

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE LIPITOR ANTITRUST
LITIGATION

This Document Relates To:

All End-Payor Class Actions

MDL No. 2332

Case No. 3:12-cv-2389-ZNQ-JBD

**DECLARATION OF CO-LEAD COUNSEL IN SUPPORT OF END-PAYOR
CLASS COUNSEL’S MOTION FOR FINAL APPROVAL OF
SETTLEMENT AND OTHER RELIEF AND MOTION FOR AWARD OF
ATTORNEYS’ FEES, REIMBURSEMENT OF LITIGATION
EXPENSES, AND GRANT OF SERVICE AWARDS TO
THE CLASS REPRESENTATIVES**

Kenneth A. Wexler, Founder and Managing Partner, Wexler Boley & Elgersma LLP, Sharon K. Robertson, Partner, Cohen Milstein Sellers & Toll PLLC, Michael M. Buchman, Member, Motley Rice LLC, and Robert G. Eisler, Partner, Grant & Eisenhofer (collectively, “Co-Lead Counsel”), subject to the penalties of perjury provided by 18 U.S.C. § 1746, hereby declare as follows:

1. Co-Lead Counsel respectfully submit this Declaration in support of End-Payor Class Plaintiffs’ Motion for Final Approval of Settlement and Other

Relief and Class Counsel's¹ Motion for Attorneys' Fees, Reimbursement of Expenses and Service Awards for the Class Representatives.

2. In this Declaration, Co-Lead Counsel describe: (i) Class Counsel's efforts in advancing this litigation and achieving the settlement with Pfizer;² (ii) Class Counsel's time-and-expense reporting, total time and expenses incurred, and maintenance of a common-cost litigation fund; (c) the Class Representatives'³ contribution to the prosecution of this case; and (d) the significant (and on-going) risk Class Counsel and the End-Payor Plaintiffs ("EPPs") have faced in litigation.

COMMENCEMENT OF THE CASE

3. Beginning in late 2011, Class Counsel began investigating whether Pfizer engaged in an anticompetitive scheme to maintain and extend monopoly power in the Lipitor market by (i) fraudulently obtaining patent and wrongfully

¹ "Class Counsel" include the firms listed in the chart at pp. 25-27, *infra*. The efforts of Class Counsel are described in further detail below and in the individual law firm Declarations annexed hereto as Exhibits A through T.

² Pfizer, as used herein, refers collectively to Defendants Pfizer Inc.; Pfizer Ireland Pharmaceuticals; Warner-Lambert Company; and Warner-Lambert Company LLC.

³ Class Representatives, as used herein, refers collectively to A.F. of L.-A.G.C. Building Trades Welfare Plan; the Mayor and City Council of Baltimore; New Mexico United Food and Commercial Workers Union's and Employers' Health and Welfare Trust Fund; Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana; Bakers Local 433 Health Fund; Fraternal Order of Police, Fort Lauderdale Lodge 31, Insurance Trust Fund; Nancy Billington; Emilie Heinle; and Andrew Livezey.

listing it in the Food and Drug Administration (“FDA”) Orange Book; (ii) engaging in serial sham patent litigation; (iii) filing a sham citizen petition; (iv) entering into an unlawful reverse payment “pay-for-delay” market-allocation agreement with Ranbaxy; and (v) thwarting efforts to obtain judicial declarations that Lipitor patents were invalid, unenforceable, and/or would not be infringed by generic Lipitor formulations.

4. In addition to their factual research, Class Counsel researched the relevant state laws under which to bring their end-payor claims, including, *inter alia*, research regarding which states had repealed *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), and research regarding which state laws applied to Defendants’ conduct.

5. Based on Class Counsel’s legal and factual research, Class Counsel filed complaints on behalf of classes of third-party payors (“TPPs”) and consumers beginning in early 2012. These end-payor class actions sought damages, pursuant to certain state antitrust, consumer protection, and/or unjust enrichment laws, for proposed classes of end-payors of Lipitor and/or its generic equivalents. The litigation did not follow any government investigation or enforcement action.

6. On April 20, 2012, the United States Judicial Panel on Multidistrict Litigation (“the Panel”) centralized before this Court direct purchaser plaintiff class actions alleging similar efforts to delay market entry of generic Lipitor. *See In re*

Lipitor Antitrust Litig., MDL No. 2332, 2012 U.S. Dist. LEXIS 55460 (J.P.M.L. Apr. 20, 2012).

7. The Panel later issued Conditional Transfer Orders transferring and centralizing in this Court all then-pending and future “tag-along” substantially similar end-payor purchaser class actions. ECF⁴ Nos. 26, 72, 88.

8. On July 9, 2012, this Court held a case management conference during which the parties discussed consolidation and coordination of the end-payor purchaser cases.

9. On August 10, 2012, the Court entered Case Management Order No. 1 consolidating all end-payor class actions for all purposes, directing that the end-payor cases be coordinated with the direct purchaser cases for certain purposes, and appointing Co-Lead Counsel⁵ as Interim Co-Lead Counsel for the proposed class of

⁴ Unless otherwise stated, “ECF No. ___” refers to the docket entry in this Action, *In re Lipitor Antitrust Litigation*, Case No. 3:12-cv-2389-ZNQ-JBD (D.N.J.).

⁵ CMO 1 appointed Michael M. Buchman (Pomerantz Haudek Grossman & Gross), Vincent J. Esades (Heins Mills & Olson, P.C.), J. Douglas Richards (Cohen Milstein Sellers & Toll, PLLC), and Kenneth A. Wexler (Wexler Wallace LLP) as interim Co-Lead Counsel for the proposed end-payor class. Over the course of the 12-year period of this litigation, certain co-lead counsel retired and/or transferred to different law firms. *See* ECF No. 647 (Order Substituting Sharon K. Robertson of Cohen Milstein Sellers & Toll as Interim Co-Lead Counsel and withdrawing J. Douglas Richards of Cohen Milstein Sellers & Toll, PLLC as Interim Co-Lead Counsel); ECF No. 904 (Order granting the request that Renae Steiner of Grant & Eisenhofer P.A. be substituted for Vincent J. Esades of Heins Mills & Olson as Interim Co-Lead Counsel in this Action); ECF No. 417 (Michael Buchman now

end-payors, and Lisa Rodriguez, as Interim Liaison Counsel. *See* ECF No. 109. In Case Management Order No. 1, the Court also set a schedule for the filing of consolidated complaints, answers, motions to dismiss, and a defense motion to stay discovery pending resolution of motions to dismiss. *Id.*

10. Case Management Order No. 1 provided that Interim Co-Lead Counsel “shall have sole authority over the following matters on behalf of plaintiffs in the End-Payor Class Actions: (a) convening meetings of counsel; (b) the initiation, authorization, response, scheduling, briefing, and argument of all motions; (c) the scope, order, and conduct of all discovery proceedings; (d) making such work assignments among themselves and other counsel as they may deem appropriate; (e) the collection on a periodic basis of contemporaneously-kept time and expense reports from all plaintiffs’ counsel; (f) the retention of experts; (g) the designation of which attorneys shall appear at hearings and conferences with the Court; (h) the timing and substance of any settlement negotiations and/or settlement with defendants, and any decisions regarding the acceptance of settlement proposals; (i) the allocation of fees and costs among counsel in the End-Payor Class Actions, if

affiliated with the law firm Motley Rice LLC). The law firm Wexler Wallace LLP is now named Wexler Boley & Elgersma LLP.

any are awarded; and (j) any and all other matters concerning the prosecution or resolution of the End-Payor Class Actions.” ECF No. 109, ¶ 30.

11. On August 24, 2012, Defendants filed a motion to stay discovery pending resolution of motions to dismiss. *See* ECF No. 128. On September 7, 2012, Class Counsel filed a brief in opposition to Defendants’ motion to stay discovery. *See* ECF No. 145. On October 5, 2012, pursuant to the authorization conferred by the Honorable Douglas E. Arpert during the September 28, 2012 teleconference for counsel for all parties, Class Counsel filed the EPPs’ surreply in further support of their Opposition to Defendants’ Motion to Stay Discovery. ECF No. 179. Class Counsel argued in part that Defendants offered no cogent reason why the limited discovery sought by EPPs should not be produced because the discovery focused on documents in electronic form that had already been produced in the underlying patent litigations or submitted to the U.S. Patent and Trademark Office (“PTO”) and U.S. Food and Drug Administration (“FDA”), the narrow set of requested documents was highly relevant, and the production would not present any significant burden or expense for Defendants and would serve to maximize the efficiency with which this case was litigated. *Id.*

12. On September 10, 2010, Class Counsel filed EPPs’ Consolidated Class Action Complaint and Jury Demand. ECF No. 150.

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

14. On October 8, 2012, Class Counsel filed EPPs' Opposition to Defendants' Motion to Stay Discovery Pending the Supreme Court's Decision in *K-Dur*. ECF No. 183. EPPs argued against this motion to stay because Defendants sought an indefinite stay of all proceedings on the grounds that the Supreme Court *might* grant *certiorari*, and *might* go on to issue a decision controlling only one of EPPs' numerous theories of liability. *Id.* EPPs also argued the stay was unwarranted because the reverse-payment agreement was unlawful regardless of the legal framework under which their allegations were analyzed. *Id.*

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

16. On October 19, 2012, the Court denied Defendants' motion to stay discovery pending resolution of motions to dismiss. *See* ECF No. 197.

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

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

MOTION TO DISMISS BRIEFING

19. Class Counsel opposed multiple rounds of motion to dismiss briefing. On November 16, 2012, Pfizer and Ranbaxy filed separate motions to dismiss EPPs' Consolidated Amended Complaint. See ECF Nos. 243, 245. In this first motion to dismiss, the Defendants argued, *inter alia*, that (i) EPPs lacked standing to challenge patents, (ii) the state law claims were preempted by Federal Patent Law and FDA law, (iii) EPPs lacked standing to assert state law claims, (iv) the consumer protection claims must be dismissed because there was no allegation of actions to deceive consumers, and (v) the unjust enrichment claims must be dismissed for myriad reasons, including as purported impermissible end-runs around *Illinois Brick. Id.*

20. On January 15, 2013, EPPs filed their Opposition to Defendants' Motion to Dismiss the Consolidated Amended Complaint responding to each of Defendants' motion to dismiss arguments. See ECF No. 308.

21. On February 22, 2013, Pfizer and Ranbaxy filed reply briefing. See ECF Nos. 341, 345.

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

23. On May 8, 2013, the Court ordered all parties to address the issue of whether oral argument on Defendants’ motions to dismiss should be delayed pending the Supreme Court’s anticipated June 2013 decision in *Actavis*. *See* ECF No. 385. The Court opted to wait for that decision before deciding the pending motions to dismiss. *See* ECF No. 397.

24. On June 17, 2013, the Supreme Court issued the *Actavis* decision, *FTC v. Actavis*, 570 U.S. 136 (2013), finding that the traditional antitrust rule-of-reason analysis was the appropriate legal framework for analyzing reverse-payment agreements alleged to violate the antitrust laws. *Id.* The Supreme Court left to the lower courts “the structuring of the present rule-of-reason antitrust litigation.” *Id.* at 160.

25. This Court subsequently ordered the parties to submit supplemental briefing on the motions to dismiss in view of *Actavis*. ECF No. 408. Those submissions were filed on July 12, 2013. *See* ECF Nos. 422, 423, 425. Class Counsel argued that *Actavis* held that “parties to a reverse payment settlement may not shield

themselves from antitrust liability simply because the anticompetitive effects of the settlement might fall within the scope of a patent's exclusionary potential. Instead, the Supreme Court's decision in *Actavis* directs courts to apply the rule of reason and consider traditional antitrust factors in analyzing antitrust challenges to such settlements. *Actavis* therefore confirms the validity of EPPs' claims involving Defendants' pay-for-delay market allocation agreement and further and fully supports denial of Defendants' motions to dismiss." ECF No. 423. Conversely, Defendants argued that *Actavis* supported granting Defendants' motions to dismiss, claiming only settlements with "large monetary payments" could be unlawful under the new precedent. *See* ECF Nos. 422, 425.

26. On July 24, 2013, the Court heard oral argument on the motions to dismiss. *See* ECF No. 432.

27. On September 5, 2013, the Court granted in part and denied in part Pfizer's motion to dismiss the direct purchasers' complaint, leaving intact their claims to the extent they were based on the purportedly anticompetitive settlement between Pfizer and Ranbaxy. ECF No. 455. In a docket annotation accompanying the Order, the Court indicated that "the law set forth in the Memorandum most likely applies to the indirect purchaser group complaint" and "request[ed] that the parties confer and determine which allegations of the indirect purchaser groups complaint are dismissed and which apply to the reverse payment allegations." *Id.*

28. While reserving their objections to the Court's adverse rulings, ECF No. 457, Class Counsel subsequently amended and narrowed the EPPs' complaint to claims rooted in the alleged reverse payment between Pfizer and Ranbaxy and filed EPPs' Amended Consolidated Class Action Complaint on October 14, 2013. ECF No. 473.

29. On November 26, 2013, Pfizer and Ranbaxy filed a second round of motions to dismiss as to EPPs' amended complaint. *See* ECF Nos. 491, 494. Defendants reiterated their previous standing and state law arguments but added that EPPs' complaint should be dismissed under *Actavis* for the same reason the DPPs' complaint required dismissal, namely that the Accupril settlement—which Plaintiffs argued constituted a reverse payment from Pfizer to Ranbaxy—was a lawful compromise of a damages claim and therefore did not qualify as a reverse payment. *Id.* at 6.

30. EPPs opposed Defendants' second round of dismissal briefing on January 17, 2014, arguing their claims fit squarely within the Supreme Court's *Actavis* ruling because there was no legal support for Defendants' argument that reverse payments need be in cash form, and that their state law antitrust and consumer protection claims were properly pled. ECF No. 515.

31. On February 7, 2014, Defendants filed reply briefing. *See* ECF Nos. 521, 522.

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

33. On October 31, 2014, the Court granted Defendants' Motions to Dismiss, dismissing the EPPs' Amended Complaint with prejudice and without leave to amend. ECF No. 601.

EPPS' APPEAL TO THE THIRD CIRCUIT

34. Class Counsel appealed to the United States Court of Appeals for the Third Circuit from the final Order dismissing with prejudice EPPs' Amended Complaint and all prior (or simultaneous) non-final Orders of the Court subsumed therein. ECF No. 624 (Notice of Appeal). The Third Circuit consolidated EPPs' appeal with those of other plaintiff groups. *See In re Lipitor Antitrust Litig.*, Case No. 14-4602, Doc. Nos. 003112011327 (July 8, 2015) and 003112050374 (Aug. 19, 2015).

35. On December 18, 2015, Class Counsel joined with the Direct Purchaser Class Plaintiffs' Counsel to file an opening brief with the Third Circuit seeking reversal of this Court's order dismissing the Plaintiffs' complaints. *See In re Lipitor Antitrust Litig.*, Case No. 14-4602, Doc. No. 003112159634. Plaintiffs appealed this Court's dismissal of Plaintiffs' reverse-payment allegations and Plaintiffs' *Walker-Process* allegations (and thus this Court's consequential limitation on Plaintiffs' damages period). *Id.*

36. On March 21, 2016, Defendants filed their opposition briefs. *See In re Lipitor Antitrust Litig.*, Case No. 14-4602, Doc. Nos. 003112239469, 003112239531. Defendants argued the appeal should be transferred to the Federal Circuit on the basis that Plaintiffs' *Walker-Process* and related claims purportedly required resolution of patent-law questions. Defendants also argued that the order of dismissal should be affirmed in its entirety and that this Court had properly denied Plaintiffs leave to amend. *Id.*

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

38. On September 16, 2016, the Third Circuit advised that it would initially hear oral argument only as to the issue of whether the appeal should be transferred to the Federal Circuit. *See In re Lipitor Antitrust Litig.*, Case No. 14-4206, Doc. No. 003112401374.

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

40. On April 13, 2017, the Third Circuit issued a precedential opinion denying Defendants' motion to transfer to the Federal Circuit because Plaintiffs'

claims did not arise under patent law. *See In re Lipitor Antitrust Litig.*, 855 F.3d 126 (3d Cir. 2017).

41. On May 19, 2017, the Third Circuit held oral argument on the merits of Plaintiffs' appeal.

42. On August 21, 2017, the Third Circuit issued a second precedential opinion, ruling in Plaintiffs' favor on the merits of the appeal. *See In re Lipitor Antitrust Litig.*, 868 F.3d 231 (3d Cir. 2017). The Third Circuit concluded Plaintiffs had plausibly pled a reverse payment claim under *Actavis* and reversed dismissal of that claim. *Id.* at 253-58. The Third Circuit also concluded Plaintiffs had plausibly pled *Walker-Process* fraud, and reversed the dismissal of Plaintiffs' *Walker-Process* allegations and related claims (and consequently this Court's limitation on Plaintiffs' damages period). *Id.* at 266-75. The Third Circuit remanded the case for further proceedings consistent with its opinion. *Id.* at 275; *see also* ECF No. 669.

43. EPPs then filed a Second Amended Complaint ("SAC"), reviving their patent and reverse-payment claims. ECF No. 700. Defendants moved to dismiss for the third time; the Court granted and denied in part Defendants' motion but permitted EPPs to file a Third Amended Complaint ("TAC"). *See* ECF Nos. 755, 813. EPPs filed the operative TAC on September 20, 2018. ECF No. 815.

DOCUMENT DISCOVERY AND MOTIONS

44. At the outset of discovery, working in conjunction with the Direct

Purchaser Class Plaintiffs and Retailer Plaintiffs, Class Counsel negotiated and drafted a Stipulated Protective Order governing confidential information. ECF No. 346. Class Counsel also drafted and negotiated a comprehensive protocol for producing electronically stored information. ECF No. 416.

45. In the early stages of the litigation, Magistrate Judge Arpert ordered that discovery on specific categories of documents could proceed pending a decision on the initial round of motions to dismiss. *See* ECF Nos. 197, 328. As a result, a limited amount of document production took place during that period.

46. Initially, EPPs requested from Defendants five narrow categories of documents, including the production of settlement agreements resolving Pfizer's lawsuits with generic companies Ranbaxy, Teva, Cobalt, Apotex, Mylan, and Actavis. Pfizer produced its settlement agreement with Ranbaxy but declined to produce the other requested settlement agreements.

47. On April 26, 2013, EPPs filed their Motion to Compel Pfizer to produce the limited discovery described above. ECF No. 377. Defendants opposed EPPs' Motion to Compel. ECF No. 388. On August 21, 2013, the Court granted EPPs' Motion to Compel, finding that the settlement agreements were relevant and that Defendants' position that the requests amounted to an "impermissible fishing expedition" was undermined by the fact that Pfizer had already agreed to produce

documents from the underlying litigations preceding each of the settlements. ECF No. 447.

48. As detailed above, for the next several years, the parties were engaged in appellate practice before the Third Circuit. No further discovery occurred during this time.

49. Litigation in this Court resumed following the Third Circuit's 2017 reversal of the district court's dismissal of this Action. On January 5, 2018, pursuant to this Court's directive and in advance of a scheduled Rule 16 conference, the parties filed a Joint Rule 16 conference report with competing proposals on a litigation schedule, privilege log issues, and other matters. *See* ECF No. 694.

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

51. Over the course of the litigation, Defendants produced more than ten million pages of documents in response to Plaintiffs' document requests. Hundreds of thousands of lines of transactional data were produced, reflecting sales, credits, returns, chargebacks, and price adjustments.

52. Class Counsel analyzed the millions of pages of documents and hundreds of thousands of transactional data lines produced by Defendants to prepare

work product to establish Defendants' liability, move for class certification, and ultimately, to reach the Settlement with Pfizer.

53. Class Counsel also identified, collected, reviewed, and produced thousands of pages of documents from the Class Representatives.

54. Class Counsel also briefed and successfully opposed a rogue effort by a small group of lawyers seeking to create and represent a California sub-class of consumers. ECF Nos. 955, 962, 969, 989, 1032, 1035, 1038, 1041.

55. To support their bid for class certification, Class Counsel prepared and served several subpoenas *duces tecum* on non-parties seeking data, documents, and information relating to end-payor issues, including subpoenas to Caremark RX, LLC, Evernorth Health, Inc., Express Scripts, Inc., Humana Pharmacy Solutions, Inc., OptumRX, Inc., Prime Therapeutics LLC, and UnitedHealth Group Incorporated. Class Counsel also worked with counsel for the other plaintiff groups to serve other subpoenas on certain non-parties.

56. After the non-parties served objections to the subpoenas, Class Counsel spent multiple weeks meeting and conferring with counsel for the non-parties to discuss the scope of productions of data and documents. Ultimately, Class Counsel secured data and or declarations from several non-parties to support their bid for class certification, including the Declarations of Tamara Cowley (Humana), Deb Fridberg (Prime), Edward Devaney (Caremark), and Eric Miller (AB Data).

MEDIATION

57. The Court referred the case to mediation, and ultimately appointed the Honorable Faith Hochberg (ret.) as mediator. *See, e.g.*, ECF Nos. 617, 948. On March 18, 2020, Judge Hochberg issued an Initial Mediation Order setting forth the process and schedule for mediation and directing the parties to meet and confer concerning Plaintiffs' request that Defendants produce further discovery for mediation. *See* ECF No. 949.

58. Mediation continued, and from August 2021 through March 2022, the parties submitted lengthy mediation briefs to Judge Hochberg concerning issues related to liability, causation, market power, and class certification.

59. After multiple years of unsuccessful mediation, and Plaintiffs' multiple and repeated attempts (and appeals to the Judge Sheridan) to re-open discovery, Magistrate Judge Arpert issued a scheduling order directing certain discovery on causation and class-certification issues and setting a schedule for class-certification and summary-judgment briefing. *See* ECF Nos. 1085, 1087, 1088, 1090, 1093, 1103, 1107, 1115, 1120, 1122, 1124.

CLASS CERTIFICATION AND SUMMARY JUDGMENT

60. From November 2022 through March 2023, the parties served expert reports and took expert depositions related to class-certification and causation issues. Class Counsel took the depositions of Defendants' experts, Daniel Troy and Dr. James Hughes, defended the depositions of their own experts, Kurt R. Karst, Dr. Hal J. Singer, and Ms. Laura Craft, and defended the depositions of the Class Representatives. Class Counsel also defended the depositions of certain class-certification related witnesses, including Eric Miller, David Perret III, and Shawn Lovering.

61. Ultimately, on March 15, 2023, Defendants filed a motion for summary judgment on causation as to all actions, which End-Payor Plaintiffs and the other plaintiff groups opposed. *See* ECF Nos. 1183, 1217, 1217.

62. End-Payor Plaintiffs moved for class certification on June 20, 2023, seeking to represent two classes of end payors—a TPP Class and a Consumer Class—under the antitrust and consumer protection laws of 24 states and the District of Columbia in connection with Pfizer and Ranbaxy's delay of the market entry of generic Lipitor. ECF No. 1251.

63. On November 28, 2023, the Court held an evidentiary hearing on EPPs' Motion for Class Certification. ECF No. 1326. Class Counsel questioned their own experts—Ms. Craft and Dr. Singer—cross-examined Defendants' expert, Dr. James'

Hughes, and argued for certification of the Classes for litigation purposes. ECF No. 1251.

64. On December 8, 2023, EPPs filed their Proposed Findings of Fact and Conclusions of Law. ECF No. 1328. On December 18, 2023, Defendants filed their Proposed Findings of Fact and Conclusions of Law. ECF No. 1333. EPPs filed a Motion to Strike certain of Defendants' findings and/or supplement their Proposed Findings of Fact and Conclusions of Law, while Ranbaxy opposed the Motion. ECF Nos. 1348, 1368, 1369, 1376, 1377-1382, 1385-1388 1382. The Court held oral argument on the Motion on March 12, 2024 and March 15, 2024. On June 6, 2024, the Court granted EPPs' Motion to Supplement Proposed Findings of Fact and Conclusions of Law. ECF No. 1421.

65. On June 6, 2024, the Court granted Defendants' motion for summary judgment on causation. ECF No. 1416.

66. Thereafter, though also on June 6, 2024, the Court denied EPPs' motion for certification of litigation classes. ECF No. 1420.

67. On July 8, 2024, EPPs filed a Notice of Appeal of the Court's class-certification and summary-judgment Orders. ECF No. 1447.

SETTLEMENT WITH PFIZER

68. The summary-judgment and class-certification motions were pending as settlement discussions between the EPPs, Pfizer, and Ranbaxy continued. As discussed above, the parties had been engaged in extensive arm's-length negotiations, both in-person and via telephone, over multiple years. With the assistance of Judge Hochberg and Magistrate Judge Arpert, the EPPs and Pfizer ultimately reached an agreement in principal to resolve the Action as to Pfizer, whereby Pfizer would provide a \$35 million, all-cash settlement. The EPPs' litigation against Ranbaxy remains ongoing.

69. After reaching an agreement in principle, Class Counsel and counsel for Pfizer continued negotiating other terms of the settlement.

70. On April 29, 2024, Class Counsel and counsel for Pfizer executed the Settlement Agreement. ECF No 1398-3. The settlement provides for Pfizer to deposit into an interest-bearing escrow account for the benefit of the Classes a one-time cash payment of \$35 million—which payment Pfizer has already deposited—in exchange for releases and the dismissal with prejudice of all EPPs' claims against Pfizer in this Action.

71. Class Counsel filed a motion for preliminary approval of the settlement with a supporting memorandum and declarations on May 3, 2024. ECF No. 1398. In the motion, Class Counsel requested that the Court preliminarily approve the

settlement, preliminarily certify two settlement classes, approve Epiq Class Action and Claims Solutions, Inc. (“Epiq”) as Claims Administrator, approve the notice program to the Classes, approve Huntington Bank as Escrow Agent, and set a schedule leading up to and including a Fairness Hearing. *Id.*

72. On June 3, 2024, the Court held a hearing on preliminary approval and, that same day, granted EPPs’ motion for preliminary approval of the settlement, preliminarily certified the settlement classes, and scheduled a Fairness Hearing for October 1, 2024. *See* ECF Nos. 1411-1412. The Preliminary Approval Order also approved the notice program and authorized that notice be issued to the Classes.

73. Epiq implemented the notice program approved by the Court. *See* Decl. of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Plan (“Azari Final Approval Decl.”), submitted with the End-Payor Class Plaintiffs’ Motion for Final Approval of Settlement and Other Relief (“Motion for Final Approval”). The deadline for objecting has passed, and no objections directed to the contemplated fee request have been received.

74. On May 13, 2024, pursuant to the Class Action Fairness Act (CAFA), Pfizer sent state and federal regulators notice of the proposed Settlement. Regulators were thus provided with at least 90 days to review the proposed settlement before the Final Fairness Hearing on October 1, 2024.

75. Class members had until August 16, 2024 to exclude themselves from the Settlement Classes or to object to the Settlement, its terms, and/or to Class Counsel's request for attorneys' fees, reimbursement of expenses, and grant of service awards to the Class Representatives. As of the date of this Declaration, Epiq has received one timely request for exclusion from a TPP Class Member and two consumer class members served untimely requests for exclusion. None of the requests for exclusion conformed to the requirements for exclusion. The late request for exclusion was postmarked after the exclusion request deadline and does not fully conform to the exclusion requirements. As of August 27, 2024, Epiq is aware of one objection to the Settlement, which does not relate to notice or administration. Azari Final Approval Decl. ¶ 36. Class Counsel believe the objector lacks standing and that the objection is without merit, and have addressed it more fully in their Motion for Final Approval. Although the objection and exclusion deadlines have passed, if any objections or exclusion requests are received after the date of this Declaration, they will be addressed by Co-Lead Counsel in their reply briefing and at the October 1, 2024 Fairness Hearing.

ATTORNEYS' FEES AND UNREIMBURSED EXPENSES

76. Class Counsel have decades of experience litigating antitrust cases on behalf of end-payors.

77. Class Counsel knew this litigation could require—and, indeed, has required—the investment of thousands of hours of attorney and paralegal time. Counsel did so at the significant risk of no recovery, and many declined other business opportunities because of the time and expense this case demanded.

78. Co-Lead Counsel have been responsible for collecting from all Class Counsel contemporaneously prepared attorney and paralegal time-and-expense reports. On June 20, 2018, Co-Lead Counsel submitted a proposed Order on the Procedures and Guidelines for End-Payor Plaintiffs' Counsel's Time and Expense Submissions. ECF No. 796. The Court approve this Time and Expense Protocol on June 25, 2018. ECF No. 801.

79. To control Class Counsel's lodestar, the Time and Expense Protocol instructed Class Counsel not to submit time for work not requested by Co-Lead Counsel, for duplicative work, for general read and review time (excluding review and coding of document productions), for time spent preparing time and expense reports or on routine clerical tasks, or for work related to any client not retained. Additionally, the Time and Expense Protocol required that each firm submit, via email, all litigation-related expenses incurred by the firm each month. Finally, time

included in the fee petition logged by contract attorneys on document review and coding was capped at \$250 per hour. *Id.*

80. In accordance with the Time and Expense Order, postage/FedEx are reported at actual cost; telephone expenses do not include general subscription or monthly lease costs associated with long-distance services and cellular phones; the maximum charge for photocopying is \$0.25 per page; and IRS rules for mileage maximums were applied for any travel mileage. *Id.*

81. The following chart summarizes the aggregate time and necessary expenses (including litigation fund contributions) of all of Class Counsel, as set forth in more detail in the individual firm declarations of Class Counsel, annexed hereto as Exhibits A through T.

82. Each individual firm provided a declaration that its time and expenses comport with the Court’s Time and Expense Order.

Exh.	Firm	Hours	Historical Lodestar	Expenses
A	Wexler Boley & Elgersma LLP	4,330.60	\$2,642,936.00	\$506,844.69
B	Cohen Milstein Sellers & Toll, PLLC	5,086.95	\$2,912,833.90	\$494,751.71
C	Motley Rice LLC	2,006.55	\$1,314,616.00	\$429,546.41
D	Heins Mills & Olson, P.L.C.	3,788.70	\$1,995,856.50	\$59,872.74

E	Grant & Eisenhofer P.A.	4,924.30	\$3,351,098.50	\$436,047.39
F ⁶	Dilworth Paxson LLP	147.5	\$172,093.50	\$1,095.04
F	Schnader Harrison Segal & Lewis	514.6	\$467,245.00	\$1,490.34
F	Trujillo, Rodriguez & Richards, LLC	87.8	\$49,679.50	\$1,692.81
G	Dugan Law Firm	258.4	\$187,237.50	\$7,136.86
H	Zimmerman Reed LLP	293.00	\$108,111.50	\$17,403.66
I	Lockridge Grindal Nauen PLLP	191.1	\$164,189.81	\$7,854.81
J	Hach Rose Schirripa & Cheverie LLP	55.6	\$33,170.00	\$603.85
K	Scott+Scott Attorneys At Law LLP	119.4	\$70,557.50	\$14,504.74
L	Cafferty Clobes Meriwether & Sprengel LLP	14.2	\$9,686.50	\$56.31
M	Chimicles Schwartz Kriner & Donaldson Smith LLP	86.7	\$57,730.00	\$730.29

⁶ Liaison Counsel Lisa Rodriguez submitted a single Declaration on behalf of the three firms with which she has been employed throughout this protracted litigation. See Ex. F.

N	Evans Law Firm	30.15	\$10,552.50	\$48.60
O	Freed Kanner London & Millen LLC	70.4	\$35,821.00	\$7,304.68
P	Miller Shah, LLP	268.05	\$190,457.50	\$10,126.20
Q	Rausch Law Firm	71.8	\$27,335.00	\$3,623.00
R	Youtz & Valdez, P.C.	22.5	\$12,735.00	\$35.09
S	Pomerantz LLP	900.05	\$566,432.75	\$2,437.11
T	Bonsignore Trial Lawyers, PLLC	23.3	\$12,900.00	\$194.17
	Total	23,291.65	\$14,393,275.46	\$2,003,400.50

83. Epiq’s outstanding invoices for claims administration costs, fees, and expenses related to paying notice to the Settlement Classes, maintaining and administering the settlement fund website, and taxation matters total \$353,853.23.

84. A summary of the expenses incurred and paid, expenses invoiced but not yet paid, and a modest holdback for possible future administrative expenses is described in the table below, along with the remaining balance of the litigation fund, to calculate the total amount of incurred and unreimbursed expenses sought:

SUMMARY OF EXPENSES INCURRED ON BEHALF OF THE CLASSES

Expense Category	Amount
Expenses Incurred To-Date	\$2,003,400.50
Invoiced But As-Yet Unpaid Expenses	\$353,853.23
Epiq Holdback	\$40,000.00
Litigation Fund Balance	(\$194,642.68)
Total Expense Reimbursement Request	\$2,202,611.05

85. The above expenses were all reasonably incurred and necessary to the representation of the Classes. Because these expenses were critical to achieving the result obtained for the Classes, and fully reasonable given the demands of this complex antitrust case, Class Counsel respectfully request that their total incurred and unreimbursed expenses in the amount of \$2,202,611.05 be reimbursed.

86. Class Counsel respectfully request attorneys’ fees in the amount of 33 $\frac{1}{3}$ % of the Settlement amount before expenses, unreimbursed expenses in the amount of \$2,202,611.05, plus a proportionate amount of any interest accrued since the Settlement was escrowed.

87. Under historical billing rates, Class Counsel’s lodestar is \$14,393,275.46, yielding a multiplier of 0.81%.

CONTRIBUTIONS OF THE CLASS REPRESENTATIVES

88. The Class Representatives' involvement in this case was instrumental to the result achieved in the case and justifies service awards for each of them. In short, the recovery of \$35 million for consumers and TPPs who purchased Lipitor, or its generic equivalent, would not have happened if these Class Representatives had not stood up and represented the Classes.

89. Throughout this litigation, Class Representatives have approved pleadings; responded to written discovery; searched for, gathered, preserved, and produced thousands of pages of documents; responded to document requests; prepared and sat for their depositions; kept themselves apprised of the progress of the case; and reviewed and approved the Pfizer settlement, all without any promise of receiving anything for their service.

90. In recognition of their time and efforts expended for the benefit of the Classes, Co-Lead Counsel request a service award of \$15,000 for each of the Class Representatives.

Executed this 27th day of August in Chicago, IL.

/s/ Kenneth A. Wexler
Kenneth A. Wexler

Executed this 27th day of August in New York, NY.

/s/ Sharon K. Robertson
Sharon K. Robertson

Executed this 27th day of August in New York, NY.

/s/ Michael M. Buchman
Michael M. Buchman

Executed this 27th day of August in Wilmington, DE.

/s/ Robert G. Eisler
Robert G. Eisler