President of Finance at Shire from 2009 through 2015 and helped negotiate and evaluate Shire's agreement with Actavis regarding Intuniv. At his deposition he was asking about these topics but professed to recall little.
Scott Bowman	10/23/2018	John Radice	Mr. Bowman, Shire's former Vice President of Managed Market and U.S. Market Access, was designated by Shire as a 30(b)(6) witness to testify about Shire's pricing of Intuniv products, its decision whether to launch an Intuniv AG, and Shire's experience and policies regarding the launch of authorized generics. He was also noticed to testify in his individual capacity.
Colman Ragan	10/23/2018	Lauren Barnes	Mr. Ragan, Vice President and General Counsel for Intellectual Property at Teva, was designated as Actavis's 30(b)(6) witness to testify concerning Actavis's assertions of non-infringement in the patent litigation with respect to each of the claims

Deponent	Date	Responsible Attorney	Topic(s)
			of the Intuniv patents, Actavis's contention in the patent litigation that one or more claims of the Intuniv patents were invalid, and the enforceability of the Intuniv patents.
Andrew Boyer	10/25/2018	David Nalven	Mr. Boyer worked at Actavis then Teva from 1998 to 2018 holding roles such as Actavis' Senior Vice President of Sales and Marketing and then President and CEO of Teva's North America Generics. Mr. Boyer testified about generic pricing, the role and accuracy of forecasts, the competence of Napoleon Clark, and the contents of key product pipeline documents and whether after the settlement Actavis considered whether Shire would launch an authorized generic.
Maureen Meehan	11/6/2018	Kristie LaSalle	Ms. Meehan was the Director of National Accounts at Watson/Actavis from 2006 through 2016. She gave testimony regarding the information she provided customers regarding the Actavis/Shire agreement, particularly that Actavis had exclusivity and that there would be no authorized generic launch.
Thomas Kolschowsky (FWK 30(b)(6))	11/14/2018	Sarah Frederick	Mr. Kolschowsky was the designated Rule 30(b)(6) witness for the proposed class representative FWK. Mr. Kolschowsky testified as to numerous topics by defendants. Class counsel defended this deposition.
Matthew Paulson (Meijer 30(b)(6))	9/3/2020	Joshua Barlow	Mr. Paulson was the designated Rule 30(b)(6) witness for proposed class representative Meijer. Mr. Paulson testified as to numerous topics requested by Shire.
Michael LeBlanc (BI-LO 30(b)(6))	6/22/2023	Joshua Barlow	Mr. LeBlanc sat for two days of deposition testimony as the 30(b)(6) witness for proposed class representative, BI-LO. Counsel for BI-LO defended this

Deponent	Date	Responsible Attorney	Topic(s)
			deposition, with the assistance of class counsel.
Tatjana May	11/1/2023	Thomas Sobol	In November 2023, Ms. May was deposed a second time after Shire informed class counsel that Ms. May would be unavailable to testify at trial.

21. Class counsel assigned witnesses to attorneys based on the fit between attorney expertise and witness subject knowledge. In addition, because most of the witnesses were beyond the jurisdiction of the Court, class counsel needed to depose witnesses with an eye towards using their deposition testimony at trial and an assumption that there would be no other opportunity to secure testimony. This necessitated that more senior lawyers conduct, or at minimum weigh in on, the examinations.

6. Class counsel worked with, and served reports from, 11 experts.

22. Class counsel identified and retained 11 experts to offer opinions through written reports and live testimony at trial. The experts collectively issued 21 opening and rebuttal reports, supported by thousands of pages of exhibits and backup material. On April 1, 2019, class counsel served 11 expert reports. On May 31, 2019, the defendants served 9 responsive reports. In turn, on June 24, 2019, class counsel served 10 rebuttal reports. The defendants countered with 7 sur-reply reports on July 12, 2019.

23. To promote efficiency and defray costs that would otherwise be borne solely by the direct purchasers, direct and end-payor purchasers shared experts and end-payor counsel contributed to expert costs.

24. On April 1, 2019, class counsel served eleven expert reports. On May 31, 2019, the defendants served nine responsive reports. In turn, on June 24, 2019, class counsel served ten rebuttal reports. The defendants countered with seven sur-reply reports on July 12, 2019.

Plaintiffs' Experts	
Name	Testimony
Thomas McGuire	Professor McGuire, a professor of health care economics at Harvard University, offered opinions in the field of economics regarding pharmaceutical industry background, industry dynamics, and industry settlement agreements. In his 114-page opening report, Prof. McGuire opined that (1) the Shire/Actavis settlement agreement contained an implicit no-AG provision ensuring that Shire would not launch its on AG version of Intuniv; (2) Shire made a large, unjustified payment to Actavis in connection with the Shire agreement; (3) Actavis expected to receive more profits from the settlement and its reverse payment agreement than it stood to make had it won the patent litigation. Prof. McGuire also offered opinions as to what would have occurred had there been no anticompetitive agreement between Shire and Actavis.
Mansoor Amiji	Professor Amiji, tenured professor of Material Science and Engineering at the Massachusetts Institute of Technology, offered opinions on the merits, or lack thereof, of Shire's technical position in the underlying patent litigation with Actavis. Specifically, he opined on the functionality of the fumaric acid in the Actavis ANDA products and whether it infringed the asserted claims of the Intuniv patents.
Michael Cima	Professor Cima, a pharmaceutical formulations expert, offered opinions on the merits, or lack thereof, of Shire's position in the underlying patent litigation with Actavis. Specifically, he opined on the state of the prior art when the Intuniv patents were filed and whether the asserted claims were invalid as anticipated and/or obvious.
Thomas Fernandez	Dr. Fernandez, a practicing pediatric psychiatrist, opined that Intuniv was not therapeutically interchangeable with any other stimulant or non-stimulant used to treat children and adolescents with ADHD.
Don Allen	Mr. Allen, a senior operations and supply chain pharmaceutical executive, offered opinions on whether Actavis would have been

Plaintiffs' Experts	
Name	Testimony
	ready and able to launch a generic version of Intuniv any time between November 15, 2012, through the end of 2014. Mr. Allen concluded that Actavis would have been ready any time after November 15, 2012, and, absent the settlement with Shire, would have launched. He further opined that absent the settlement, Shire would have been ready to launch its own authorized generic through a third-party, Anchen, by November 20, 2012.
Christopher Baum	Professor Baum, professor of Economics and Social Work at Boston College and Academic Affiliate of Greylock McKinnon Associated, offered opinions on the relevant product market for Intuniv. His report concluded that, other than generic Intuniv (guanfacine extended-release tablets) no other products demonstrated statistically significant or economically meaningful evidence of positive cross-price elasticity with brand Intuniv.
Michael Johnson	Mr. Johnson, a former business executive with expertise in the business practices of brand pharmaceutical companies concerning their distribution of authorized generic products, opined that, absent the settlement, a reasonable company in Shire's position would have launched an authorized generic through a third-party.
Jeffrey Leitzinger	Professor Leitzinger is an economist with extensive experience in analyzing issues of market power, market definition, and the competitive effects of firm behavior. In his expert report, Prof. Leitzinger opined, based on a series of models he ran, that the overcharges incurred by the class ranged from \$547 million to \$1.04 billion (depending on the generic entry scenario being modeled). He further concluded that the volume of generic Intuniv that would have been available first quarter following generic entry would have ranged from 17.1 million to 19.5 million tablets (depending on the generic entry date).
Martha Starr	Professor Starr, a senior economist at Greylock McKinnon Associates, opined on issues of market power. Prof. Starr opined that there was both direct and indirect evidence of market power leading her to conclude that Shire had substantial market power over Intuniv until the generic version came to market in December 2014.
John Thomas	John Thomas, professor of law, offered his opinions on pharmaceutical patent law and the regulatory issues associated with the Hatch-Waxman Act. Prof. Thomas opined that Shire had virtually

Plaintiffs' Experts	
Name	Testimony
	no chance of successfully asserting its patents against generic competitors, including Actavis.
Shashank Upadhye	Attorney Upadhye specializes in pharmaceutical industry business and the process for brand and generic pharmaceutical companies bringing their products to market. In his expert report, Mr. Upadhye opined that (1) the parties reached an agreement which ignored the merits of the patent litigation, (2) a reasonable company in Actavis's position would have launched at risk at or about November 15, 2012, and (3) had there been no settlement, other generics would have launched on or immediately after the end of Actavis's 180-day exclusivity period.

7. Class counsel defended expert depositions.

25. As expert reports were finalized and exchanged, class counsel prepared to defend expert depositions and began researching and preparing the grounds for summary judgment and motions to exclude portions of the defendants' expert testimony, scheduled to be filed in September 2019.

26. Between July and August 2019, class counsel defended nine expert depositions.

Expert	Deposition Date	Counsel Defending
Mansoor Amiji	7/19/2019	Kenneth Pickle, Esq. Radice Law Firm
Michael Cima	7/9/2019	Kenneth Pickle, Esq. Radice Law Firm
Thomas Fernandez	7/3/2019	John Radice, Esq. Radice Law Firm
Michael Johnson	7/16/2019	Sharon Robertson, Esq. Cohen Milstein Sellers & Toll
Jeffrey Leitzinger	7/10/2019	Caitlin Coslett, Esq. Berger & Montague

Expert	Deposition Date	Counsel Defending
Thomas McGuire	7/2/2019	Lauren Barnes, Esq. Hagens Berman Sobol Shapiro, LLP
Martha Starr	7/10/2019	John Radice, Esq. Radice Law Firm
John Thomas	7/16/2019	Lauren Barnes, Esq. Hagens Berman Sobol Shapiro, LLP
Shashank Upadhye	8/6/2019	Clark Craddock, Esq. Radice Law Firm Donna Evans, Esq. Cohen Milstein Sellers & Toll

27. Class counsel made the strategic decision not to depose any of the defendants' expert witnesses, preserving their cross-examinations for trial.

D. Class counsel successfully moved to certify the class.

28. On November 1, 2018, class counsel moved to certify the following direct-purchaser class:

All persons or entities in the United States and its territories, or subsets thereof, that purchased Intuniv and/or generic Intuniv in any form directly from Shire or Actavis, including any predecessor or successor of Shire or Actavis, from October 19, 2012 through June 1, 2015 (the "Class"). Excluded from the class are Shire, Actavis, and any of their officers, directors, management, employees, subsidiaries, and affiliates, as well as governmental entities.¹⁴

29. After hundreds of pages of briefing (including exhibits), the parties completed class certification briefing on April 8, 2019.¹⁵ On September 24, 2019, the Court certified a direct purchaser class comprising 48 entities that purchased Intuniv directly from the defendants

¹⁴ ECF No. 198 at 1.

¹⁵ ECF No. 249.

during the class period.¹⁶ At this time, both my partner, Lauren Guth Barnes, and I were appointed as class counsel.¹⁷

E. Class counsel moved for summary judgment and to limit defense expert testimony.

30. Given the complexity of the issues raised in this case—and the desire to keep the case as simple or well-explained for the jury as possible—class counsel spent significant time and resources preparing *Daubert* motions directed at discrete portions of the defendants’ experts’ reports and opposing the defendants’ *Daubert* motions.

31. In light of the complex issues, unique positions, and high stakes here, each party retained numerous subject matter experts to opine on complex and emerging issues—often in diametrically opposed ways. As a result, both parties moved to disqualify opposing opinions on *Daubert* grounds and to bar certain issues and evidence from getting to the jury.

32. On September 6, 2019, class counsel filed four *Daubert* motions.¹⁸ The defendants filed seven, all of which class counsel opposed.¹⁹

33. On September 10, 2020, the Court issued a 55-page decision ruling on all *Daubert* motions.²⁰ Of the four *Daubert* motions class counsel filed, the Court granted three; two of these motions were granted in part.

¹⁶ ECF No. 343 at 9. While the Court certified the direct purchaser class, it did find that FWK Holdings LLC, was not an adequate class representative. *Id.* at 23.

¹⁷ *Id.* at 23.

¹⁸ ECF Nos. 296–299, 301.

¹⁹ ECF No. 349.

²⁰ ECF Nos. 492, 525 (redacted version). *See* ECF No. 525 at 11 (“[t]o the extent that [Dr. Bell] attempts to opine concerning the medical utility of Intuniv as compared to other ADHD treatments, such testimony will be excluded.”).

<i>Daubert</i> Motions Concerning Market Share Testimony			
1	Plaintiffs' motion to exclude the testimony of Dr. Gregory Bell	Denied	Dr. Bell's testimony on economic interchangeability of ADHD treatments, such as Intuniv, was allowed. However, any attempt to provide opinions on medical utility was excluded.
2	Defendants' motion to exclude the testimony of Martha Starr and Christopher Baum	Denied	The Court found Dr. Starr and Prof. Baum's economic analyses, including the hypothetical monopolist test, sufficiently reliable. The Court considered their testimony probative of market dynamics.
3	Defendants' motion to exclude certain opinions of Thomas Fernandez M.D.	Denied	The Court allowed Dr. Fernandez to testify on the interchangeability of ADHD medications as circumstantial evidence of market power. He could also reference his own prescribing habits but could not testify about specific prescribing rates of his colleagues.

<i>Daubert</i> Motions Concerning Shire & Actavis's Likelihood of Success in the Underlying Patent Trial			
4	Plaintiffs' motion to exclude part of the testimony of Professor Klibanov	Granted	The Court excluded Prof. Klibanov's testimony related to Intuniv's commercial success, particularly paragraphs 218, 219, and 222 of his report. Prof. Klibanov was found unqualified to opine on commercial success based on his technical expertise, and any reliance on experts from earlier litigation was disallowed as those experts were unavailable for cross-examination.
5	Defendants' motion to exclude the testimony of John Thomas	Granted in part	Prof. Thomas was permitted to testify that Shire was unlikely to prevail in the underlying litigation, but he was barred from providing any specific percentage of success. Additionally, Prof. Thomas's testimony concerning the timing of Judge Andrews's decision was excluded.
6	Defendants' motion to exclude the testimony of	Granted in part	Dr. Amiji was allowed to offer objective scientific opinions on whether Actavis's

Daubert Motions Concerning Shire & Actavis's Likelihood of Success in the Underlying Patent Trial

	Mansoor Amiji R.Ph., Ph.D., and Michael Cima Ph.D.		product infringed Shire's patent claims but could not opine on the trial outcome or speculate about what the trial judge might have decided. Similarly, Dr. Cima was allowed to testify on patent-related issues but could not use materials outside the trial record to support his opinions on the trial's outcome.
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Daubert Motions Regarding Expert Testimony Concerning the Shire-Actavis Agreement

7	Plaintiffs' motion to exclude certain opinions expressed by Harsha Murphy	Granted in part	Mr. Murphy was allowed to testify that pharmaceutical companies consider various factors before deciding whether to launch an authorized generic (AG). He could identify these factors if properly supported by his experience, but the Court limited his ability to offer overly broad statements without explaining how his expertise was relevant to each factor.
8	Plaintiffs' motion to exclude testimony from William Zoffer and Dr. Iain Cockburn	Granted in part	Mrs. Zoffer and Cockburn were permitted to testify about the general rationale behind reverse-payment settlements, such as avoiding litigation costs, but they were barred from testifying that a reverse payment was justified because it avoided litigation costs. Furthermore, they could not offer opinions on how the Shire-Actavis settlement should be legally interpreted.
9	Defendants' motion to exclude the testimony of Dr. Thomas McGuire	Granted in part	Prof. McGuire was allowed to testify on how a reasonable company in Actavis's position would act based on financial analysis but could not use Actavis's internal records to infer intent. He was prohibited from testifying that a large payment necessarily implied a delayed generic entry, and from discussing product hopping or relying on Prof. Thomas's disputed 95% statistic for generic entry dates.

<i>Daubert</i> Motions Regarding Expert Testimony Concerning the Shire-Actavis Agreement			
10	Defendants' motion to exclude the testimony of Shashank Upadhye	Granted in part	Mr. Upadhye was allowed to testify on Hatch-Waxman settlements, including whether the Shire-Actavis settlement contained a no-AG agreement, based on his experience. However, he was prohibited from referencing product hopping, testifying about the subjective beliefs of the parties, or interpreting the contract beyond what a reasonable party would have believed under similar circumstances.
Q11	Defendants' motion to exclude portions of the testimony of Michael Johnson	Granted in part	Mr. Johnson could testify regarding what a reasonable party might expect or agree to in a complex settlement and could clarify complicated contract terms for the jury. However, he was barred from offering legal conclusions or testifying about the subjective beliefs or intentions of Shire and Actavis.

34. Summary judgment briefing occurred simultaneously with *Daubert* briefing, with the parties filing their affirmative motions on September 6, 2019. Class counsel filed two motions while the defendants filed five, which class counsel opposed.²¹ In addition, class counsel drafted and exchanged a detailed, assiduously supported statements of facts,²² which the defendants attacked with a motion to strike.²³ Class counsel's summary judgment briefing included more than 300 exhibits.²⁴ In total, briefing on both summary judgment and *Daubert* motions took more than four months.

35. On September 21, 2020, the Court issued a 63-page decision in which it denied the defendants' motions for summary judgment. The Court, finding that Actavis was ready and

²¹ ECF Nos. 294, 295, 335, and accompanying briefing.

²² ECF No. 301.

²³ ECF No. 383.

²⁴ ECF Nos. 301, 349, 367.

able to launch generic Intuniv,²⁵ granted the plaintiff's motion for summary judgment on causation.²⁶

F. Class counsel prepared to present the direct purchasers' case to a jury.

36. During the fall of 2019 and winter of 2020, with summary judgment motions still pending, class counsel prepared for trial.

37. In April 2020, the parties began to exchange Rule 26(a)(3) pretrial disclosures, including trial exhibit lists, witness lists, and deposition designations.

38. The direct purchasers' initial exhibit list contained more than 1,600 documents, data sets relating to Intuniv purchases, and proposed demonstratives for use at trial. The defendants asserted multiple objections to most of this evidence, requiring class counsel to evaluate and respond to the objections and recommend action for each. The defendants also provided class counsel with their own exhibit list, which contained nearly 700 documents that class counsel had to review and, when necessary, lodge objections to and negotiate with defendants.

39. Given uncertainties in witness availability, class counsel prepared both comprehensive deposition designations for each potential trial witnesses and detailed trial examinations for key witnesses, in case these individuals appeared live. The process, including the affirmative designation of testimony, the review of defendants' designations, the lodging of objections, the assessment of the defendants' objections, and preparing for negotiations over the designations took substantial time.

²⁵ ECF No. 523 at 63.

²⁶ ECF No. 500; *see* also ECF No. 523 (redacted version).

G. Class counsel filed 26 motions *in limine* and opposed 24.

40. Class counsel filed an omnibus motion *in limine* comprising 26 targeted motions.²⁷ Class counsel also opposed the 24 motions *in limine* filed by defendants²⁸ and Actavis's renewed motion to disqualify the plaintiffs' patent experts.²⁹

Plaintiffs' MIL No.	Topic
1	Requiring defendants to produce witnesses for the plaintiffs' case-in-chief that defendants themselves will bring to trial.
2	Excluding evidence of any party's size or financial condition.
3	Excluding self-serving portions of patent litigation transcripts.
4	Excluding cumulative expert testimony.
5	Excluding evidence that plaintiffs failed to mitigate damages.
6	Excluding motion of downstream effects.
7	Excluding mention of treble damages or attorney fees.
8	Excluding argument that the reverse payment is immune from antitrust scrutiny because it was pre-Actavis.
9	Excluding evidence or argument of risk aversion to justify the reverse payment.
10	Excluding testimony and argument that "early entry" was procompetitive.
11	Excluding evidence and opinions of Shire's purported research and development activities and high fixed costs.
12	Excluding testimony by Actavis executives that an AG launch is tantamount to "stealing" from the first-to-file generic manufacturer or that the first-to-file generic manufacturer is "entitled" to no AG competition in its first 180 days.

²⁷ ECF No. 412.

²⁸ ECF Nos. 416, 418.

²⁹ ECF No. 413.

Plaintiffs' MIL No.	Topic
13	Excluding testimony that a no-AG promise is an exclusive patent license.
14	Excluding argument that Shire's reverse payments were not "large" compared to Shire's profits.
15	Excluding evidence of therapeutic interchangeability.
16	Excluding evidence purporting to reflect non-price competition.
17	Excluding Dr. Bell's "own price" elasticity analysis.
18	Excluding evidence of Shire's gross profits being reduced by sunk costs.
19	Excluding evidence and argument concerning Shire's purported post-agreement evaluation of an AG launch
20	Excluding expert testimony from Mr. Galbraith concerning Judge Andrews's statements from the bench, capabilities, and state of mind.
21	Excluding testimony by Mr. Murthy and Mr. Patel about how Shire could have launched an AG without a generic product distributor.
22	Excluding Mr. Murthy's testimony about the factors a brand company will consider in deciding whether to launch an AG.
23	Excluding Mr. Zoffer's legal interpretation of the settlement agreement.
24	Excluding Professor Klibanov's expert testimony concerning commercial success to support Shire's claim that its Intuniv patents were valid.
25	Excluding argument that the Federal Circuit review of Judge Andrews's rulings based on claim construction of other district courts would have resulted in reversal of an Actavis trial win and a new trial win for Shire.
26	Excluding evidence and argument regarding the opioid crisis, bankruptcy, or other past or present litigation involving the named plaintiffs.

Defendants' MIL No.	Topic
1	Plaintiffs should not be allowed to impugn Defendants' intentions or imply bad faith based on legal developments that post-date the settlement.

Defendants' MIL No.	Topic
2	Plaintiffs should not be allowed to introduce an alternative theory of liability based solely on Shire's agreement not to launch an AG using a third party
3	Plaintiffs should not be allowed to introduce circumstantial "second guessing" evidence of a purported anticompetitive conspiracy.
4	Plaintiffs should not be allowed to refer to Federal Trade Commission statements, publications, and other documents.
5	Plaintiffs should not be allowed to introduce evidence that Professors Cima and Amiji had any role in the underlying Intuniv case, or any argument that Actavis has "switched sides" regarding the validity or infringement of the Intuniv patents.
6	Plaintiffs' experts Professors Cima and Amiji should not be allowed to offer opinions or rely on evidence that was not before Judge Andrews when attempting to predict his decision.
7	Plaintiffs' expert Professor Cima should not be allowed to opine on secondary considerations of non-obviousness due to his failure to timely disclose those opinions.
8	Plaintiffs should not be allowed to present unsupported opinions concerning the timing of a decision on the merits or introduce evidence of judicial practice in patent cases after April 25, 2013.
9	Plaintiffs should not be allowed to introduce speculation by Plaintiffs' expert John R. Thomas.
10	Plaintiffs should not be allowed to introduce evidence denigrating the patent system.
11	Plaintiffs should not impute the views of "Old Actavis" to the Actavis Defendants here, which would mislead and confuse the jury.
12	Plaintiffs should not be allowed to introduce a May 2013 Actavis email that contains inadmissible hearsay not subject to any exception.
13	Plaintiffs should not be allowed to introduce evidence pertaining to RDC's bankruptcy proceedings.
14	Plaintiffs should not be allowed to introduce evidence that Defendants tried to retain Dr. Fernandez.

Defendants' MIL No.	Topic
15	Plaintiffs' counsel and Plaintiffs' witnesses should not be allowed to use pejorative or inflammatory terms.
16	Plaintiffs should not be permitted to appeal to jurors' self-interest as consumers or taxpayers.
17	Plaintiffs should not be allowed to elicit an adverse inference based on absence of Defense witnesses.
18	Plaintiffs should not be allowed to refer to the compensation structure of current or former employee witnesses.
19	Plaintiffs should not be allowed to refer to alleged anticompetitive conduct involving other products, including to unrelated proceedings, lawsuits, and settlements involving such products.
20	Plaintiffs should not be allowed to introduce witnesses' legal opinions.
21	Plaintiffs should not be allowed to disclose to the jury document confidentiality designations or similar endorsements.
22	Plaintiffs should not be allowed to refer to or ask questions about confidential information relied upon by experts.
23	Plaintiffs should not be allowed to use Defendants' invocation of the attorney-client privilege to draw negative inferences in front of the jury.
24	Plaintiffs should not be allowed to argue that Defendants have waived attorney-client privilege based on the fact that Defendants or their counsel have made statements to each other or the public about various aspects of the patent litigation or their settlement.

41. As these motions *in limine* were briefed, class counsel addressed other trial tasks including the drafting of detailed (and vigorously debated) jury instructions and verdict forms, as well as other pretrial submissions.

H. The Court, faced with a global pandemic, stayed the trial.

42. In May 2020, due to the coronavirus pandemic, the Court continued the July 2020 trial without setting a new trial date. By that time, class counsel had invested hundreds of hours in preparing for a jury trial.

I. Class counsel fought to maintain a class representative.

43. In April 2020, on the verge of the anticipated trial date, the defendants moved to decertify the class based on the bankruptcy of class representative RDC.³⁰ In July 2020, the Court denied the motion, reaffirmed certification, but removed RDC as class representative.³¹ At the same time, the Court allowed a June 2, 2020 motion by direct purchasers Meijer, Inc. and Meijer Distribution, Inc. (together, Meijer) to intervene.³²

44. On August 28, 2020, Shire moved to compel Meijer to arbitrate its claims.³³ On September 8, 2020, class counsel filed a motion requesting that the court appoint Meijer as class representative.³⁴ The Court addressed both motions in a sealed order issued January 29, 2021.³⁵ The Court denied Meijer's motion to be appointed as class representative and ordered Meijer to submit its claims to an arbitrator.³⁶ Class counsel engaged in extensive briefing in response to defendants' efforts to compel Meijer into arbitration.³⁷

³⁰ ECF No. 404. *See e.g., In re Rochester Drug Co-Operative, Inc.*, No. 20-20230 (Bankr. W.D.N.Y.).

³¹ ECF No. 456.

³² ECF Nos. 440, 462.

³³ ECF No. 475.

³⁴ ECF No. 485.

³⁵ ECF No. 553.

³⁶ ECF No. 554.

³⁷ ECF Nos. 496, 575, 578, 608, 609.

45. On March 19, 2021, RDC emerged from bankruptcy.³⁸ Meijer's claims remained pending with the arbitrator.

46. On November 8, 2021, BI-LO obtained an assignment of claims for its purchases of Shire's brand Intuniv from direct purchaser Cardinal Health.

47. On June 8, 2022, the arbitrator determined that Meijer's claims were arbitrable.³⁹ One month later, on July 8, 2022, class counsel filed a motion requesting that the Court (1) reconsider its decision on arbitrability,⁴⁰ and (2) vacate the arbitrator's decision regarding Meijer.⁴¹ On the same day, BI-LO moved to intervene and serve as a class representative.⁴²

48. In an August 3, 2022 joint status report, the parties informed the Court that Shire and the direct purchasers had agreed to attempt to mediate the direct purchasers' claims. On September 30, 2022, class counsel requested an extension on the briefing on the BI-LO intervention motion, motions to vacate the arbitrator's decision, and a motion for reconsideration of the Court's order denying Meijer's motion to be appointed class representative and granting Shire's motion to compel arbitration.⁴³

49. During an October 6, 2022 status conference, the parties reported to the Court that no resolution had been reached at mediation.⁴⁴ The Court scheduled trial to commence on October 2, 2023.⁴⁵

³⁸ Notice of Effective Date of Chapter 11 Plan, *In re Rochester Drug Co-Operative, Inc.*, No. 20-20230 (Bankr. W.D.N.Y. Mar. 22, 2021), ECF No. 1305.

³⁹ See Order on Dispute as to Arbitrability on Referral from the District of Massachusetts, *Meijer, Inc., et al. v. Shire LLC, et al.*, AAA Case No. 01-21-0002-3258.

⁴⁰ ECF No. 578.

⁴¹ ECF No. 575.

⁴² ECF No. 570.

⁴³ ECF No. 590.

⁴⁴ ECF No. 598.

⁴⁵ ECF No. 598.

50. On March 15, 2023, the Court granted BI-LO's motion to intervene and permitted Shire a period of discovery concerning BI-LO's adequacy as a class representative.⁴⁶ With this decision, the Court also denied class counsel's request that the court (1) reconsider its decision on arbitrability, and (2) vacate the arbitrator's decision regarding Meijer.⁴⁷

51. On April 5, 2023, Shire served BI-LO with requests for production of documents, interrogatories, and requests for admission, as well as a notice of deposition pursuant to Fed. R. Civ. P. 30(b)(6). In response to Shire's discovery requests, class counsel helped BI-LO produce almost 4,000 pages of documentary evidence and respond to Shire's interrogatories and requests for admission. Class counsel defended the two-day long deposition of BI-LO's 30(b)(6) witness, Michael LeBlanc.⁴⁸

52. On June 23, 2023, Shire moved to continue the trial date and requested a status conference with the Court.⁴⁹ Class counsel opposed Shire's motion and insisted that the litigation proceed without delay. At the June 29, 2023 status conference, the Court set a new trial date: (February 26, 2024),⁵⁰ ordered the parties to attempt mediation again, and allowed class counsel to seek leave to reappoint RDC as a class representative.

53. On July 11, 2023, with discovery on BI-LO's adequacy complete, class counsel moved to appoint both BI-LO and RDC as class representatives.⁵¹

⁴⁶ ECF No. 613.

⁴⁷ ECF No. 613 at 2.

⁴⁸ The discovery deadline on BI-LO's adequacy was thrice extended to accommodate the parties. *See* ECF Nos. 616, 618, 621.

⁴⁹ ECF No. 624.

⁵⁰ ECF No. 629.

⁵¹ ECF No. 639

54. On July 28, 2023, Shire moved for leave to take limited discovery on absent class members,⁵² and, on August 31, 2023, moved to compel arbitration and dismiss BI-LO's complaint in intervention.⁵³ Class counsel diligently opposed both motions.⁵⁴

J. The direct purchasers settled with Actavis.

55. In August 2020, the direct purchasers and Actavis reached a settlement agreement of \$19.9 million in exchange for the direct purchasers' release of all claims against Actavis. Class counsel also secured Actavis's reasonable cooperation for admission of Actavis's documents at trial against Shire. The Court finalized the Actavis settlement on December 9, 2020⁵⁵ and disbursements went out to class members on September 16, 2021.⁵⁶

K. Class counsel resumed trial preparation.

56. On August 16, 2023, Shire notified class counsel of the need to conduct a *de bene esse* deposition of a key fact witness, Tatjana May, due to concerns about her availability to attend trial in person and the need to preserve her testimony.⁵⁷ Given the broad scope of the deposition and the key role that Ms. May played in the negotiations of the agreements at the center of the direct purchasers' antitrust allegations, class counsel engaged in extensive preparation by reviewing and analyzing Ms. May's prior deposition testimony, drafting the direct examination, analyzing the proposed exhibits, and negotiating with Shire the sequence in which

⁵² ECF No. 645.

⁵³ ECF No. 667.

⁵⁴ ECF Nos. 651, 675.

⁵⁵ ECF No. 551.

⁵⁶ ECF No. 565.

⁵⁷ This conversation took place over the phone and was followed by multiple emails and calls discussing the parameters of Ms. May's deposition.

the testimony would be played at trial. Class counsel deposed Ms. May on November 1, 2023, in London.

57. Class counsel retained a jury consultant to better prepare for trial. Class counsel drafted, revised, and finalized five detailed presentations made to a jury focus group on October 26, 2023. The feedback obtained from the focus groups aided class counsel in honing arguments to be presented at trial.

58. Class counsel worked virtually nonstop in the fall 2023 through winter 2024, preparing the case for the jury.

59. From November 2023 through January 2024, the parties engaged in extensive negotiations over deposition designations and trial exhibits. On December 21, 2023, the parties filed a proposed order regarding revised witness lists and deposition designations.⁵⁸ On the same day, the parties moved to establish video and audio feed of trial proceedings.⁵⁹

60. Class counsel revised its detailed guidelines for designating and objecting to testimony and exhibits. Members from each issue team, pursuant to the revised guidelines, identified trial exhibits and designated, and counter-designated, deposition testimony, as well as objected to Shire's designations. Each issue team also reviewed Shire's trial exhibits to ensure that all appropriate objections were lodged.

61. The parties exchanged deposition designations for 15 witnesses and thousands of proposed trial exhibits. For each deposition designation and proposed exhibit, the parties agreed to indicate whether that exhibit or designation had been previously disclosed when the parties first prepared for trial in 2020. The parties met and conferred, as required by the rules, for many

⁵⁸ ECF No. 687.

⁵⁹ ECF No. 689. In the weeks to come, the parties would also file a joint stipulation on trial logistics. ECF No. 699.

hours trying to reach consensus over objections and counter-objections to the proposed deposition designations and witness exhibits.

62. On January 19, 2024, the parties filed a joint motion for pretrial consideration of bellwether deposition designations.

63. Class counsel organized a team of attorneys to revise jury instructions and the verdict form. These attorneys prepared substantive instructions that covered the basics of the Hatch-Waxman Act and other regulatory schemes and detailed the complex nuances of antitrust law. Class counsel attorneys carefully cite checked the draft instructions to ensure that they accurately reflected the current state of the law. On December 8, 2023, class counsel shared the draft instructions with Shire. Final jury instructions, with Shire's redlines, were served on January 8, 2024.

64. Class counsel attorneys also drafted a pretrial memorandum, which presented a summary of the evidence, detailed admitted facts and questions of facts, listed testifying witnesses, and proposed how the parties would present evidence and resolve disputes at trial. On November 21, 2023, class counsel submitted a draft of the pretrial memorandum to Shire. Shire returned its edits on December 21, 2023.

65. Class counsel also spent considerable time drafting direct examinations and cross examinations, selecting exhibits to be used with expert witnesses, and anticipating potential issues that could arise at trial.

L. The Court stayed the January 2024 trial.

66. On January 22, 2024, the Court denied the direct purchasers' request to name RDC as a class representative and stayed BI-LO's claims pending a decision from the arbitrator on whether BI-LO's claims should be subject to arbitration. The Court officially stayed the trial

on January 29, 2024.⁶⁰ In the same order, the Court allowed Shire's motion to conduct limited discovery on absent class members on the issue of arbitration.⁶¹

M. Class counsel responded to Shire's absent class member discovery requests.

67. On January 25, 2024, Shire served document requests, interrogatories, and 30(b)(6) deposition notices directed to each of the 44 absent class members.⁶²

68. Class counsel undertook the task of coordinating the discovery responses for all 44 absent class members, including the coordination and review of requests for admissions for 17 individual absent class members.

N. The direct purchasers settled with Shire.

69. On November 9, 2023, the parties, as directed by the Court, gathered for an in-person mediation session in New York. Although they failed to resolve the litigation that day, the mediator, the Honorable Layn Phillips (ret.), continued to guide the parties in subsequent settlement discussions, which the parties had renewed following the Court's January 22, 2024 Order.

70. On June 18, 2024, the parties executed a settlement providing \$58 million to the direct purchaser class in exchange for the dismissal of all the class's claims against Shire with prejudice and certain other releases.⁶³ On June 21, 2024, class counsel moved for preliminary

⁶⁰ The Court did not officially stay the trial until Shire asked for clarification on the status of trial given the Court's January 22, 2024 order. *See* ECF No. 718.

⁶¹ ECF No. 710.

⁶² Class counsel filed a protective order asking that Shire comply with the limited scope of the Court's discovery Order, which the Court eventually granted. *See* ECF Nos. 723, 733.

⁶³ *See* Shire Settlement Agreement, ECF No. 740-2.

approval.⁶⁴ On July 2, 2024, the Court granted preliminary approval and allowed QK Healthcare to join as class representative for the purpose of settlement.⁶⁵

II. WORK PERFORMED BY THE CLASS REPRESENTATIVES

71. On June 2, 2020, Meijer moved to intervene as a class representative.⁶⁶ On July 24, 2020, the Court granted Meijer's motion and allowed the parties to complete limited discovery on Meijer's adequacy to serve as class representative.⁶⁷ In total, Meijer responded to more than 27 requests for production of documents and more than 15 interrogatories, produced 9,500 documents, and sat for a 30(b)(6) deposition. It also participated in extensive briefing when the defendants moved to compel Meijer into arbitration.⁶⁸

72. QK Healthcare joined this litigation on July 2, 2024, to ensure that class members would secure the settlement.⁶⁹

III. CLASS COUNSEL'S LODESTAR AND EXPENSES

A. Class counsel spent more than 63,000 hours prosecuting this litigation on a contingent-fee basis.

73. In total, from inception through May 30, 2024, class counsel expended 63,449.3 hours prosecuting this case, totaling \$46,455,784.40 in lodestar. The cumulative hours and lodestar for each class counsel firm are as follows:

Firm	Hours	Lodestar
Berger Montague PC	2,602.7	\$1,761,944.00

⁶⁴ ECF No. 739.

⁶⁵ ECF Nos. 740, 742.

⁶⁶ ECF No. 440.

⁶⁷ ECF No. 462.

⁶⁸ ECF Nos. 496, 575, 578, 608, 609.

⁶⁹ ECF Nos. 740, 742.

Firm	Hours	Lodestar
Cohen Milstein Sellers & Toll PLLC	5,368.1	\$4,210,115.25
Faruqi & Faruqi LLP	1,831.2	\$1,593,757.00
Hagens Berman Sobol Shapiro LLP	23,199.0	\$14,985,418.00
Hilliard Shadowen LLP	963.6	\$819,610.50
Kessler Topaz Meltzer & Check LLP	2,618.5	\$1,642,910.50
Nussbaum Law Group, P.C.	4,374.8	\$4,093,364.50
The Radice Law Firm, PC	16,952.4	\$12,903,314.50
Sperling & Slater, P.C. ⁷⁰	5,539.0	\$4,445,350.15
TOTAL	63,449.3	\$46,455,784.40

74. Class counsel are submitting *in camera* the detailed time records supporting the above totals. These detailed time records were prepared from contemporaneously prepared time records maintained by the class counsel firms, which were submitted monthly to an online timekeeping portal maintained by lead counsel Hagens Berman. The hourly rates for each firm’s attorneys and professional support staff are the same as the usual and customary hourly rates charged for their services on a contingent basis in similar complex class action litigation and have been approved by courts in comparable cases.⁷¹

⁷⁰ Includes hours and lodestar for predecessor firm Vanek, Vickers & Masini PC.

⁷¹ See, e.g., *In re Glumetza Antitrust Litig.*, No. 19-cv-05822, 2022 WL 327707, at *9 (N.D. Cal. Feb. 3, 2022) (court would “not reduce the billing rate for any of” the 79 timekeepers from class counsel firms that participated in the case—three of which are class counsel here—because their rates “correspond with the going rate for counsel in our geographic region with the same levels of skill and experience”); see also, e.g., *In re Lipitor Antitrust Litig.*, No. 12-cv-2389, slip op. at 10–11 (D.N.J. June 12, 2024); *In re Suboxone (Buprenorphine Hydrochloride & Nalaxone) Antitrust Litig.*, No. 13-md-2445, 2024 WL 815503, at *18 (E.D. Pa. Feb. 27, 2024); *In re Ranbaxy Generic Drug Appl. Antitrust Litig.*, 630 F. Supp. 3d 241, 246–48 (D. Mass. Sept. 19, 2022); *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472, 2020 WL 5203323, at *5 (D.R.I. Sept. 1, 2020); *In re Solodyn Antitrust Litig.*, No. 14-md-2503, 2018 WL7075880 (D. Mass. July 18, 2018).

75. Following the settlement with Shire, each class counsel firm carefully reviewed its time records to identify and eliminate errors, duplication, excess, and inefficiency.

Specifically, lead counsel directed the class counsel firms to do the following:

- Ensure that the descriptions for all time records adequately supported the hours billed, giving the reader a clear sense of what work was performed and the purpose of that work.
- Eliminate (1) time that was unnecessary, duplicative, or excessive for the particular task, (2) time spent by attorneys or professional support staff who joined mid-case familiarizing themselves with the background; (3) time spent recording, reviewing, or submitting time or expenses or performing other internal firm administration tasks, and (4) time spent on CLEs or other professional development activities with no specific relevance to the case; and
- Confirm that tasks billed by timekeepers were appropriate to their position and billing rate (i.e., that administrative tasks like filing documents on ECF, preparing exhibits and cover sheets, drafting pro hac vice applications and notices of appearance, updating calendars, etc. were performed by paralegals and other support staff, with attorneys handling strategy and substantive discovery and motion practice).

As a result of this review process, the class counsel firms collectively reduced or eliminated 1,155.6 hours totaling \$767,414.64 in lodestar. The table above and the individual firm declarations and time detail reports reflect these changes. They also exclude the time class counsel have expended since the Shire settlement agreement was finalized, including the time spent preparing the preliminary approval motion, working with the settlement administrator to disseminate notice to the class, and preparing this motion.

76. Attached as **Exhibits 1–9** are declarations from all class counsel firms summarizing their individual contributions to the litigation, the cumulative hours and lodestars for which they seek compensation, the hours eliminated as a result of their review of their detailed time records, the total unreimbursed expenses they incurred in the prosecution of this action, and the total amounts they contributed to the litigation fund.

Ex.	Firm Declaration
1	Berger Montague PC
2	Cohen Milstein Sellers & Toll PLLC
3	Faruqi & Faruqi LLP
4	Hagens Berman Sobol Shapiro LLP
5	Hilliard Shadowen LLP
6	Kessler Topaz Meltzer & Check LLP
7	Nussbaum Law Group, P.C.
8	The Radice Law Firm, PC
9	Sperling & Slater, P.C.

B. Class counsel incurred nearly \$800,000 in unreimbursed, out-of-pocket litigation and administrative expenses.

77. Class counsel have advanced \$795,204.50 for litigation and administrative expenses that have not been reimbursed.⁷² Litigation expenses were incurred by class counsel in two ways. First, all class counsel firms contributed to a litigation fund from which common expenses, such as expert fees, charges for document databases, and deposition costs, were paid. The total unreimbursed expenditures from the litigation fund by expense category are as follows:

⁷² Direct purchaser class counsel sought, and the Court granted, reimbursement from the Actavis settlement fund for reasonable litigation expenses incurred through September 30, 2020. *See* Order Granting Final Approving of Actavis Settlement ¶¶ 16–17, ECF No. 551 (awarding reimbursement of litigation expenses and costs totaling \$2,165,475.18 from the Actavis settlement fund).

EXPENSES PAID FROM LITIGATION FUND	
Printing/copying	\$6,258.97
Service of subpoenas	\$278.00
Document database vendor	\$111,224.51
Court transcripts	\$108.00
Depositions (court reporting, videography, transcripts)	\$37,212.76
Experts/consultants	\$278,993.04
Class notice/administration	\$2,257.23
Miscellaneous case costs	\$144,019.27
TOTAL	\$580,351.78

78. Second, each class counsel firm recorded, and submitted monthly to an online portal maintained by lead counsel Hagens Berman, its individual expenditures for non-common litigation expenses, such as expenses related to travel and legal research. The total unreimbursed firm expenditures by category are as follows:

EXPENSES PAID BY CLASS COUNSEL FIRMS	
Printing/copying	\$11,722.75
Postage/FedEx/messenger	\$1,171.96
Travel (airfare, train, care rental/mileage, taxi)	\$26,237.15
Hotel	\$50,508.56
Meals	\$5,991.99
Telephone/teleconference/fax	\$99.79
Computerized research	\$41,205.30
Filing fees and other court costs	\$331.00

Document database vendor	\$41,084.19
Experts/consultants	\$2,089.44
Miscellaneous case costs	\$34,410.59
TOTAL	\$214,852.72

79. Class counsel are submitting *in camera* itemized expense reports for the litigation fund and all the class counsel firms supporting the above totals. The itemized expense reports were prepared from the class counsel firms' books and records and the supporting receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the unreimbursed expenses paid from the litigation fund and by all class counsel firms in the prosecution of this litigation.

80. Following the settlement with Shire, lead counsel retained an independent accounting firm, Robert A. Zagrodny CPA, Inc., to review all litigation fund and individual firm expenses to ensure each of the charges was reasonable, conformed to the limitations set forth by lead counsel, and was supported by an invoice, receipt, or other acceptable form of documentation. The accounting firm, in consultation with lead counsel, eliminated or made downward adjustments to expenses that did not conform to the expense limitations, were unnecessary or excessive, or lacked sufficient documentation. Attached as **Exhibit 10** is a declaration from the accounting firm providing more detail about the review procedures and findings, the expenses eliminated or reduced as a result of the review, and the total approved expenses. The tables above and the itemized expense reports reflect the eliminated and reduced expenses.

81. Class counsel respectfully request reimbursement for all approved, unreimbursed expenses incurred in the prosecution of this litigation, totaling \$795,204.50.

82. In addition to the litigation fund and firm expenses summarized above, class counsel have incurred and will continue to incur expenses for the costs of settlement administration. A.B. Data, the Court-appointed settlement administrator, has unpaid invoices totaling \$2,257.23 for work related to the Shire settlement performed to date and estimates that it will accrue \$25,000.00 in additional charges to complete administration of the settlement. Econ One, the economic firm that class counsel retained to review settlement claims and supporting documentation and calculate *pro rata* shares of the settlement fund, has unpaid invoices totaling \$2,715.00 for settlement-related work to date and estimates that it will cost an additional \$5,000.00 to complete administration. Class counsel have not included incurred or estimated future administration costs in the total expenses for which they seek reimbursement here but will instead ask the Court to approve payment of these costs from net settlement fund in their motion to distribute.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 22, 2024

/s/ Thomas M. Sobol

Thomas M. Sobol

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This document relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF DAVID F. SORENSEN IN SUPPORT OF DIRECT PURCHASER
CLASS COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE CLASS
REPRESENTATIVES**

I, David F. Sorensen, hereby declare as follows:

1. I am licensed to practice law in the Commonwealth of Pennsylvania. I am an Executive Shareholder in the law firm Berger Montague PC (“Berger Montague” or “BMPC”), counsel for the direct purchaser class in this matter. I provide this declaration in support of Direct Purchaser Class Counsel’s Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the time invested and litigation expenses incurred by Berger Montague in the prosecution of this action.

2. Berger Montague attorneys have spent over two decades prosecuting and trying antitrust cases like this one, against pharmaceutical drug companies that have impeded the entry of generic drugs into the marketplace and thus artificially inflated drug prices (including cases challenging pay-for-delay agreements) on behalf of similar classes of direct purchasers as the Class here. Here, BMPC attorneys have contributed to numerous aspects of the litigation, including (1) overseeing certain aspects of and working on fact and expert discovery; (2) briefing dispositive motions, including summary judgment motions; (3) class certification briefing and work on related expert discovery; (4) trial preparation, including drafting motions *in limine* and

jury instructions.

3. From inception through May 30, 2024, BMPC timekeepers expended a total of 2602.7 hours on this litigation. BMPC's total lodestar at current billing rates is \$1,761,944.00.

4. Attached as **Exhibit A** is a chart of the names, titles, billing rates, and cumulative hours and lodestars for the attorneys and professional support staff from my firm who contributed to this litigation. I am also submitting *in camera* a complete set of my firm's detailed time report for this matter. Exhibit A and the detailed time report are based on contemporaneously prepared time records maintained by my firm. The hourly rates provided for my firm's attorneys and professional support staff are the same as the usual and customary hourly rates charged for their services on a contingent basis in similar complex class action litigation and have been approved by courts in comparable cases.¹

5. After careful review of my firm's time records, I made the following adjustments to my firm's time:

- Removed two attorney time entries incorrectly billed in this matter;
- Applied a 50% reduction to two attorney time entries for travel; and
- Removed time entries for IT support personnel that supported the litigation.

These cuts, which are reflected in Exhibit A and my firm's detailed time report, totaled 23.3 hours and \$5,252.74 in lodestar.

¹ See, e.g., *In re Glumetza Antitrust Litig.*, No. C 19-05822, 2022 WL 327707, at *8–9 (N.D. Cal. Feb. 3, 2022) (court would “not reduce the billing rate for any of” the 79 timekeepers from class counsel firms that participated in the case—three of which are class counsel here—because their rates “correspond with the going rate for counsel in our geographic region with the same levels of skill and experience”); see also, e.g., *In re Lipitor Antitrust Litig.*, No. 12-cv-2389, slip op. at 10–11 (D.N.J. June 12, 2024); *In re Effexor In re Suboxone (Buprenorphine Hydrochloride & Nalaxone) Antitrust Litig.*, No. 13-md-2445, 2024 WL 815503, at *18 (E.D. Pa. Feb. 27, 2024); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 246–48 (D. Mass. Sept. 19, 2022); *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472, 2020 WL 5203323, at *5 (D.R.I. Sept. 1, 2020); *In re Solodyn Antitrust Litig.*, No. 14-md-2503, 2018 WL7075880 (D. Mass. July 18, 2018).

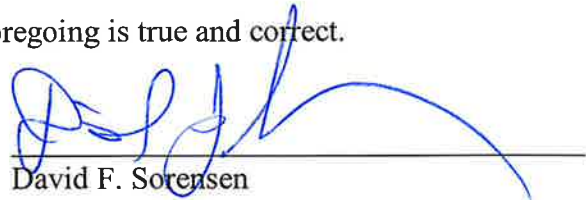
6. From October 1, 2020² through May 30, 2024, Berger Montague incurred litigation expenses totaling \$16,875.91.

7. Attached as **Exhibit B** is a chart of the total unreimbursed litigation expenses by category that my firm incurred in the prosecution of this action. I am also submitting *in camera* an itemized expense report with details on each individual expense. Exhibit B and the itemized expense report were prepared from BMPC's books and records and the supporting expense vouchers, receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the expenses BMPC incurred in the prosecution of the litigation since October 1, 2020.

8. All expenses included in Exhibit B and the itemized expense report were reviewed by an independent accounting firm retained by lead counsel to ensure that each of the charges (i) was reasonable, necessary, and appropriate, (ii) complies with the expense guidelines set forth in this case, and (iii) is supported by an invoice, receipt, or other acceptable form of documentation. After careful review of my firm's expense records, I made the following adjustments to my firm's expenses: I reduced BMPC's expenses by removing two duplicate computerized research entries and reducing two entries for printing costs by adjusting the per page expense from 30 cents to 25 cents, for a total reduction of \$10.40. Exhibit B and the itemized expense report reflect these adjustments.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 16, 2024



David F. Sorensen

² Class counsel's litigation expenses from inception through September 30, 2020 were reimbursed from the Actavis settlement fund. *See* Order Granting Final Approval of Actavis Settlement ¶¶ 16–17, ECF No. 551 (granting class counsel's request for reimbursement of reasonable litigation expenses totaling \$2,165,475).

EXHIBIT A
BERGER MONTAGUE PC CUMULATIVE HOURS AND LODESTAR BY TIMEKEEPER

Timekeeper	Title	Billing Rate³	Hours	Lodestar
Sorensen, David F.	Executive Shareholder	\$1,390	35.4	\$49,206.00
Coslett, Caitlin G.	Shareholder	\$975	666.6	\$649,935.00
Parker, Phyllis*	Shareholder	\$740	152.5	\$112,850.00
Twersky, Michael	Shareholder	\$840	1.1	\$924.00
Urban, Nick*	Shareholder	\$640	16.6	\$10,624.00
Klein, Joseph	Senior Counsel	\$850	64.0	\$54,400.00
Langer, David	Senior Counsel	\$870	9.3	\$8,091.00
Schwartz, Richard	Senior Counsel	\$850	380.6	\$323,510.00
Simons, Daniel*	Senior Counsel	\$660	4.2	\$2,772.00
Black, Christina*	Associate	\$450	16.6	\$7,470.00
Chaudhury, Aurelia*	Associate	\$470	366.8	\$172,396.00
Parron, John*	Associate	\$520	7.0	\$3,640.00
Sauder, Karissa*	Associate	\$450	56.3	\$25,335.00
Arteaga, Alexandra*	Paralegal	\$330	66.5	\$21,945.00
Choe, Caroline	Paralegal	\$440	135.4	\$59,576.00
Frohbergh, Patricia*	Paralegal	\$390	278.3	\$108,537.00

³ Former employees are identified with an asterisk (*). For former employees, the billing rate is the employee's billing rate at the time they departed the firm.

Timekeeper	Title	Billing Rate³	Hours	Lodestar
Ginis, Haroula	Paralegal	\$440	35.6	\$15,664.00
Kerr, Joseph*	Paralegal	\$305	1	\$305.00
Leo, Susan	Paralegal	\$450	1.3	\$585.00
Shappell, David*	Paralegal	\$310	7.5	\$2,325.00
Stein, Mark*	Paralegal	\$345	2.0	\$690.00
Werwinski, Diane	Paralegal	\$440	298.1	\$131,164.00
TOTAL			2602.7	\$1,761,944.00

EXHIBIT B
BERGER MONTAGUE PC LITIGATION EXPENSES BY CATEGORY

Category	Amount
Printing/copying	\$84.25
Postage/FedEx/messenger	\$64.79
Travel (airfare, train, care rental/mileage, taxi)	\$0.00
Hotel	\$0.00
Meals	\$0.00
Telephone/teleconference/fax	\$13.05
Service of subpoenas	\$0.00
Computerized research	\$1,107.78
Filing fees and other court costs	\$0.00
Document database vendor	\$15,606.04
Court transcripts	\$0.00
Depositions (court reporting, videography, transcripts)	\$0.00
Experts/consultants	\$0.00
Class notice/administration	\$0.00
Miscellaneous case costs	\$0.00
TOTAL	\$16,875.91

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This document relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF SHARON K. ROBERTSON IN SUPPORT OF DIRECT
PURCHASER CLASS COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’
FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE
CLASS REPRESENTATIVES**

I, Sharon K. Robertson, hereby declare as follows:

1. I am a member of the bar of New York and New Jersey. I am a partner in the law firm of Cohen Milstein Sellers & Toll, PLLC (“Cohen Milstein”), counsel for the direct purchaser class in this matter. I provide this declaration in support of Direct Purchaser Class Counsel’s Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the time invested and litigation expenses incurred by Cohen Milstein in the prosecution of this action.

2. Over the course of this litigation, Cohen Milstein was involved in the following for this case:

- *Discovery*: As class counsel, Cohen Milstein attorneys participated in plaintiffs’ discovery efforts and engaged in specific discovery activities, including:
 - Reviewing documents produced by the defendants.
 - Assisting in the preparation of key fact witness depositions.
 - Taking the lead on reviewing and analyzing the defendants’ privilege logs, including conducting legal research and drafting letters and motions to prevent defendants from improperly withholding documents.
 - Briefing discovery motions and assisting in preparation with co-counsel of additional discovery motions.
 - Overseeing the work of the plaintiffs’ experts, and preparing experts for their depositions.

- *Summary Judgment and Daubert Motions*: In coordination with lead counsel, Cohen Milstein attorneys drafted sections of briefing motions for and in opposition to summary judgment and multiple affirmative and defensive Daubert motions.
- *Preparation for trial*. In coordination with lead and class counsel, Cohen Milstein attorneys reviewed and selected exhibits and designated deposition testimony for trial and began negotiating the same with defendants, drafted witness examinations, and drafted and coordinated the briefing on pretrial submissions including multiple affirmative and defensive motions *in limine*.

3. From inception through May 30, 2024, Cohen Milstein’s timekeepers expended a total of 5,368.10 hours on this litigation. Cohen Milstein’s total lodestar at current billing rates is \$4,210,115.25.

4. Attached as **Exhibit A** is a chart of the names, titles, billing rates, and cumulative hours and lodestars for the attorneys and professional support staff from my firm who contributed to this litigation. I am also submitting *in camera* a complete set of my firm’s detailed time report for this matter. Exhibit A and the detailed time report are based on contemporaneously prepared time records maintained by my firm. The hourly rates provided for my firm’s attorneys and professional support staff are the same as the usual and customary hourly rates charged for their services on a contingent basis in similar complex class action litigation and have been approved by courts in comparable cases.¹

5. After careful review of my firm’s time records, I made the following adjustments to my firm’s time:

¹ See, e.g., Order, *In re Resistors Antitrust Litig.*, No. 3:15-cv-382, (N.D. Cal. Mar. 24, 2020), ECF No. 584 (Firm’s “rates were reasonable”—partners: \$945-\$645; associates: \$570-\$525; staff: \$300-\$270); Mem. Op. & Order, *Reynolds v. Fidelity Inv. Inst’l Pts. Co., Inc.*, No. 1:18-cv-423 (M.D.N.C. Jan. 8, 2020), ECF No. 92 (Firm’s rates were “in line with or less than the customary rates charged in this type of case”—partner: \$820; associate: \$475; paralegals: \$290); Order, *In re: Lidoderm Antitrust Litig.*, No. 3:14-md-2521 (N.D. Cal. Sept. 20, 2018), ECF 1055 (Firm’s “billing rates . . . are appropriate”—partners: \$885-\$540; of counsel: \$805-\$710; associates: \$530-\$415); Fairness Hearing Tr. at 21:12-20, *In re Dental Supplies Antitrust Litig.*, No. 16-cv-696 (E.D.N.Y. June 24, 2019) (Firm billed “reasonabl[e] hourly fee[s]”—partners: \$885-\$517; associates: \$555-\$465; paralegals: \$280-\$240).

- removing duplicative time;
- removing time spent on administrative tasks; and
- removing certain time spent reading and reviewing pleadings.

These cuts, which are reflected in Exhibit A and my firm's detailed time report, totaled 49.20 hours and \$23,585.00 in lodestar.

6. From October 1, 2020² through May 30, 2024, Cohen Milstein incurred litigation expenses totaling \$354.49.

7. Attached as **Exhibit B** is a chart of the total unreimbursed litigation expenses by category that my firm incurred in the prosecution of this action. I am also submitting *in camera* an itemized expense report with details on each individual expense. Exhibit B and the itemized expense report were prepared from Cohen Milstein's books and records and the supporting expense vouchers, receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the expenses Cohen Milstein incurred in the prosecution of the litigation since October 1, 2020.

8. All expenses included in Exhibit B and the itemized expense report were reviewed by an independent accounting firm retained by lead counsel to ensure that each of the charges (i) was reasonable, necessary, and appropriate, (ii) complies with the expense guidelines set forth in this case, and (iii) is supported by an invoice, receipt, or other acceptable form of documentation.

9. In addition to the expenses shown in Exhibit B and the itemized expense report, my firm contributed a total of \$295,000 to a common litigation fund to cover common litigation

² Class counsel's litigation expenses from inception through September 30, 2020 were reimbursed from the Actavis settlement fund. *See* Order Granting Final Approval of Actavis Settlement ¶¶ 16–17, ECF No. 551 (granting class counsel's request for reimbursement of reasonable litigation expenses totaling \$2,165,475).

expenses such as expert and consulting fees, charges for document databases, and deposition costs.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 18, 2024

/s/ Sharon K. Robertson

Sharon K. Robertson

EXHIBIT A
COHEN MILSTEIN'S CUMULATIVE HOURS AND LODESTAR BY TIMEKEEPER

Timekeeper	Title	Billing Rate	Hours	Lodestar
Sharon Robertson	Partner	\$875	692.80	\$606,200.00
Richard Koffman	Partner	\$910	2.20	\$2,002.00
Brent Johnson	Partner	\$790	1.10	\$869.00
Robert Braun	Partner	\$570	141.70	\$80,769.00
Donna Evans	Of Counsel	\$990	2,607.70	\$2,581,623.00
Richard Speirs	Of Counsel	\$880	1.00	\$880.00
Jessica Weiner	Associate	\$585	1,197.30	\$700,391.25
Sabira Khan	Associate	\$400	15.90	\$6,360.00
Courtney Elgart	Associate	\$350	35.20	\$12,320.00
John Bracken	Staff Attorney	\$420	5.00	\$2,100
Joshua Prince	Staff Attorney	\$415	108.70	\$45,110.50
Soohyun Choi	Staff Attorney	\$385	19.50	\$7,507.50
James Hannaway	Law Clerk	\$300	15.10	\$4,530.00
Noemi Schor	Law Clerk	\$300	1.00	\$300.00
Andrew Haag	Law Clerk	\$290	21.10	\$6,119.00
Jonathan Abetti	Paralegal	\$300	18.10	\$5,430.00
Kashif Azam	Paralegal	\$325	9.40	\$3,055.00
Richard Burner	Paralegal	\$290	42.60	\$12,354.00

Camille Chill	Paralegal	\$300	7.30	\$2,190.00
Nathaniel Dickstein	Paralegal	\$300	85.90	\$25,770.00
Samuel Hainbach	Paralegal	\$300	154.30	\$46,290.00
Alex Noronha	Paralegal	\$290	22.60	\$6,554.00
Jordan Reynolds	Paralegal	\$310	155.30	\$48,143.00
Rachel Selzer	Paralegal	\$335	2.80	\$938.00
Marit Vike	Paralegal	\$310	3.00	\$930.00
Suzanne Clark	Investigator	\$920	1.50	\$1,380.00
TOTAL				\$4,210,115.25

EXHIBIT B
COHEN MILSTEIN'S LITIGATION EXPENSES BY CATEGORY

Category	Amount
Printing/copying	
Postage/FedEx/messenger	
Travel (airfare, train, care rental/mileage, taxi)	
Hotel	
Meals	
Telephone/teleconference/fax	
Service of subpoenas	
Computerized research	\$354.49
Filing fees and other court costs	
Document database vendor	
Court transcripts	
Depositions (court reporting, videography, transcripts)	
Experts/consultants	
Class notice/administration	
Miscellaneous case costs	
TOTAL	\$354.49

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This document relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF PETER KOHN IN SUPPORT OF DIRECT PURCHASER CLASS
COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE CLASS
REPRESENTATIVES**

I, Peter Kohn, hereby declare as follows:

1. I am a member of the bar of the Commonwealth of Pennsylvania. I am a partner in the law firm of Faruqi & Faruqi, LLP (“F&F”), counsel for the direct purchaser class in this matter. I provide this declaration in support of Direct Purchaser Class Counsel’s Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the time invested and litigation expenses incurred by F&F in the prosecution of this action.

2. Over the course of this litigation, F&F was involved in the following for this case:

- *Complaint:* F&F undertook factual investigation and legal research, resulting in drafting of the initial complaint on behalf of plaintiff Rochester Drug Co- Operative, Inc. (“RDC”) and the consolidated class action complaint.
- *Discovery:* F&F attorneys assisted with plaintiffs’ discovery efforts and engaged in specific discovery activities, including:
 - Drafting responses and objections to the defendants’ requests for production and interrogatories directed at RDC;
 - Managing RDC’s document production to the defendants;
 - Reviewing thousands of pages of documents produced by the defendants for the Patent and Causation Teams and drafting litigation

strategy memos related to same;

- Defending RDC's representative, Christopher Masseth, at deposition;
 - Drafting responses and objections to the defendants' additional requests for discovery directed at RDC years after RDC's document production and 30(b)(6) deposition;
 - Drafting briefs and letters opposing the defendants' motions to compel additional 30(b)(6) testimony and document discovery from RDC;
 - Drafting the brief opposing the defendants' motion to take discovery from absent class members;
 - Preparing discovery responses for absent class member MLI RX, LLC.
- *Class Certification:* F&F attorneys assisted with briefing on class certification, and were the primary drafters of the opposition papers to the defendants' motion to decertify the class.
 - *Preparation for trial:* F&F attorneys drafted motions in limine regarding issues pertaining to RDC, witness examinations for trial, and prospective jury instructions.

3. From inception through May 30, 2024, F&F timekeepers expended a total of 1831.20 hours on this litigation. F&F's total lodestar at current billing rates is \$1,593,757.00.

4. Attached as **Exhibit A** is a chart of the names, titles, billing rates, and cumulative hours and lodestars for the attorneys and professional support staff from my firm who contributed to this litigation. I am also submitting *in camera* a complete set of my firm's detailed time report for this matter. Exhibit A and the detailed time report are based on contemporaneously prepared time records maintained by my firm. The hourly rates provided for my firm's attorneys and professional support staff are the same as the usual and customary hourly rates charged for their services on a contingent basis in similar complex class action litigation and have been approved by courts in comparable cases.¹

¹ See, e.g., *In re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litig.*, No. 13-md-02445-MSG, ECF No. 999 at 30 (E.D. Pa. Feb. 27, 2024); *In re Novartis and Par Antitrust Litig.*, No. 18-cv-04361-AKH,

5. After careful review of my firm's time records, all administrative tasks related to compiling timekeeping and expenses and generating time and expense reports for co-counsel were removed. These cuts, which are reflected in Exhibit A and my firm's detailed time report, totaled 42.20 hours and \$14,688.50 in lodestar.

6. From October 1, 2020² through May 30, 2024, F&F incurred litigation expenses totaling \$303.66.

7. Attached as **Exhibit B** is a chart of the total unreimbursed litigation expenses by category that my firm incurred in the prosecution of this action. I am also submitting *in camera* an itemized expense report with details on each individual expense. Exhibit B and the itemized expense report were prepared from F&F's books and records and the supporting expense vouchers, receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the expenses F&F incurred in the prosecution of the litigation since October 1, 2020.

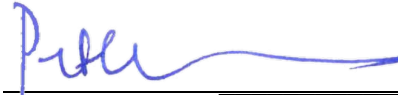
8. All expenses included in Exhibit B and the itemized expense report were reviewed by an independent accounting firm retained by lead counsel to ensure that each of the charges (i) was reasonable, necessary, and appropriate, (ii) complies with the expense guidelines set forth in this case, and (iii) is supported by an invoice, receipt, or other acceptable form of documentation.

ECF No. 635 at 5-6 (S.D.N.Y. July 26, 2023); *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, No. 18-md-02819-NG-LB, ECF No. 562 at 10-11 (E.D.N.Y. Oct. 7, 2020); *In re Loestrin 24 Fe Antitrust Litig.*, 2020 WL 5203323, at *5 (D.R.I. Sept. 1, 2020); *In re Lidoderm Antitrust Litig.*, No. 14-md-02521, ECF No. 1054 at 4 (N.D. Cal. Sept. 20, 2018); *In re Solodyn Antitrust Litig.*, No. 14-md-2503, 2018 WL7075880, at *2 (D. Mass. July 18, 2018); *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 14-cv-00361, 2018 WL 2382091, at *4-5 (E.D. Va. Apr. 18, 2018); *In re Asacol Antitrust Litig.*, No. 15-cv-12730, ECF No. 648 at 7-10 (D. Mass. Dec. 7, 2017).

² Class counsel's litigation expenses from inception through September 30, 2020 were reimbursed from the Actavis settlement fund. See Order Granting Final Approval of Actavis Settlement ¶¶ 16–17, ECF No. 551 (granting class counsel's request for reimbursement of reasonable litigation expenses totaling \$2,165,475).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 20, 2024



Peter Kohn
Faruqi & Faruqi, LLP
One Penn Center, Suite 1550
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103
(215) 277-5770

EXHIBIT A
F&F CUMULATIVE HOURS AND LODESTAR BY TIMEKEEPER

Professional	Position	Billing Rate	Cumulative Hours	Cumulative Lodestar
Aloise, Anthony	L	\$470.00	6.00	\$2,820.00
Barto, Raymond	P	690.00	203.10	140,139.00
Behnke, Derek	L	470.00	5.20	2,444.00
Calvello, David	P	670.00	576.10	385,987.00
Clark, Neill	C	950.00	27.50	26,125.00
Demuth, Bradley	P	975.00	0.80	780.00
Dietz, Julianna*	L	300.00	2.50	750.00
Doherty, Stephen	C	800.00	10.80	8,640.00
Fields, Kristyn	P	690.00	1.90	1,311.00
Giacalone, Brian*	L	375.00	6.10	2,287.50
Kohn, Peter	P	1,190.00	341.90	406,861.00
Lukens, Joseph	P	1,175.00	9.60	11,280.00
Steinfeld, Adam	P	950.00	634.20	602,490.00
Thompson, Timothy*	L	335.00	5.50	1,842.50
TOTAL			1831.20	\$1,593,757.00

P	Partner
C	Counsel
A	Associate
L	Legal Assistant

*Former employee, rate stated as of the date of end of employment.

EXHIBIT B
F&F LITIGATION EXPENSES BY CATEGORY

Expense	Amount
Copying costs	\$0.00
FedEx/Messenger/Postage	0.00
Telephone/Teleconferences/Fax	0.00
Computer research	303.66
Court costs/service of process/hearing transcripts	0.00
Transportation (air, rail, local)	0.00
Food and lodging while travelling	0.00
Litigation Fund (e.g., expert fees, document databases)	0.00
Other	0.00
TOTAL	\$303.66

EXHIBIT 4

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE INTUNIV ANTITRUST
LITIGATION

This Document Relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF HAGENS BERMAN SOBOL SHAPIRO LLP IN SUPPORT OF
DIRECT PURCHASER CLASS COUNSEL'S MOTION FOR AN AWARD OF
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS
FOR THE CLASS REPRESENTATIVES**

I, Rachel A. Downey, hereby declare as follows:

1. I am a member of the bar of the Supreme Judicial Court of the Commonwealth of Massachusetts, the United States District Court for the District of Massachusetts, and the United States Court of Appeals for the First Circuit. I am an attorney in the Boston office of Hagens Berman Sobol Shapiro LLP (HBSS), lead counsel for the direct purchaser class in this matter. I provide this declaration in support of Direct Purchaser Class Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the time invested and litigation expenses incurred by HBSS in the prosecution of this action.

2. Over the course of this litigation, HBSS was involved in the following:

- *Complaint:* HBSS was involved in the discovery and investigation of the case and drafted the initial complaint and the consolidated amended complaints.
- *Opposition to Defendants' Motions to Dismiss:* HBSS attorneys collaborated with class co-counsel in conducting legal research in support of and drafting the briefs supporting the plaintiffs' oppositions to the defendants' motions to dismiss and preparing for and participating in oral argument.

- *Discovery:* As lead counsel, HBSS attorneys were responsible for both overseeing the plaintiffs' discovery efforts and engaging in specific discovery activities, including:
 - Drafting and negotiating protective orders, ESI agreements, and other agreements with the defendants.
 - Drafting the plaintiffs' requests for production, interrogatories, and non-party discovery requests.
 - Negotiating with the defendants regarding the scope of documents to be produced in response to the plaintiffs' document requests.
 - Reviewing hundreds of thousands of pages of documents produced by the defendants.
 - Taking the depositions of key fact witnesses, including those of Shire's General Counsel and IP counsel, and multiple key manufacturing personnel; as well as assisting in the preparation of many other depositions.
 - Briefing discovery motions and assisting in preparation of additional discovery motions with co-counsel.
 - Overseeing the work of the plaintiffs' experts and preparing experts for deposition and trial.
- *Class Certification:* In coordination with class co-counsel, HBSS attorneys drafted and coordinated the briefing on class certification and the Meijer intervention and argued the direct purchasers' motion for class certification. HBSS attorneys also drafted and coordinated the briefing on appointing BI-LO as class representative.
- *Summary Judgment and Daubert Motions:* In coordination with class co-counsel, HBSS attorneys drafted and coordinated the briefing on two affirmative motions for summary judgment, the opposition to five defensive motions for summary judgment, and multiple affirmative and defensive *Daubert* motions.
- *Trial Preparation:* In coordination with class co-counsel, HBSS attorneys reviewed and selected exhibits and designated deposition testimony for trial and began negotiating the same with defendants, drafted witness examinations, and drafted and coordinated the briefing on pretrial submissions including multiple affirmative and defensive motions *in limine*. Once preparation for trial resumed in earnest in 2023, HBSS attorneys, in coordination with class counsel, conducted jury research, refined the selection of exhibits and designations of deposition

testimony, drafted jury instructions and the pretrial memorandum, and prepared expert witnesses for trial. As lead counsel, HBSS attorneys helped lead all strategic trial decision-making.

- *Settlement:* HBSS attorneys negotiated the settlement agreement with Shire and prepared the motion for preliminary approval.

3. From inception through May 30, 2024, HBSS timekeepers spent a total of 23,199 hours on this litigation. HBSS's total lodestar at current billing rates is \$14,985,418.00.

4. Attached as **Exhibit A** is a chart of the names, titles, billing rates, and cumulative hours and lodestars for the attorneys and professional support staff from my firm who contributed to this litigation. I am also submitting *in camera* a complete set of my firm's detailed time report for this matter. Exhibit A and the detailed time report are based on contemporaneously prepared time records maintained by my firm. The hourly rates provided for my firm's attorneys and professional support staff are the same as the usual and customary hourly rates charged for their services on a contingent basis in similar complex class action litigation and have been approved by courts in comparable cases.¹

5. After careful review of my firm's time records, I made the following adjustments to my firm's time:

- Eliminated time that was duplicative, erroneously billed to the case, unnecessary, or excessive for the particular task;
- Eliminated time spent by attorneys or professional support staff who joined mid-case to familiarize themselves with the background;
- Eliminated time spent recording or reviewing time or expenses, addressing

¹ See, e.g., *In re Glumetza Antitrust Litig.*, No. C 19-05822, 2022 WL 327707, at *8–9 (N.D. Cal. Feb. 3, 2022) (court would “not reduce the billing rate for any of” the 79 timekeepers from class counsel firms that participated in the case—three of which are class counsel here—because their rates “correspond with the going rate for counsel in our geographic region with the same levels of skill and experience”); see also, e.g., *In re Lipitor Antitrust Litig.*, No. 12-cv-2389, slip op. at 10–11 (D.N.J. June 12, 2024); *In re Suboxone (Buprenorphine Hydrochloride & Nalaxone) Antitrust Litig.*, No. 13-md-2445, 2024 WL 815503, at *18 (E.D. Pa. Feb. 27, 2024); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 246–48 (D. Mass. Sept. 19, 2022); *re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472, 2020 WL 5203323, at *5 (D.R.I. Sept. 1, 2020); *In re Solodyn Antitrust Litig.*, No. 14-md-2503, 2018 WL7075880 (D. Mass. July 18, 2018).

staffing, catching up on email, or performing other internal firm administration-type tasks;

- Eliminated time lacking description with sufficient detail to support the hours billed;
- Reduced by 50% time billed for non-working travel time; and
- Eliminated time spent on Actavis-specific tasks (primarily related to the Actavis settlement agreement, preliminary and final approval papers, motion for attorneys' fees and expenses, and administration).

These cuts to HBSS time, which are reflected in Exhibit A and my firm's detailed time report, totaled 806.6 hours and \$581,600.00 in lodestar.

6. From October 1, 2020² through May 30, 2024, HBSS incurred litigation expenses totaling \$101,478.25.

7. Attached as **Exhibit B** is a chart of the total unreimbursed litigation expenses by category that my firm incurred in the prosecution of this action. I am also submitting *in camera* an itemized expense report with details on each individual expense. Exhibit B and the itemized expense report were prepared from HBSS's books and records and the supporting expense vouchers, receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the expenses HBSS incurred in the prosecution of the litigation since October 1, 2020.

8. All expenses included in Exhibit B and the itemized expense report were reviewed by an independent accounting firm retained by lead counsel to ensure that each of the charges (i) was reasonable, necessary, and appropriate, (ii) complies with the expense guidelines set forth in this case, and (iii) is supported by an invoice, receipt, or other acceptable form of

² Class counsel's litigation expenses from inception through September 30, 2020, were reimbursed from the Actavis settlement fund. *See* Order Granting Final Approval of Actavis Settlement ¶¶ 16–17, ECF No. 551 (granting class counsel's request for reimbursement of reasonable litigation expenses totaling \$2,165,475).

documentation. As a result of this review, in consultation with the accounting firm, I eliminated any expenses that (i) lacked proper supporting documentation, or (ii) were excessive or unnecessary, for a total reduction of \$3,259.71. Exhibit B and the itemized expense report reflect these adjustments.

9. In addition to the expenses shown in Exhibit B and the itemized expense report, my firm contributed a total of \$945,000.00 to a common litigation fund to cover common litigation expenses such as expert and consulting fees, charges for document databases, and deposition costs.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 22, 2024

/s/ Rachel A. Downey
Rachel A. Downey

EXHIBIT A
HBSS'S CUMULATIVE HOURS AND LODESTAR BY TIMEKEEPER

Timekeeper³	Title	Billing Rate	Hours	Lodestar
Addanki, Srinidhi*	Intern	\$30.00	17.2	\$516.00
Alvarez, Valeria	Intern	\$50.00	1.6	\$80.00
	Paralegal	\$375.00	10.6	\$3,825.00
Arnold, Greg	Partner	\$950.00	146.3	\$138,985.00
Arnold, Michael*	Intern	\$25.00	37.0	\$925.00
Bah, Ibrahim*	Intern	\$50.00	2.6	\$130.00
Barnes, Lauren	Partner	\$950.00	3999.2	\$3,799,287.50
Brennan, Hannah	Partner	\$725.00	101.1	\$73,297.50
Burd, Beatriz*	Intern	\$50.00	26.0	\$1,300.00
Burns, Erin	Partner	\$875.00	9.5	\$8,312.50
Dathan, Will*	Intern	\$50.00	65.9	\$3,295.00
Davis, Rochella*	Associate	\$375.00	132.2	\$49,575.00
Downey, Rachel	Paralegal	\$350.00	1689.2	\$591,220.00
	Associate	\$500.00	144.8	\$72,400.00
Elias, Justine*	Paralegal	\$375.00	17.1	\$6,412.50
Falcon, Linaris	Executive Assistant	\$400.00	43.6	\$17,440.00
Farbstein, Esther*	Contract Attorney	\$350.00	8.0	\$2,800.00

³ Former employees are identified with an asterisk (*). For former employees, the billing rate is their rate as of the date they departed the firm.

Timekeeper³	Title	Billing Rate	Hours	Lodestar
Flexer, Carrie	Paralegal	\$425.00	10.5	\$4,462.50
Gacutan, Pono*	Intern	\$55.00	3.7	\$203.50
Gao, Ray*	Paralegal	\$325.00	31.9	\$10,367.50
Glass, Mado*	Paralegal	\$250.00	8.3	\$2,075.00
Glickman-Simon, Rebekah	Associate	\$475.00	24.1	\$11,447.50
Green, Kevin	Of Counsel	\$650.00	73.6	\$47,840.00
Gwardschaladse, Jessica*	Intern	\$50.00	31.5	\$1,575.00
Hayes, Laura	Of Counsel	\$600.00	2457.1	\$1,474,260.00
Herman, Paige*	Intern	\$55.00	8.1	\$445.50
Huerta, Nicolle	Paralegal	\$375.00	4.3	\$1,612.50
Jackson, Marcella*	Intern	\$30.00	38.0	\$1,140.00
	Paralegal	\$375.00	4.5	\$1,687.50
James, Keiana*	Paralegal	\$325.00	44.7	\$14,527.50
Johnson, Kristen	Partner	\$950.00	15.7	\$14,915.00
Jundy, Natali*	Intern	\$40.00	274.2	\$10,968.00
Kavanah, Matthew*	Paralegal	\$200.00	.6	\$120.00
Kerzan, Radha	Litigation Technology Specialist	\$350.00	10.2	\$3,570.00
Khan, Iman	Paralegal	\$350.00	23.9	\$7,465.00
Laning, Erica	Legal Assistant	\$375.00	28.5	\$10,687.50
Largmann, Taylor*	Paralegal	\$320.00	44.2	\$14,144.00

Timekeeper³	Title	Billing Rate	Hours	Lodestar
LaSalle, Kristie*	Associate	\$625.00	4051.7	\$2,532,312.50
Levy, Alanna*	Law Clerk	\$325.00	114.1	\$37,082.50
MacAuley, Jessica	Partner	\$825.00	13.7	\$11,302.50
MacKerron, Jane*	Paralegal	\$375.00	24.2	\$9,075.00
Mann, Benjamin*	Intern	\$30.00	5.9	\$177.00
McCluer, Kelly*	Summer Associate	\$50.00	78.1	\$3,905.00
McGovern, Grace*	Intern	\$50.00	2.8	\$140.00
Morera, Claudia	Associate	\$450.00	1266.9	\$570,105.00
Nalven, David*	Partner	\$950.00	2675.7	\$2,541,867.50
Naughton, Kevin	Investigator	\$325.00	3.0	\$975.00
Nicklaus, James	Of Counsel	\$725.00	191.1	\$138,547.50
O'Brien, Chris	Associate	\$450.00	1.5	\$825.00
O'Brien, Jennifer*	Paralegal	\$350.00	32.2	\$11,270.00
Ognibene, Abbye	Partner	\$725.00	517.3	\$375,042.50
Pelles, Emily*	Paralegal	\$275.00	90.6	\$24,915.00
Penza, Vittorio*	Law Clerk	\$30.00	58.2	\$1,746.00
Percy, Lynn*	Paralegal	\$320.00	36.4	\$11,648.00
Polonsky, Daniel	Associate	\$425.00	1.4	\$595.00
Portney, Joshua	Staff Attorney	\$350.00	1196.7	\$418,845.00
Renfroe, Payton*	Law Clerk	\$40.00	22.0	\$880.00

Timekeeper³	Title	Billing Rate	Hours	Lodestar
Schwarzschild, Hannah	Of Counsel	\$725.00	163.6	\$118,610.00
Shumate, Sage*	Law Clerk	\$50.00	1.0	\$50.00
Silva, Achebe*	Paralegal	\$325.00	371.2	\$120,640.00
Sobol, Tom	Partner	\$1,350.00	554.3	\$748,305.00
Taylor, Kiersten*	Associate	\$425.00	107.8	\$45,815.00
Tierney, Christine	Paralegal	\$425.00	1981.5	\$842,137.50
Vettraino, Bradley*	Associate	\$550.00	3.2	\$1,760.00
Wang, Sarah*	Intern	\$50.00	11.5	\$575.00
Weaver, Sophia	Associate	\$400.00	1.3	\$520.00
Williams, Lauriane	Associate	\$425.00	27.3	\$11,602.50
Young, Don	Litigation Technology Specialist	\$225.00	3.7	\$832.50
TOTAL			23199.0	\$14,985,418.00

EXHIBIT B
HBSS'S LITIGATION EXPENSES BY CATEGORY

Category	Amount
Printing/copying	\$11,638.50
Postage/FedEx/messenger	\$468.52
Travel (airfare, train, car rental/mileage, taxi)	\$13,416.71
Hotel	\$40,633.72
Meals	\$3,804.91
Telephone/teleconference/fax	-
Service of subpoenas	-
Computerized research	\$24,110.30
Filing fees and other court costs	-
Document database vendor	-
Court transcripts	-
Depositions (court reporting, videography, transcripts)	-
Experts/consultants	-
Class notice/administration	-
Miscellaneous case costs	\$7,405.59
TOTAL	\$101,478.25

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This document relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF HILLIARD & SHADOWEN LLP IN SUPPORT OF DIRECT
PURCHASER CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS'
FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE
CLASS REPRESENTATIVES**

I, Steve D. Shadowen, hereby declare as follows:

1. I am a member of the bar of Supreme Court of Pennsylvania. I am a partner in the law firm of Hilliard & Shadowen LLP, counsel for the direct purchaser class in this matter. I provide this declaration in support of Direct Purchaser Class Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the time invested and litigation expenses incurred by Hilliard & Shadowen LLP in the prosecution of this action.

2. Over the course of this litigation, Hilliard & Shadowen LLP was involved in the following for this case:

- *Counsel for BI-LO.* As counsel representing proposed class representative BI-LO, LLC, members of the firm worked with Lead Counsel in the researching, drafting, and oversight of BI-LO's motion to intervene in the litigation following the Court's finding the prior class representatives inadequate. Once that motion was granted, firm members responded to documents requests and written discovery on behalf of BI-LO, LLC, prepared its corporate representative for deposition, appeared on behalf of BI-LO, LLC and the direct purchaser class at the deposition, and worked with lead counsel in researching, drafting and oversight of the motion to appoint BI-LO, LLC to represent the direct purchaser class.
- *Trial preparation.* Members of the firm also worked closely with Lead Counsel for the Direct Purchaser Class to prepare the case for trial. This

included regular participation in strategy sessions, conference calls, in-person meetings, and virtual meetings among the other counsel for the Direct Purchaser Class. As part of trial preparation, a member of the firm participated in jury consultant meetings (including presenting a portion of the case to the mock jury panel), preparation of witness and exhibits list, and preparation of witness examinations for several fact and expert witnesses.

3. From inception through May 30, 2024, Hilliard & Shadowen LLP timekeepers expended a total of 963.6 hours on this litigation. Hilliard & Shadowen's LLP's total lodestar at current billing rates is \$819,610.50.

4. Attached as **Exhibit A** is a chart of the names, titles, billing rates, and cumulative hours and lodestars for the attorneys and professional support staff from my firm who contributed to this litigation. I am also submitting *in camera* a complete set of my firm's detailed time report for this matter. Exhibit A and the detailed time report are based on contemporaneously prepared time records maintained by my firm. The hourly rates provided for my firm's attorneys and professional support staff are the usual and customary hourly rates that we have charged for our services on a contingent basis in similar complex class action litigations and are equivalent to those that have been approved by courts in comparable cases.¹

5. After careful review of my firm's time records, I made the following adjustments to my firm's time:

- Inefficient time and any time entries that appeared to have been billed to half-hour or quarter-hour increments instead of 0.1-hour increments were reduced.
- Any time entries that lacked an appropriate level of specificity in their descriptions were removed.
- Time entries that appeared to be duplicative of others were removed.
- Any time entries for new members to the team reviewing case documents

¹ See, e.g., *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, No. 13-md-2445, 2024 WL 815503, at *1 (E.D. Pa. Feb. 27, 2024).

to get up to speed on the case were removed.

- The hours for all time entries for travel to and from work events and legal proceedings were reduced by half.

These cuts, which are reflected in Exhibit A and my firm's detailed time report, totaled 35 hours and \$26,171.50 in lodestar.

6. From October 1, 2020² through May 30, 2024, Hilliard & Shadowen LLP incurred litigation expenses totaling \$5,022.42.

7. Attached as **Exhibit B** is a chart of the total unreimbursed litigation expenses by category that my firm incurred in the prosecution of this action. I am also submitting *in camera* an itemized expense report with details on each individual expense. Exhibit B and the itemized expense report were prepared from Hilliard & Shadowen LLP's books and records and the supporting expense vouchers, receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the expenses Hilliard & Shadowen LLP incurred in the prosecution of the litigation since October 1, 2020.

8. All expenses included in Exhibit B and the itemized expense report were reviewed by an independent accounting firm retained by lead counsel to ensure that each of the charges (i) was reasonable, necessary, and appropriate, (ii) complies with the expense guidelines set forth in this case, and (iii) is supported by an invoice, receipt, or other acceptable form of documentation.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 22, 2024

s/ Steve D. Shadowen
Steve D. Shadowen

² Class counsel's litigation expenses from inception through September 30, 2020 were reimbursed from the Actavis settlement fund. *See* Order Granting Final Approval of Actavis Settlement ¶¶ 16–17, ECF No. 551 (granting class counsel's request for reimbursement of reasonable litigation expenses totaling \$2,165,475).

EXHIBIT A
HILLIARD SHADOWEN LLP CUMULATIVE HOURS AND LODESTAR BY TIMEKEEPER

Timekeeper	Title	Billing Rate	Hours	Lodestar
Allen, Kathryn	Of Counsel	\$850.00	305.8	\$259,930.00
Brunell, Richard	Partner	\$1,150.00	0.2	\$230.00
Chernick, Jacob	Paralegal	\$300.00	21.1	\$6,330.00
Faridifar, Sherwin	Of Counsel	\$850.00	3.6	\$3,060.00
Gustafson, Emily	Law Clerk	\$150.00	8.2	\$1,230.00
Hagye, Olivia	Law Clerk	\$200.00	20.7	\$4,140.00
Mather, H. Melissa	Partner	\$925.00	0.1	\$92.50
Miranda, Tina	Partner	\$925.00	533.3	\$493,302.50
Mulligan, Deirdre	Associate	\$495.00	14.9	\$7,375.50
Shadowen, Nick	Partner	\$625.00	27.8	\$17,375.00
Shadowen, Steve	Partner	\$1,250.00	4.1	\$5,125.00
Weiner, Matthew	Partner	\$900.00	23.8	\$21,420.00
TOTAL			963.6	\$819,610.50

EXHIBIT B
HILLIARD SHADOWEN LLP LITIGATION EXPENSES BY CATEGORY

Category	Amount
Printing/copying	-
Postage/FedEx/messenger	-
Travel (airfare, train, care rental/mileage, taxi)	\$2,088.92
Hotel	\$2,365.15
Meals	\$206.15
Telephone/teleconference/fax	-
Service of subpoenas	-
Computerized research	\$37.20
Filing fees and other court costs	\$300.00
Document database vendor	-
Court transcripts	-
Depositions (court reporting, videography, transcripts)	\$8,106.53
Experts/consultants	-
Class notice/administration	-
Miscellaneous case costs	\$25.00
TOTAL	\$13,128.95

EXHIBIT 6

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This document relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF JOSEPH H. MELTZER IN SUPPORT OF DIRECT PURCHASER
CLASS COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE CLASS
REPRESENTATIVES**

I, Joseph H. Meltzer, hereby declare as follows:

1. I am a member of the bar of the Commonwealth of Pennsylvania, the State of New Jersey and the State of New York. I have been admitted *pro hac vice* to this Court. I am a partner in the law firm of Kessler Topaz Meltzer & Check (“KTMC”), counsel for the direct purchaser class in this matter. I provide this Declaration in support of Direct Purchaser Class Counsel’s Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the time invested and litigation expenses incurred by KTMC in the prosecution of this action.

2. Over the course of this litigation, KTMC was involved in the following for this case:

KTMC was tasked to lead the non-party discovery team and assisted class counsel on discovery issues related to causation. To this end, we directed efforts with the dual goals of defeating any motions (dispositive or otherwise) based on lack of causation and preparing to present causation-related evidence at trial. We worked closely with the team responsible for antitrust impact and damages related issues, as well as class certification issues, to ensure that sufficient evidence was garnered to support relevant expert reports and testimony. We led efforts concerning non-party discovery from generic manufacturers of AB-rated generic versions of Intuniv, including through subpoenas,

motion practice and negotiated declarations. KTMC also contributed to substantive pre-trial tasks as the case was being prepared for trial.

Some of the specific activities in which KTMC was involved include:

- *Discovery*: My firm led the efforts to seek discovery from several non-party pharmaceutical companies, which had filed applications and marketed generic versions of Intuniv. KTMC's work included leading meet and confers with counsel for the non-parties and negotiating the scope of responsive document production. We conducted the primary review of the voluminous non-party document productions. My firm negotiated declarations that were ultimately executed by the non-party generic manufacturers concerning causation-related issues and authentication/admissibility issues.
- *Trial*: KTMC contributed to numerous pre-trial tasks. These included the identification of trial exhibits, preparing objections to Defendant's trial exhibits, drafting trial examinations for a causation-related expert and certain fact witnesses, finalizing a Rule 1006 summary of exhibits related to FDA approval of several Intuniv ANDA's, and preparing an expert witness for anticipated trial testimony.

3. From inception through May 30, 2024, KTMC timekeepers expended a total of 2,618.50 hours on this litigation. KTMC's total lodestar at current billing rates is \$1,642,910.50.

4. Attached as Exhibit A is a chart of the names, titles, billing rates, and cumulative hours and lodestars for the attorneys and professional support staff from my firm who contributed to this litigation. I am also submitting *in camera* a complete set of my firm's time report for this matter. Exhibit A and the detailed time report are based on time records prepared and maintained by my firm. The hourly rates provided for my firm's attorneys and professional support staff are the same as the usual and customary hourly rates charged on a contingent basis in similar complex class action litigation and have been approved by courts in comparable

cases.¹

5. After review of my firm's time records, the following adjustments were made:

- Duplicative time entries deleted; two travel entries reduced by 50%; timekeeper entries below 5 hours deleted.

These adjustments, which are reflected in Exhibit A and my firm's detailed time report, totaled 43.40 hours and \$41,051.90 in lodestar.

6. From October 1, 2020² through May 30, 2024, KTMC incurred litigation expenses totaling \$1,517.04.

7. Attached as Exhibit B is a chart of the total unreimbursed litigation expenses by category that my firm incurred in the prosecution of this action. I am also submitting *in camera* an itemized expense report with details on each individual expense. Exhibit B and the itemized expense report were prepared from KTMC's books and records and the supporting expense vouchers, receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the expenses KTMC incurred in the prosecution of the litigation since October 1, 2020.

8. All expenses included in Exhibit B and the itemized expense report were reviewed by an independent accounting firm retained by lead counsel to ensure that each of the charges (i) was reasonable, necessary, and appropriate, (ii) complies with the expense guidelines set forth in this case, and (iii) is supported by an invoice, receipt, or other acceptable form of documentation.

¹ See, e.g., *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 246–48 (D. Mass. Sept. 19, 2022); *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472, 2020 WL 5203323, at *5 (D.R.I. Sept. 1, 2020).

² Class counsel's litigation expenses from inception through September 30, 2020 were reimbursed from the Actavis settlement fund. See Order Granting Final Approval of Actavis Settlement ¶¶ 16–17, ECF No. 551 (granting class counsel's request for reimbursement of reasonable litigation expenses totaling \$2,165,475).

9. In addition to the expenses shown in Exhibit B and the itemized expense report, my firm contributed a total of \$20,000.00 to a common litigation fund to cover common litigation expenses such as expert and consulting fees, charges for document databases, and deposition costs.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 22, 2024

/s/ Joseph H. Meltzer

Joseph H. Meltzer
Kessler Topaz Meltzer & Check
280 King of Prussia Road
Radnor, PA 19087
610-667-7706

EXHIBIT A**KTMC CUMULATIVE HOURS AND LODESTAR BY TIMEKEEPER**

Timekeeper	Title	Billing Rate	Hours	Lodestar
Barlieb, Ethan	Partner	\$965.00	320.10	\$308,896.50
Duskin, Stephen	Staff Attorney	\$455.00	455.00	\$207,025.00
Gertner, Abigail	Staff Attorney	\$350.00	76.10	\$26,635.00
Hemsley, Courtney	Paralegal	\$405.00	7.50	\$3,037.50
Kerrigan, Quinn	Associate	\$525.00	320.30	\$168,157.50
Meltzer, Joseph	Partner	\$1,195.00	103.80	\$124,041.00
Moffa, Donna	Of Counsel	\$750.00	135.90	\$101,925.00
Oldenetttel, Elaine	Staff Attorney	\$440.00	668.00	\$293,920.00
Russo, Lacey	Paralegal	\$275.00	158.40	\$43,560.00
Wotring, Julie	Paralegal	\$320.00	92.00	\$29,440.00
Ziegler, Terence	Partner	\$1,195.00	281.40	\$336,273.00
TOTAL			2618.50	\$1,642,910.50

EXHIBIT B**KTMC LITIGATION EXPENSES BY CATEGORY**

Category	Amount
Travel (airfare, train, car rental/mileage, taxi)	\$985.44
Hotel	\$467.78
Meals	\$63.82
TOTAL	\$1,517.04

EXHIBIT 7

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This document relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF LINDA P. NUSSBAUM IN SUPPORT OF DIRECT PURCHASER
CLASS COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE CLASS
REPRESENTATIVES**

I, Linda P. Nussbaum, hereby declare as follows:

1. I am a member of the bar of New York. I am a partner in the law firm of Nussbaum Law Group, P.C. (“NLG”), counsel for the direct purchaser class in this matter. I provide this declaration in support of Direct Purchaser Class Counsel’s Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the time invested and litigation expenses incurred by NLG in the prosecution of this action.

2. Over the course of this litigation, NLG was involved in all major aspects of the prosecution of the case, including discovery, depositions, class certification, working with experts, legal research, drafting of motions, pre-trial preparation, and supporting lead counsel as needed.

3. From inception through May 30, 2024, NLG timekeepers expended a total of 4,374.8 hours on this litigation. NLG’s total lodestar at current billing rates is \$4,093,364.50.

4. Attached as **Exhibit A** is a chart of the names, titles, billing rates, and cumulative hours and lodestars for the attorneys and professional support staff from my firm who

contributed to this litigation. I am also submitting *in camera* a complete set of my firm's detailed time report for this matter. Exhibit A and the detailed time report are based on contemporaneously prepared time records maintained by my firm. The hourly rates provided for my firm's attorneys and professional support staff are the same as the usual and customary hourly rates charged for their services on a contingent basis in similar complex class action litigation and have been approved by courts in comparable cases.¹

5. After careful review of my firm's time records, I made the decision to remove entries that I considered to be administrative tasks as well as entries for attorneys new to the case reviewing the case file. The entries removed spanned from paralegal billings to partner level billings. These cuts, which are reflected in Exhibit A and my firm's detailed time report, totaled 54.5 hours and \$17,534.50 in lodestar.

6. From October 1, 2020² through May 30, 2024, NLG incurred litigation expenses totaling \$2,673.84.

7. Attached as **Exhibit B** is a chart of the total unreimbursed litigation expenses by category that my firm incurred in the prosecution of this action. I am also submitting *in camera* an itemized expense report with details on each individual expense. Exhibit B and the itemized expense report were prepared from NLG's books and records and the supporting expense

¹ See, e.g., *In re Glumetza Antitrust Litig.*, No. C 19-05822, 2022 WL 327707, at *8–9 (N.D. Cal. Feb. 3, 2022) (court would “not reduce the billing rate for any of” the 79 timekeepers from class counsel firms that participated in the case—three of which are class counsel here—because their rates “correspond with the going rate for counsel in our geographic region with the same levels of skill and experience”); see also, e.g., *In re Lipitor Antitrust Litig.*, No. 12-cv-2389, slip op. at 10–11 (D.N.J. June 12, 2024); *In re Effexor In re Suboxone (Buprenorphine Hydrochloride & Nalaxone) Antitrust Litig.*, No. 13-md-2445, 2024 WL 815503, at *18 (E.D. Pa. Feb. 27, 2024); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 246–48 (D. Mass. Sept. 19, 2022); *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472, 2020 WL 5203323, at *5 (D.R.I. Sept. 1, 2020); *In re Solodyn Antitrust Litig.*, No. 14-md-2503, 2018 WL7075880 (D. Mass. July 18, 2018).

² Class counsel's litigation expenses from inception through September 30, 2020 were reimbursed from the Actavis settlement fund. See Order Granting Final Approval of Actavis Settlement ¶¶ 16–17, ECF No. 551 (granting class counsel's request for reimbursement of reasonable litigation expenses totaling \$2,165,475).

vouchers, receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the expenses NLG incurred in the prosecution of the litigation since October 1, 2020.

8. All expenses included in Exhibit B and the itemized expense report were reviewed by an independent accounting firm retained by lead counsel to ensure that each of the charges (i) was reasonable, necessary, and appropriate, (ii) complies with the expense guidelines set forth in this case, and (iii) is supported by an invoice, receipt, or other acceptable form of documentation. As a result of this review, in consultation with the accounting firm and lead counsel, I removed from this application NLG's expenses that lacked backup documentation, for a total reduction of \$137.90. Exhibit B and the itemized expense report reflect these adjustments.

9. In addition to the expenses shown in Exhibit B and the itemized expense report, my firm contributed a total of \$280,000.00 to a common litigation fund to cover common litigation expenses such as expert and consulting fees, charges for document databases, and deposition costs.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 22, 2024



Linda P. Nussbaum
NUSSBAUM LAW GROUP, P.C.
1133 Avenue of the Americas, 31st Floor
New York, NY 10036
Telephone: (917) 438-9102
lnussbaum@nussbaumpc.com

EXHIBIT A
NLG CUMULATIVE HOURS AND LODESTAR BY TIMEKEEPER

Timekeeper	Title	Billing Rate	Hours	Lodestar
Linda Nussbaum	Managing Director	\$1,250	635.7	\$794,625.00
Bart Cohen	Director	\$925	344.6	\$318,755.00
Hugh Sandler	Director	\$825	322.9	\$266,392.50
Peter Moran	Counsel	\$975	2222.7	\$2,167,152.00
Christopher Sanchez	Of Counsel	\$750	152.8	\$114,600.00
Fred Isquith	Of Counsel	\$750	28.2	\$21,150.00
Jonathan Ross	Senior Associate	\$950	230.4	218,880.00
Brett Leopold	Associate	\$650	4	\$2,600.00
James Perelman	Associate	\$650	76.8	\$49,920.00
Marc Foto	Associate	\$595	80	\$47,600.00
Sara Wigmore	Associate	\$525	7.5	\$3,937.50
Hoyoung Yang	Associate	\$425	97.4	\$41,395.00
Zachary Shutran	Law Clerk	\$375	12.6	\$4,725.00
Yahui Zhao	Paralegal	\$350	29.2	\$10,220.00
Molly Goldberg	Paralegal	\$350	17.3	\$6,055.00
Vivian Lee	Paralegal	\$225	112.7	\$25,357.50
TOTAL			4374.8	\$4,093,364.50

EXHIBIT B
NLG LITIGATION EXPENSES BY CATEGORY

Category	Amount
Printing/copying	-
Postage/FedEx/messenger	-
Travel (airfare, train, care rental/mileage, taxi)	-
Hotel	-
Meals	-
Telephone/teleconference/fax	-
Service of subpoenas	-
Computerized research	\$2,673.84
Filing fees and other court costs	-
Document database vendor	-
Court transcripts	-
Depositions (court reporting, videography, transcripts)	-
Experts/consultants	-
Class notice/administration	-
Miscellaneous case costs	-
TOTAL	\$2,673.84

EXHIBIT 8

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This document relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF JOHN RADICE IN SUPPORT OF DIRECT PURCHASER CLASS
COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE CLASS
REPRESENTATIVES**

I, John Radice, hereby declare as follows:

1. I am a member of the bars of New York and New Jersey. I am a partner in the law firm of Radice Law Firm, P.C., counsel for the direct purchaser class in this matter. I provide this declaration in support of Direct Purchaser Class Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the time invested and litigation expenses incurred by Radice Law Firm in the prosecution of this action.

2. Over the course of this litigation, Radice Law Firm was involved in the following activities in this case:

- Drafted numerous pleadings and key briefs, including the complaint and amended complaint, opposition to defendants' motion to dismiss, summary judgment briefing, and other discovery and pretrial briefing including drafting motions to compel, motions to dismiss, motions for expert disqualification, motions for class certification, motions for summary judgment and partial summary judgment, statement of material facts in service of summary judgment, motions in limine, bench memoranda, *Daubert* briefing, and oppositions to defendants dispositive and non-dispositive motions, as well as preparing for, researching, cite-checking, and drafting memoranda.
- Participated in trial strategy meetings throughout the litigation.

- Performed legal and factual research on substantial number of legal and factual issues throughout the litigation.
- Undertook party and nonparty discovery, including drafting and issuing subpoenas, meet & confers, document review and analysis, and motion practice.
- Took numerous depositions and participated in discovery analysis for all litigation teams including market power and damages, patents, causation, privilege, and agreements, including party and nonparty discovery, drafting and responding to written discovery, drafting whitepapers, preparing deposition outlines for party, nonparty, and expert witnesses.
- Worked with various experts in all aspects of expert discovery, including identifying and vetting potential experts, working with experts to draft their reports on economic issues such as market power and damages-related expert issues for reports and rebuttals, medical experts on therapeutic substitutability issues, technical experts on the merits of the underlying patents, and prepared for and defended depositions of experts.
- Engaged in trial preparation, including drafting presentations for the mock jury study, drafting jury instructions, drafting witness outlines and scripts (direct, cross-, and re-direct) for more than twenty trial witnesses, preparing deposition designations and objections and counter-designations, and analyzing and preparing plaintiff exhibits for trial.
- Drafted supporting documents for settlement approval and worked with expert consultants for damages-related declaration.

3. From inception through May 30, 2024, Radice Law Firm timekeepers expended a total of 16,952.4 hours on this litigation. Radice Law Firm's total lodestar at current billing rates is \$12,903,314.50.

4. Attached as **Exhibit A** is a chart of the names, titles, billing rates, and cumulative hours and lodestars for the attorneys and professional support staff from my firm who contributed to this litigation. I am also submitting *in camera* a complete set of my firm's detailed time report for this matter. Exhibit A and the detailed time report are based on contemporaneously prepared time records maintained by my firm. The hourly rates provided for my firm's attorneys and professional support staff are the same as the usual and customary

hourly rates charged for their services on a contingent basis in similar complex class action litigation and have been approved by courts in comparable cases.¹

5. After careful review of my firm's time records, I made the following adjustments to my firm's time:

- Removed getting up-to-speed time for new members joining mid-case.
- Deleted time for administrative matters and work performed by timekeepers more senior than is necessary for the task.
- Removed time spent on a different matter inadvertently coded for this case.

These cuts, which are reflected in Exhibit A and my firm's detailed time report, totaled 101.4 hours and \$72,219 in lodestar.

6. From October 1, 2020² through May 30, 2024, Radice Law Firm incurred litigation expenses totaling \$138,558.73.

7. Attached as **Exhibit B** is a chart of the total unreimbursed litigation expenses by category that my firm incurred in the prosecution of this action. I am also submitting *in camera* an itemized expense report with details on each individual expense. Exhibit B and the itemized expense report were prepared from Radice Law Firm's books and records and the supporting expense vouchers, receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the expenses Radice Law Firm incurred in the prosecution of the litigation since October 1, 2020.

¹ See, e.g., *In re Lipitor Antitrust Litig.*, No. 12-cv-2389, slip op. at 10–11 (D.N.J. June 12, 2024); *In re Effexor In re Suboxone (Buprenorphine Hydrochloride & Nalaxone) Antitrust Litig.*, No. 13-md-2445, 2024 WL 815503, at *18 (E.D. Pa. Feb. 27, 2024); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 246–48 (D. Mass. Sept. 19, 2022); *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472, 2020 WL 5203323, at *5 (D.R.I. Sept. 1, 2020); *In re Solodyn Antitrust Litig.*, No. 14-md-2503, 2018 WL7075880 (D. Mass. July 18, 2018).

² Class counsel's litigation expenses from inception through September 30, 2020 were reimbursed from the Actavis settlement fund. See Order Granting Final Approval of Actavis Settlement ¶¶ 16–17, ECF No. 551 (granting class counsel's request for reimbursement of reasonable litigation expenses totaling \$2,165,475).

8. All expenses included in Exhibit B and the itemized expense report were reviewed by an independent accounting firm retained by lead counsel to ensure that each of the charges (i) was reasonable, necessary, and appropriate, (ii) complies with the expense guidelines set forth in this case, and (iii) is supported by an invoice, receipt, or other acceptable form of documentation. As a result of this review, in consultation with the accounting firm and lead counsel, I reduced Radice Law Firm's expenses for typographical errors in expense reporting, for a total reduction of \$1.67. Exhibit B and the itemized expense report reflect these adjustments.

9. In addition to the expenses shown in Exhibit B and the itemized expense report, my firm contributed a total of \$125,030 to a common litigation fund (plus wire fee) to cover common litigation expenses such as expert and consulting fees, charges for document databases, and deposition costs.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 18, 2024

/s/John Radice
John Radice

EXHIBIT A
RADICE LAW FIRM CUMULATIVE HOURS AND LODESTAR BY TIMEKEEPER

Timekeeper	Title	Billing Rate	Hours	Lodestar
John Radice	Partner	\$945	1,022.7	\$966,452
Clark Craddock	Partner	\$785	4,910.0	\$3,854,350
Kenneth Pickle	Partner	\$750	3,979.5	\$2,984,625
April Lambert	Partner	\$785	1,993.3	\$1,564,741
Daniel Rubenstein	Partner	\$785	1,451.3	\$1,139,271
Luke Smith	Partner	\$785	407.2	\$319,652
Natasha Fernandez-Silber	Partner	\$695	1,674.8	\$1,163,987
Eva Kane	Of Counsel	\$520	691.7	\$359,684
Rishi Raithatha	Of Counsel	\$675	797.5	\$538,313
Eric Blanco	Of Counsel	\$520	19.9	\$10,348
Charlotte Atkins	Staff Attorney	\$425	3.9	\$1,658
Larry Schwartz	Staff Attorney	\$395	0.6	\$237
TOTAL			16,952.4	\$12,903,318

EXHIBIT B
RADICE LAW FIRM LITIGATION EXPENSES BY CATEGORY

Category	Amount
Printing/copying	
Postage/FedEx/messenger	
Travel (airfare, train, care rental/mileage, taxi)	\$6,951.13
Hotel	\$5,904.90
Meals	\$672.70
Telephone/teleconference/fax	
Service of subpoenas	
Computerized research	
Filing fees and other court costs	
Document database vendor	
Court transcripts	
Depositions (court reporting, videography, transcripts)	
Experts/consultants	
Class notice/administration	
Miscellaneous case costs	
TOTAL	\$13,528.73

EXHIBIT 9

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This document relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF DAVID P. GERMAINE IN SUPPORT OF DIRECT PURCHASER
CLASS COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE CLASS
REPRESENTATIVES**

I, David P. Germaine, hereby declare as follows:

1. I am a member of the bar of the state of Illinois. I am a partner in the law firm of Sperling & Slater, LLC (“Sperling”) and was formally a partner in the firm Vanek, Vickers & Masini, P.C. (“VVM”). Sperling and VVM have served as counsel for Meijer and the direct purchaser class in this matter. I provide this declaration in support of Direct Purchaser Class Counsel’s Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives and to describe the time invested and litigation expenses incurred by Sperling and VVM in the prosecution of this action.

2. Over the course of this litigation, Sperling and VVM were involved in the following for this case:

- *Complaint*: VVM undertook analysis of the initial complaint and the consolidated class action complaint with a focus on class representative specific issues.
- *Opposition to Defendants’ Motions to Dismiss*: VVM attorneys collaborated with lead counsel in conducting legal research and assisting in the drafting of the briefs supporting the plaintiffs’ oppositions to the defendants’ motions to dismiss.
- *Discovery*: Sperling and VVM attorneys were responsible for assisting in various offensive and defensive discovery efforts, including being

principally responsible for managing the discovery directed against plaintiffs FWK and Meijer. These efforts included:

- Assisting with protective orders, ESI agreements, and other agreements with the defendants concerning discovery issues;
- Preparing plaintiffs' responses to multiple requests for production and multiple sets of interrogatories;
- Negotiating with defense counsel, through many meet and confer conferences and follow up correspondence, plaintiff document collections, search terms, custodians and productions, as well as plaintiff interrogatory answers and objections, with a specific focus on FWK and Meijer.
- Review and analysis of plaintiff documents for purposes of preparing document productions;
- Review and analysis of defendant documents to prepare for depositions and to prepare white paper materials;
- Drafting of white paper sections based on document and deposition transcript review;
- Preparing and presenting the FWK and Meijer 30(b)6 witnesses, which included drafting of deposition objections and multiple preparatory witness meetings and related correspondence;
- Briefing discovery motions and assisting in preparation with co-counsel for additional discovery motions;
- *Class Certification*: In coordination with lead counsel, Sperling and VVM attorneys drafted and coordinated the briefing on class certification.
- *Summary Judgment and Daubert Motions*: In coordination with lead counsel, Sperling attorneys assisted with the briefing on multiple summary judgment and Daubert motions;
- *Meijer Motion to Intervene*. In coordination with lead counsel, Sperling attorneys assisted in the preparation of Meijer complaint and Meijer Motion to Intervene.
- *Meijer Adequacy Challenge and Motion to Compel Arbitration*. In coordination with lead counsel, Sperling attorneys drafted and coordinated the opposition briefing to Shire's Motion to Compel Arbitration against Meijer and Shire's challenges to Meijer's adequacy to serve as class representative;

- *Preparation for trial.* In coordination with lead counsel, Sperling attorneys reviewed and selected exhibits and designated deposition testimony for trial and began negotiating the same with defendants, prepared objections to defendants' deposition designations and proposed exhibits, drafted witness examinations and outlines, and drafted and assisted with the briefing on various pretrial submissions, including multiple affirmative and defensive motions *in limine*; and
- *Settlement:* Sperling attorneys assisted with the direct purchasers' negotiation of the settlement agreements with Actavis and Shire.

3. From inception through May 30, 2024, Sperling timekeepers expended a total of 5,132.4 hours on this litigation. Sperling's total lodestar at current billing rates is \$4,099,023.15. During this same time period, VVM timekeepers expended a total of 406.6 hours on this litigation. VVM's total lodestar at current billing rates is \$346,327.00.

4. Attached as **Exhibit A** is a chart of the names, titles, billing rates, and cumulative hours and lodestars for the attorneys and professional support staff from Sperling and VVM who contributed to this litigation. I am also submitting *in camera* a complete set of Sperling's and VVM's detailed time reports for this matter. Exhibit A and the detailed time report are based on contemporaneously prepared time records maintained by Sperling and VVM. The hourly rates provided for by Sperling's and VVM's attorneys and professional support staff are the same as the usual and customary hourly rates charged for their services on a contingent basis in similar complex class action litigation and have been approved by courts in comparable cases.¹

¹ See, e.g., *In re Glumetza Antitrust Litig.*, No. C 19-05822, 2022 WL 327707, at *8–9 (N.D. Cal. Feb. 3, 2022) (court would “not reduce the billing rate for any of” the 79 timekeepers from class counsel firms that participated in the case—three of which are class counsel here—because their rates “correspond with the going rate for counsel in our geographic region with the same levels of skill and experience”); see also, e.g., *In re Lipitor Antitrust Litig.*, No. 12-cv-2389, slip op. at 10–11 (D.N.J. June 12, 2024); *In re Effexor In re Suboxone (Buprenorphine Hydrochloride & Nalaxone) Antitrust Litig.*, No. 13-md-2445, 2024 WL 815503, at *18 (E.D. Pa. Feb. 27, 2024); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 246–48 (D. Mass. Sept. 19, 2022); *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472, 2020 WL 5203323, at *5 (D.R.I. Sept. 1, 2020); *In re Solodyn Antitrust Litig.*, No. 14-md-2503, 2018 WL7075880 (D. Mass. July 18, 2018).


5. From October 1, 2020² through May 30, 2024, Sperling incurred litigation expenses totaling \$73,098.38.

6. Attached as **Exhibit B** is a chart of the total unreimbursed litigation expenses by category that Sperling incurred in the prosecution of this action. I am also submitting *in camera* an itemized expense report with details on each individual expense. Exhibit B and the itemized expense report were prepared from Sperling's books and records and the supporting expense vouchers, receipts, invoices, check and bank records, and other source materials and represent a complete and accurate recordation of the expenses Sperling incurred in the prosecution of the litigation since October 1, 2020.

7. All expenses included in Exhibit B and the itemized expense report were reviewed by an independent accounting firm retained by lead counsel to ensure that each of the charges (i) was reasonable, necessary, and appropriate, (ii) complies with the expense guidelines set forth in this case, and (iii) is supported by an invoice, receipt, or other acceptable form of documentation. As a result of this review, in consultation with the accounting firm and lead counsel, I reduced Sperling's expenses that lacked proper documentation and exceeded per diem rates for a total reduction of \$301.11. Exhibit B and the itemized expense report reflect these adjustments.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 22, 2024



David P. Germaine

² Class counsel's litigation expenses from inception through September 30, 2020 were reimbursed from the Actavis settlement fund. *See* Order Granting Final Approval of Actavis Settlement ¶¶ 16–17, ECF No. 551 (granting class counsel's request for reimbursement of reasonable litigation expenses totaling \$2,165,475). As a result, VVM has no unreimbursed litigation expenses.

EXHIBIT A
SPERLING & VVM CUMULATIVE HOURS AND LODESTAR BY TIMEKEEPER

Timekeeper	Title	Billing Rate	Hours	Lodestar
Abraham, Danna	Attorney	\$395.00	1.1	\$434.50
Amaro, Martin	Associate	\$645.00	89.9	\$57,985.50
Bjork, John	Partner	\$835.00	1,224.6	\$1,022,541.00
Boone, Brianna	Paralegal	\$375.00	13.2	\$4,950.00
Brooks, Thomas	Partner	\$735.00	51.5	\$37,852.50
Cheifetz, Robert	Partner	\$815.00	1,032.6	\$841,528.25
Cramer, Philip	Partner	\$1,055.00	6.5	\$6,857.50
DeLong, Kathryn	Associate	\$535.00	34.9	\$18,671.50
Dickler, Michael	Partner	\$825.00	159.5	\$131,546.25
Fan, Diane	Paralegal	\$395.00	102.2	\$40,349.25
Fleming, Matthew	Paralegal	\$395.00	28.9	\$11,395.75
Fridgeirsson, Lisa	Paralegal	\$395.00	66.2	\$26,129.25
Germaine, David	Partner	\$905.00	317.7	\$287,500.40
Kelly, Eamon	Partner	\$775.00	2.9	\$2,247.50
Margolies, Allison	Associate	\$645.00	348.9	\$225,008.25
Mgbada, Blair	Of counsel	\$425.00	53.8	\$22,865.00
Moran, Jeffrey	Partner	\$645.00	22.4	\$14,448.00
Reyna, Elsa	Paralegal	\$395.00	15.8	\$6,221.25
Rodriguez, Alberto	Partner	\$835.00	21.8	\$18,203.00
Scheetz, Trevor	Partner	\$735.00	11.8	\$8,636.25
Shev, Nathan	Associate	\$705.00	920.9	\$649,199.25
Shinall, Greg	Partner	\$1,095.00	403.4	\$441,723.00
Slater, Matthew	Partner	\$715.00	13.0	\$9,295.00
Slater, Paul	Partner	\$1,395.00	32.1	\$44,779.50
Tarwar, Ashima	Associate	\$475.00	183.7	\$87,257.50
Vanek, Joseph	Partner	\$1,125.00	380.2	\$427,725.00
TOTAL			5,539.50	\$4,445,350.15

EXHIBIT B
[FIRM] LITIGATION EXPENSES BY CATEGORY

Category	Amount
Printing/copying	\$0.00
Postage/FedEx/messenger	\$638.65
Travel (airfare, train, care rental/mileage, taxi)	\$2,769.95
Hotel	\$1,137.01
Meals	\$1,244.41
Telephone/teleconference/fax	\$86.74
Service of subpoenas	\$0.00
Computerized research	\$12,618.03
Filing fees and other court costs	\$31.00
Document database vendor	\$25,478.15
Court transcripts	\$0.00
Depositions (court reporting, videography, transcripts)	\$0.00
Experts/consultants	2,089.44
Class notice/administration	\$0.00
Miscellaneous case costs	\$27,005.00
TOTAL	\$73,098.38

EXHIBIT 10

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE INTUNIV ANTITRUST
LITIGATION

This document relates to:
Direct Purchaser Actions

Civil Action No. 16-cv-12653-ADB

**DECLARATION OF ROBERT A. ZAGRODNY, CPA, IN SUPPORT OF DIRECT
PURCHASER CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS'
FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE
CLASS REPRESENTATIVES**

I, Robert A. Zagrodny, CPA, subject to the penalties and perjury provided by 18 U.S.C. § 1776, hereby declare as follows:

1. I am a Certified Public Accountant (CPA) based in Fall River, Massachusetts. I submit this declaration in support of Direct Purchaser Class Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards for the Class Representatives.

2. On July 12, 2024, I was retained by Hagens Berman Sobol Shapiro LLP, lead counsel for the direct purchaser class, to apply agreed-upon procedures to review the litigation expenses paid by the individual direct purchaser class firms and from the direct purchaser litigation fund. These agreed-upon procedures included:

- Reviewing all reported expenses and ensuring that each was supported by a receipt, invoice, or other acceptable form of documentation;
- Identifying and bringing to the attention of lead counsel any excessive or unreasonable expense;
- Preparing variance reports for the direct purchaser class firms and the litigation fund;
- Promptly communicating with lead counsel and the individual direct purchaser class firms regarding any discrepancies, missing documentation, or other issues; and

- Preparing and signing a declaration describing the accounting services performed to be filed with the Court in support of direct purchaser class counsel's motion for an award of attorneys' fees, reimbursement of expenses, and service awards for the class representatives.

3. Lead counsel provided me with the following criteria for assessing the reasonableness of the reported expenses:

A. Travel Limitations

- i. Airfare.** Only the price of a coach seat for a reasonable itinerary will be reimbursed. If business/first-class airfare is used, an estimate of the difference between the business/first-class airfare and coach fare must be documented, and only the coach fare will be reimbursed. Reasonable upgrades to coach airfare, such as economy plus, are permissible. Airfare deemed to be excessive or which is not related to an assigned task or judicial requirement will not be reimbursed.
- ii. Hotel.** Hotel room charges for the average available room rate of a business hotel (e.g., Hyatt, Westin, Marriott) related to an assigned task or judicial requirement will be reimbursed. Unless a special discounted rate is negotiated, luxury hotel room charges will not be fully reimbursed. If a luxury hotel is used, an estimate of the difference between the luxury hotel room rate and that of an average business hotel in the same location must be documented, and only the business hotel rate will be reimbursed. No hotel phone call, mini-bar, rental movies, athletic facilities, dry cleaning, or other personal charges will be reimbursed.
- iii. Meals.** Meal expenses must be reasonable. Meal expense submissions must be supported by receipts or credit card statements showing the date and persons partaking in the meal. Charges for alcohol will not be reimbursed. Meal expenses for an individual may not exceed \$105 per day.
- iv. Car rentals.** Only rentals of economy, compact, or intermediate/standard non-luxury vehicles will be reimbursed. If premium or luxury rentals are used, an estimate of the difference between the premium/luxury rental cost and that for a non-luxury rental must be documented, and only the non-luxury cost will be reimbursed. Charges for rentals of large vehicles may be reimbursed if documented that the vehicle was necessary to accommodate several people.
- v. Mileage.** Mileage claims must be documented by stating the

origination point, destination, total actual miles, and rate per mile paid. The maximum allowable rate will be the IRS's standard business mileage rate for the applicable year.

- vi. **Parking.** Reasonable charges for parking related to an assigned task or judicial requirement that are properly documented will be reimbursed.

B. Non-Travel Limitations

- i. **Long-distance/conference call and cellular telephone charges.** Reasonable and necessary charges for long-distance calls, conference calls, and cellular telephone usage will be reimbursed if individually documented. Such charges must be reported at actual cost.
- ii. **Shipping, courier, and delivery charges.** All claimed common benefit shipping, courier, or delivery expenses must be properly documented with invoices showing the sender, origin, recipient, and destination. Such charges must be reported at actual cost.
- iii. **Postage charges.** A contemporaneous postage log or other supporting documentation must be maintained and submitted for reimbursement. Postage charges are to be reported at actual cost.
- iv. **In-house reproduction charges.** A contemporaneous log of charges for printing/photocopying or other supporting documentation must be maintained and submitted for reimbursement. The maximum reimbursable charge is \$0.25 per page.
- v. **Computerized research (Lexis/Westlaw).** Charges for Lexis, Westlaw, or any other computerized database for legal research should be in the exact amount charged to the firm for these services.

4. The above criteria are comparable to court-ordered limitations on common benefit expenses in similar cases in which I have been engaged by direct purchaser class counsel to apply agreed-upon procedures to review litigation expenses.¹

¹ See, e.g., Order on Procedures & Guidelines for Class Pls.' Counsel's Time & Expense Submissions, *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, No. 18-md-2819 (E.D.N.Y. Apr. 17, 2018), ECF No. 62; Case Management Order No. 3, *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472 (D.R.I. Feb. 28, 2014), ECF No. 90.

5. To conduct my review, lead counsel provided me with an itemized accounting of the unreimbursed litigation expenses for each direct purchaser class firm and the litigation fund, including payment dates, descriptions, and amounts. Lead counsel also provided copies of the supporting documentation these expenses.

6. During the course of my review, if I determined that (i) the supporting documentation for an expense was missing or improper, or (ii) an expense was unreasonable or excessive according to the criteria provided by lead counsel, I notified both lead counsel and the firm that had reported the expense to allow them the opportunity to remedy the deficiency.

7. Any expenses for which proper supporting documentation could not be provided were, in consultation with lead counsel and the firm that had reported the expense, removed from the itemized accounting spreadsheet and excluded from the total expense reimbursement sought by direct purchaser class counsel. Any expenses that I determined were non-compliant with the reasonableness criteria provided were either eliminated or reduced to a permissible amount.

8. As a result of my review and application of agreed-upon procedures, the total litigation expenses for which direct purchaser class counsel seek reimbursement was reduced by \$6,980.21.

9. I can attest that each of the litigation expenses included in direct purchaser class counsel's request for reimbursement, totaling \$795,204.50, is (i) supported by a receipt, invoice, or other acceptable form of documentation, and (ii) reasonable and non-excessive according to the above criteria.

10. I have conducted this agreed-upon procedures engagement in accordance with attestation standards, AT 201, Agreed-Upon Procedure Engagements (Statements on Standards for Attestation Engagements 10, as amended) established by the American Institute of Certified

Public Accountants. The sufficiency of these procedures is solely the responsibility of counsel for the direct purchaser class and ultimately the Court. Consequently, I make no representation regarding the sufficiency of the procedures described above for the purpose of which this engagement was requested or for any other purpose.

11. Because this engagement did not constitute an examination, I do not express an opinion on the necessity of the expenses submitted, other than to ensure proper compliance by the participating counsel with the agreed-upon procedures. Had I performed additional procedures, other matters may have come to my attention that would have been reported to you.

12. This declaration is intended solely for the information of the Court and the respective direct purchaser law firms and is not intended to be and should not be used by anyone other than these specified parties.

Executed this 21st day of August, 2024.

Robert A. Zagrodny CPA, INC.

Robert A. Zagrodny CPA, Inc.

57 North Main Street

Fall River, MA 02720

(508) 677-4707

Massachusetts License Number 2