

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION**

**MDL No. 2445**

**Master File No. 2:13-MD-2445-MSG**

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**NOTICE OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS'  
FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR THE  
CLASS REPRESENTATIVES**

**PLEASE TAKE NOTICE** that upon the accompanying Memorandum of Law, and Declaration of Bruce E. Gerstein and Exhibits A-I thereto, Class Counsel hereby move for an award of attorneys' fees, reimbursement of expenses, and service awards for the class representatives.

Dated: December 29, 2023

Respectfully Submitted,

*/s/ Bruce E. Gerstein*

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Bruce E. Gerstein  
Noah Silverman  
Kimberly Hennings  
Garwin Gerstein & Fisher LLP  
88 Pine Street, 28th Floor  
New York, NY 10005  
(212) 398-0055

*Co-Lead Counsel for the Direct Purchaser  
Plaintiffs and Counsel for Burlington Drug  
Company, Inc.*

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

*Co-Lead Counsel for the Direct Purchaser  
Plaintiffs and Counsel for Rochester Drug Co-  
Operative, Inc.*

Stuart E. Des Roches  
Andrew W. Kelly  
Chris Letter  
Odom & Des Roches, LLC  
650 Poydras Street, Suite 2020  
New Orleans, LA 70130  
(504) 522-0077

*Counsel for Burlington Drug Company, Inc.*

Russell Chorush  
Heim, Payne & Chorush LLP  
1111 Bagby Street, #2100  
Houston, TX 77002  
(713) 221-2000

Thomas M. Sobol  
Jessica R. MacAuley  
Kristen Johnson  
Hannah Schwarzschild  
Hagens Berman Sobol Shapiro LLP  
1 Faneuil Hall Sq., 5<sup>th</sup> Fl.  
Boston, MA 02109  
(617) 482-3700

*Co-Lead Counsel for the Direct Purchaser  
Class Plaintiffs and Counsel for Meijer, Inc.  
and Meijer Distribution, Inc.*

David P. Smith  
Susan Segura  
David C. Raphael, Jr.  
Erin R. Leger  
Smith Segura Raphael & Leger, LLP  
3600 Jackson St., Suite 111  
Alexandria, LA 71303  
(318) 445-4480

*Counsel for Burlington Drug Company, Inc.*

David F. Sorensen  
Caitlin G. Coslett  
Richard Schwartz  
Berger Montague PC  
1818 Market Street, Suite 3600  
Philadelphia, PA 19103

*Counsel for Burlington Drug Company, Inc.*

(215) 875-3000

Barry S. Taus  
Archana Tamoshunas  
Taus, Cebulash & Landau LLP  
123 William Street, Suite 1900A  
New York, NY 10038  
(212) 931-0704

*Counsel for Rochester Drug Co-Operative,  
Inc.*

Joseph M. Vanek  
David P. Germaine  
John P. Bjork  
Sperling & Slater, P.C.  
55 W. Monroe Street, Suite 3200  
Chicago, IL 60603  
(312) 641-3200

*Counsel for Meijer, Inc. and Meijer Distribution,  
Inc.*

*Counsel for Meijer, Inc. and Meijer  
Distribution, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 29, 2023, I caused the above to be publicly filed on the Court's CM/ECF system.

Respectfully submitted,

/s/ Bruce E. Gerstein  
Bruce E. Gerstein

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
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**MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR  
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS  
FOR THE NAMED PLAINTIFFS**

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## I. INTRODUCTION

Class Counsel, who have represented named plaintiffs Burlington Drug Company, Inc. (“BDC”), Rochester Drug Co-Operative, Inc. (“RDC”), and Meijer, Inc. and Meijer Distribution, Inc. (collectively “Meijer”) and the certified direct purchaser class (hereinafter “Plaintiffs” or the “Class”) throughout this litigation, respectfully submit this memorandum in support of their Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses and Services Awards for the Named Plaintiffs.

On October 4, 2023, after more than a decade of litigation and just 3½ weeks before a jury trial was to commence on October 30, and during a third round of a multi-month mediation presided over by this Court by agreement of all parties and their counsel, Class Counsel agreed to a settlement (the “Settlement”) with Indivior, Inc. (“Indivior”) providing for one (1) immediate cash payment of \$385 million for the benefit of the Class. If finally approved by the Court, the Settlement will represent one of the largest recoveries that Class Counsel has obtained for the direct purchaser class in a pharmaceutical antitrust case, and will represent a recovery where Class Counsel’s early independent investigative work gave rise to later cases brought by various government entities.

Investigating, bringing, and litigating this lengthy and highly complex case through trial preparation required Class Counsel to expend significant hard work and extraordinary perseverance, despite knowing that they were litigating the case on a wholly contingent basis without any guarantee of success against a formidable adversary who would (and did) assert every conceivable defense. This contingent risk was exacerbated by Indivior’s sometimes perilous financial condition. From case investigation through the filing of their motion for preliminary approval of the proposed Settlement between Plaintiffs and Indivior, Class Counsel expended more than 112,000 hours of uncompensated professional time equating to a lodestar of

approximately \$80 million. Class Counsel also incurred approximately \$7.5 million in unreimbursed out-of-pocket expenses. For these efforts, Class Counsel seek an award of attorneys' fees in the amount of one-third (33⅓%) of the settlement amount net of unreimbursed expenses and service awards to the named plaintiffs, plus a proportionate amount of any interest accrued since the settlement was escrowed. The requested fee represents a 1.57 multiplier on Class Counsel's lodestar. Class Counsel also seek service awards in the amount of \$150,000 each for class representatives BDC, RDC, and Meijer.<sup>1</sup>

As detailed below, Class Counsel's fee request is strongly supported by consideration of each of the "*Gunter/Prudential*" factors.

First, the size of the settlement — \$385 million cash — unquestionably represents a substantial, immediate, and guaranteed recovery for the Class. It is one of the largest settlements that Class Counsel has achieved for the Class in terms of dollar value.

Second, to the extent any objections to Class Counsel's requested fee award are received, Class Counsel will promptly inform the Court.

Third, Class Counsel are highly experienced antitrust litigators, some of whom have been representing the Class here for decades, and possess the valuable skill, knowledge, and expertise necessary to resolve this long-pending litigation successfully.

Fourth and fifth, while all antitrust cases are inherently complex and all litigation involves some degree of risk, these complexities and risks are magnified in pharmaceutical antitrust cases, particularly in this case, which involved a unique combination of legal and factual

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<sup>1</sup> The efforts of Class Counsel are described in further detail below and in the declaration of Bruce E. Gerstein ("Gerstein Decl.") and individual law firm declarations, filed contemporaneously herewith (Gerstein Decl. Exs. A through I).

issues, as well as a defendant with financial issues. Class Counsel aggressively litigated across all issues to ensure that the Class's potential recovery would not be eliminated or curtailed during the litigation and at trial. Nonetheless, a high degree of risk remained. Previous pharmaceutical antitrust cases have been lost after significant outlays of time and expenses by Class Counsel either because of successful defense summary judgment motions or adverse jury verdicts.

Sixth, the litigation was settled at a very advanced stage, with trial just 3.5 weeks away when a settlement-in-principle was agreed to after a third round of extended mediation efforts.

Seventh, the requested fee award of one-third is squarely within the range typically awarded by courts in the Third Circuit, and is also in line with awards granted in other pharmaceutical antitrust cases.

Eighth, Class Counsel filed the first complaint on behalf of any plaintiff group months before the FDA's referral of Indivior's conduct to the FTC, the FTC's subsequent investigation, and the filing of criminal indictments by the DOJ. Class Counsel did not ride the coattails of any government investigation in initiating and prosecuting this litigation; quite the opposite. In addition, the Settlement was negotiated wholly independently of the settlements other plaintiff groups and enforcement agencies achieved.

Ninth, the requested fee award is consistent with the percentage fee that courts in this Circuit have held would have been privately negotiated,

Finally, a lodestar cross-check equals a 1.57 multiplier of Class Counsel's total lodestar. This multiplier is amply justified by this case's high risk, complexity, and length, coupled with Class Counsel's hard work, skill, and perseverance.

## II. SUMMARY OF CLASS COUNSEL’S LITIGATION EFFORTS

### A. Pre-Filing Investigation

Class Counsel began investigating this case in August of 2012. Class Counsel’s pre-filing investigation included, *inter alia*, reviewing and analyzing the market availability of generic versions of Suboxone; publicly available regulatory filings for Suboxone Tablets and Film, including Indivior’s 2009 Citizen Petition related to Subutex, Indivior’s September 2012 Citizen Petition relating to Suboxone, and generic manufacturer Amneal’s October 2012 response to the Citizen Petition; Indivior’s annual reports; Indivior’s promotional materials related to Suboxone Tablets and Film; information related to Suboxone product packaging; information related to Indivior’s Risk Evaluation and Mitigation Strategies (“REMS”) for Suboxone; information related to accidental pediatric exposures to Suboxone Tablets and Film, as well as reports of misuse, abuse and diversion; and medical treatment options for opioid use disorder. Gerstein Decl. at ¶ 1.

Class Counsel filed the initial direct purchaser complaint in December 2012 — *before* the FDA issued its February 2013 decision on Indivior’s September 25, 2012 Citizen Petition — without the aid of any preceding governmental action, and to Class Counsel’s knowledge, prior to the commencement of any government agency investigation into the misconduct alleged in this case. *Id.* at ¶¶ 2-3.

### B. Motion to Dismiss

On September 16, 2013, Indivior filed a motion seeking to dismiss Plaintiffs’ claims on multiple bases, including challenging Plaintiffs’ theory that Indivior’s conduct constituted an actionable scheme to monopolize. After conducting oral argument on Indivior’s motion, the Court largely denied it, allowing the parties to turn to discovery. *Id.* at ¶¶ 7-10.

**C. Discovery**

In response to document requests served by Class Counsel on Indivior and third parties, Class Counsel received an unusually high volume of documents. While Class Counsel generally obtains, on average, approximately 2-4 million pages of documents in most pharmaceutical antitrust cases, Class Counsel fought for, and obtained, approximately 6.7 million pages of documents from Indivior and third parties in this litigation. *Id.* at ¶ 15. To construct Plaintiffs’ case — in particular, to assemble the various components of conduct that Plaintiffs alleged were part of Indivior’s overarching anticompetitive scheme — and to vigorously oppose Indivior’s defenses, Class Counsel had to carefully review such documents by, *inter alia*, forming numerous subject matter teams. Class Counsel then assembled collections of key documents, and used those documents in depositions, expert reports, in seeking class certification and in opposing summary judgment, during the various mediation efforts, and in preparing this case for trial. Class Counsel took 33 fact and 7 expert depositions and defended 3 fact and 8 expert depositions (51 depositions overall). *Id.* at *e.g.*, ¶¶ 15-18.

Class Counsel also engaged in discovery-related motion practice. Class Counsel filed motions to compel against both Indivior and third-party Actavis (one of the earliest sellers of generic Suboxone Tablets), some of which Class Counsel prevailed upon. Class Counsel also successfully defended against Indivior’s motion to compel “downstream” discovery from Plaintiffs, and successfully prevented Indivior from entirely shielding certain witnesses from being deposed based upon Fifth Amendment invocations. *Id.* at ¶¶ 19-23, 49-52.

**D. Class Certification**

Class Counsel developed the evidence necessary to support their motion for certification of the direct purchaser class, obtained a grant of class certification from this Court on September 27, 2019, successfully defended against Indivior’s *Daubert* motion against Plaintiffs’ expert

economist, and then successfully defeated Indivior's appeal of this Court's class certification decision, which was unanimously affirmed in a precedential opinion by the Third Circuit. Notably, Indivior's appeal of class certification in the Third Circuit involved challenges to the merits of this action. It included a motion seeking "judicial notice" of certain evidence, forcing Class Counsel to defend in the Third Circuit not just the grant of class certification but also the cognizability under Section 2 of the Sherman Act of a multi-faceted overarching anticompetitive scheme of which one aspect was a unilateral increase in price. *Id.* at ¶¶ 29-36.

**E. Summary Judgment and *Daubert* Motions**

At their sole risk and expense (totaling more than \$6 million), Class Counsel retained 8 experts, each of whom issued at least one report and sat for one or more depositions. Class Counsel also deposed each of Indivior's 7 experts. *Id.* at ¶¶ 24-27. This effort required Class Counsel to master exceptionally complex material across multiple disciplines to ensure that the experts were fully prepared to address all aspects of Plaintiffs' case — liability, causation, class certification, damages, regulatory background, and nuances particular to Suboxone which is subject to a REMS requirement and the DATA 2000 law — and to provide comprehensible testimony at trial. *Id.* at ¶ 28. Class Counsel was also required to defend against Indivior's broad *Daubert* attacks on Plaintiffs' experts, including successfully defeating Indivior's *Daubert* motion seeking to preclude any of Plaintiffs' experts from testifying that Indivior's safety claims concerning Suboxone Film were false or misleading, which was a significant issue in the case. *Id.* at ¶¶ 37-38.

Likewise, Class Counsel defended against Indivior's *three* motions seeking summary judgment on Plaintiffs' claims, the first of which (in 2016) challenged Plaintiffs' "delay" claims, and the second and third of which (both in 2021) included numerous liability, causation and damages arguments and were supported by 288 statements of fact and 329 exhibits. In opposing



these latter two motions, Class Counsel had to submit a near-equivalent number of counter-statements of fact and 460 exhibits. *Id.* at ¶¶ 45-47. Class Counsel’s efforts proved successful, and Indivior’s motions were denied. *Id.* at ¶ 48. Indeed, as the Court remarked to defense counsel at oral argument: “I think Plaintiffs have done a pretty good job. Every time ... you point to a fact [they] say there’s another fact that we can prove ... and they’ve done a pretty good job in ... saying this isn’t just a counter argument, Judge. This is a fact that’s admissible in evidence.” *See* Dec. 2, 2021 Tr. at 10:8-13.

#### **F. Trial Preparation**

On December 16, 2022 — just two days after the scheduling of court-ordered mediation — the case was set for trial on September 18, 2023, and a pre-trial schedule was ordered. *See* ECF No. 852. Class Counsel thereafter began trial preparations pursuant to the pretrial scheduling order, including negotiating protocols for the exchange of exhibits and deposition designations. Class Counsel began exchanging witness lists, exhibit lists and exhibits, deposition designations, Rule 1006 summaries, and proposed fact stipulations. Gerstein Decl. at ¶ 55. On July 14, 2023, the trial date was reset to October 30, 2023. *See* ECF No. 912. The parties continued their pretrial exchanges, including jury instructions, verdict forms, *voir dire* and jury questionnaires, and negotiated trial procedures concerning further exchanges of items such as demonstratives, culled deposition designations, and notifications of witness ordering. Gerstein Decl. at ¶ 55. During September 2023, Class Counsel filed Plaintiffs’ pretrial memoranda, 21 motions *in limine*, and a motion relating to the continued Fifth Amendment invocations by numerous former Indivior employees after previously challenging those invocations in a motion filed with the Court. *Id.* at ¶¶ 59-60, 62. Class Counsel also deposed four former Reckitt employees who had previously invoked their Fifth Amendment privilege but who later represented that they were willing to testify, deposed Indivior’s current CEO (who previously

served as CFO) after he was belatedly added to Indivior’s witness list and responded to Indivior’s motion concerning the admissibility of evidence relating to the criminal and False Claims Act proceedings against Indivior. *Id.* at ¶¶ 56-57, 59. Class Counsel also filed a motion directed to various trial presentation matters, and opposed numerous pre-trial motions filed by Indivior. At the time a settlement-in-principle was reached, Class Counsel were just two days away from filing oppositions to Indivior’s own 21 motions *in limine*, and were actively preparing for the final pretrial conference with the Court, at which the parties were set to argue motions *in limine* and objections to witnesses and exhibits. *Id.* at ¶¶ 60-63.

### **G. Mediation and Settlement**

The parties reached an agreement in principle on October 4, 2023 as part of the third round of mediation proceedings, the last of which was presided over by this Court. *Id.* at ¶¶ 65-67. As part of this Court-supervised mediation process, which commenced in January 2023 and spanned approximately ten months, counsel for both sides presented their views on the merits of each other’s positions, as well as Indivior’s financial wherewithal, and engaged in hard fought, arm’s length negotiations, as overseen by the Court. Further, even after the parties reached the settlement-in-principle, the parties continued to engage in hard fought negotiations concerning various specific terms of the settlement for several weeks, coming to final agreement just days before Class Counsel filed a motion for preliminary settlement approval. *Id.* at ¶ 68.

## **III. ARGUMENT**

### **A. Class Counsel Should Be Awarded Reasonable Attorneys’ Fees**

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” *See* Fed. R. Civ. P. 23(h). An attorney “who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van*

*Gemert*, 444 U.S. 472, 478 (1980). See also *Ahrendsen v. Prudent Fiduciary Servs., LLC*, 2023 U.S. Dist. LEXIS 107802, at \*18 (E.D. Pa. Jun. 22, 2023) (“Class Counsel are entitled to reasonable attorney’s fees and litigation expenses paid from a common fund settlement”).

While attorneys’ fees may be calculated using either the percentage-of-recovery method or the lodestar method, “the percentage-of-recovery method is generally favored in common fund cases, such as the one here, because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for its failure.’” *In re Suboxone (Buprenorphine and Naloxone) Antitrust Litig.*, No. 13-md-2445, ECF No. 990 at 24 (E.D. Pa. Dec. 4, 2023) (Goldberg, J.) (quoting *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998) (internal quotations omitted) and citing *In re Rite Aid Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)). See also *Glaberson v. Comcast Corp.*, 2015 U.S. Dist. LEXIS 127370, at \*37 (E.D. Pa. Sep. 22, 2015) (“[t]he Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases. Courts within the Third Circuit and elsewhere routinely use this method in antitrust class actions) (collecting cases); *In re Kirsch v. Delta Dental of N.J.*, 534 Fed. Appx. 113, 115 (3d Cir. 2013) (percentage of recovery method “generally favored in common fund cases”) (internal quotation omitted); *Ahrendsen*, 2023 U.S. Dist. LEXIS 107802, at \*18 (percentage-of-recovery is “preferred method”); *In re Remicade Antitrust Litig.*, 2023 U.S. Dist. LEXIS 43284, at \*65 (E.D. Pa. Mar. 15, 2023) (“Where, as here, the settlement funds come from a common fund, courts generally evaluate the attorneys’ fees’ reasonableness using the percentage-of-recovery method, with a lodestar crosscheck”). A percentage recovery method appropriately incentivizes counsel to maximize the recovery for the class as much as possible.

**B. The *Gunter/Prudential* Factors Support Class Counsel’s Requested Fee**

In evaluating fee awards, courts in the Third Circuit consider the following factors as articulated in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n. 1 (3d Cir. 2000):

(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or the fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by counsel; and (7) awards in similar cases.

Additionally, courts generally also consider:

[8] [T]he value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, [9] the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained, and [10] any “innovative” terms of settlement.

*In re Suboxone*, ECF No. 990 at 24 (citing *In re Prudential*, 148 F.3d at 336-40). *See also In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.*, 2022 U.S. Dist. LEXIS 196845, at \*28 (E.D. Pa. Oct. 28, 2022) (listing additional factors). Overall, these “reasonableness factors ‘need not be applied in a formulaic way’ because each case is different, ‘and in certain cases, one factor may outweigh the rest.’” *Id.* (quoting *In re Rite Aid*, 396 F.3d at 301 and *Gunter*, 222 F.3d at 195 n.1). Further, a court may consider “any other factors that are useful and relevant with respect to the particular facts of the case.” *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 166 (3d Cir. 2006).

“Once all of the *Gunter* and *Prudential* factors have been considered, the Third Circuit has suggested that it is ‘sensible’ for district courts to ‘cross check’ the percentage fee award against the ‘lodestar’ method [to] ensure that the percentage-of-recovery method does not yield too high or low of an award.” *In re Suboxone*, ECF No. 990 at 26 (citing *In re Prudential*, 148 F.3d 333 and *In re Rite Aid*, 396 F.3d at 305-06). *See also Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 U.S. Dist. LEXIS 69614, at \*81-82 (E.D. Pa. Apr. 20, 2020) (Goldberg, J.).

As demonstrated below, consideration of each factor, followed by a lodestar cross check, supports the requested fee.

**1. The Size of the Fund Created and the Number of Persons Benefitted Favor the Requested Fee**

The first factor considers the fee request in comparison to “the size of the fund created [and] the number of persons benefitted.” *In re Suboxone*, ECF No. 990 at 26. *See also In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*67. This is because in awarding fees, the “most critical factor is the degree of success obtained.” *Hensley v. Eckerheart*, 461 U.S. 424, 436 (1983). Here, the Class will share in a recovery of \$385 million (net of attorneys’ fees, expenses and service awards granted by the Court). This ranks among one of the largest settlements achieved for a direct purchaser class in a pharmaceutical antitrust case. Because numerous Class members have already returned the claim forms that were mailed to them contemporaneously with the notice of settlement, upon the Settlement becoming final Class members will promptly receive a substantial recovery. *See generally In re Suboxone*, ECF No. 990 at 27 (one third fee award reasonable in \$30 million settlement benefitting class of indirect purchasers in pharmaceutical antitrust case with substantial number of claimants getting relief).

The recovery to the Class is substantial not only in terms of dollar value, but also when assessed in light of the risks Class Counsel faced in prosecuting the Class’s claims, as discussed below in Section III.B.5. Absent the Settlement, Class Counsel would have had to secure a favorable jury verdict against Indivior. And even assuming that occurred, an appeal (and subsequent petition for *certiorari*) would inevitably follow, presenting additional risk and delay in a case already more than a decade old. Additionally, Indivior’s financial condition would continue to be an independent risk due to ongoing litigation in other jurisdictions. Moreover, there was a substantial possibility that a judgment in Plaintiffs’ favor would result in Indivior

declaring bankruptcy, jeopardizing the Class's recovery. In comparison, the Settlement assures the Class of an immediate and substantial recovery free from the risks and delays of a jury trial and subsequent appeals.

Accordingly, analysis of this factor supports Class Counsel's fee request.

## **2. Objections to the Requested Fee**

The Third Circuit has recognized that when there are either no or few objections to a fee request, it can be said that the class's "reaction to the fee request supports approval" of the requested fees, particularly where class members are "sophisticated" entities that have "considerable financial incentive to object had they believed the requested fees were excessive." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). *See In re Schering-Plough Corp.*, 2012 U.S. Dist. LEXIS 75213, at \*18 (D.N.J. May 31, 2012) ("The lack of objections to the requested attorneys' fees supports the request, especially because the settlement class includes large, sophisticated institutional investors") (internal quotation omitted); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F.Supp.2d 322, 338 (E.D. Pa. 2007) ("The absence of objections to the requested attorneys' fees...is particularly notable given the sophisticated nature of the absent Class Members"); *Vista*, 2020 U.S. Dist. LEXIS 69614, at \*84 (lack of objections by nearly all class members who had filed claims "tacitly indicat[ed] their approval for the Settlement and requested attorneys' fees").

Here, on November 20, 2023, Class members were mailed a notice of settlement which informed them of the fact of and details concerning the Settlement, that Class Counsel intended to submit an application for attorneys' fees of up to 33⅓% of the Settlement Fund plus court-approved expenses and service awards, including a proportionate share of interest accrued, and that Class members had the right to object to any or all of the above and the procedures for doing so. The period for lodging objections to either the Settlement or Class Counsel's fee application

concludes on January 12, 2024. *See* ECF No. 984 (Order) at ¶¶ 8, 15-16. In the event any objection is received, Class Counsel will promptly inform the Court.

Accordingly, this factor can be evaluated once the deadline for objections expires.

### **3. Class Counsel are Highly Skilled in Antitrust Litigation**

“The skill and efficiency of class counsel is measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” *Calhoun v. Invention Submission Corp.*, 2023 U.S. Dist. LEXIS 41172, at \*11 (W.D. Pa. Mar. 8, 2023) (internal quotation omitted). “The Third Circuit has explained that the goal of the percentage fee-award device is to ensure ‘that competent counsel continue to undertake risky, complex, and novel litigation.’” *In re Suboxone*, ECF 990 at 27-28 (quoting *Gunter*, 223 F.3d at 198) (quotations omitted).

Here, Class Counsel’s aggressive prosecution of this case at all stages, and the significant result achieved, demonstrate Class Counsel’s skill and efficiency. Lead Class Counsel worked with a sophisticated group of co-counsel to achieve what Class Counsel believe is an outstanding result for the Class. Class Counsel were fully prepared to try this case skillfully and with vigor, as the Court knows. Collectively, counsel for the Class represent some of the most preeminent antitrust firms in the country, with decades of experience in complex pharmaceutical antitrust litigation. Each law firm involved specializes in particular areas of expertise (*e.g.*, issues relating specifically to liability, causation, regulatory regimes, economics, pharmaceutical industry business operations, pharmaceutical wholesaler business operations), providing Class Counsel the ability to deploy an efficient and non-duplicative allocation of resources meant to both build the strongest case possible for the Class and to rebut each of Indivior’s numerous defenses. Class Counsel had formidable adversaries in the form of two large and sophisticated defense firms

retained by Indivior. Indeed, this Court has acknowledged that the attorneys on both sides were “outstanding” (Dec. 2, 2021 Tr. at 10:14-15), “sophisticated [and] super experienced[.]” *See* Dec. 13, 2022 Tr. at 13:12-13. *See also In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*68-70 (where attorneys representing both sides were “well-credentialed, highly qualified, and have years of experience litigating similar matters,” this factor weighed in favor of finding requested fees reasonable); *In re Innocoll*, 2022 U.S. Dist. LEXIS 196845, at \*30-31 (that class counsel was experienced and successful in the field and demonstrated skillful litigation over the course of five years “merit[ed] approval of the requested attorneys’ fees”).

Accordingly, analysis of this factor supports Class Counsel’s fee request.

#### **4. The Complexity and Duration of the Action Favor the Requested Fee**

Courts have frequently acknowledged that “antitrust class actions are among the most complex to litigate.” *In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*71 (citing cases). *See also Fusion Elite All Stars v. Varsity Brands, LLC*, 2023 U.S. Dist. LEXIS 179316, at \*14-15 (W.D. Tenn. Oct. 4, 2023) (“Antitrust actions are ‘arguably the most complex actions[s] to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome.’”) (internal quotation omitted). Moreover, “[i]t is well known that monopolization cases are among the most complex and difficult and protracted in the antitrust field.” *U.S.N. Co. v. American Express Co.*, 55 F.R.D. 31, 32 (E.D. Pa. 1972).

This case was no exception. It was uniquely complex, as this Court noted. *See In re Suboxone*, ECF No. 990 at 28 (“The legal issues involved here were complex, implicating a novel theory of a product hop antitrust scheme.”). Never before — or since — has an antitrust case in the pharmaceutical industry consisted of all the following alleged, unique scheme components parts: a hard product hop from a Tablet to a Film dosage form, using safety allegations, pricing, public statements, formulary placement, and eventual product withdrawal as



means of achieving the product hop; manipulations of FDA-mandated REMS negotiations to delay market entry of generics; and use of a Citizen Petition.

Class Counsel reviewed approximately 6.7 million pages of documents, took and defended numerous depositions, and retained highly qualified experts in order to build evidence of the numerous components of the anticompetitive scheme alleged and to refute Indivior's countless defenses. During the entirety of the litigation, Indivior asserted every conceivable defense to Plaintiffs' claims, as perhaps most aptly demonstrated by its sweeping (and unsuccessful) motions for summary judgment on all claims, discussed above. *See generally In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*70-71 (complexity of pharmaceutical antitrust litigation weighed in favor of fee request); *In re Auto Refinishing Paint Antitrust Litig.*, 2008 U.S. Dist. LEXIS 569, at \*14 (E.D. Pa. Jan. 3, 2008) (complexity of price-fixing litigation in automotive paint industry weighed in favor of fee request).

Likewise, the duration of the litigation — more than a decade — is unquestionably significant by any measure. *See In re Suboxone*, ECF 990 at 28 (noting this litigation lasted ten years); *In re Remicade*, 2023 U.S. Dist. LEXIS 43284 at \*70 (antitrust litigation lasting five years weighed in favor of fee request); *Calhoun v. Invention Submission Corp.*, 2023 U.S. Dist. LEXIS 41172, at \*13-14 (W.D. Pa. Mar. 8, 2023) (four-year duration of litigation “strongly” supported fee request); *In re Auto. Refinishing Paint*, 2008 U.S. Dist. LEXIS 569, at \*14 (six-year duration of antitrust litigation supported fee request).

Accordingly, analysis of this factor supports Class Counsel's fee request.

##### **5. The Risk of Nonpayment Favors the Requested Fee**

“Courts in the Third Circuit have consistently recognized that the attorneys' contingent fee risk is an essential factor in determining a fee award.” *In re Mercedes-Benz Emissions Litig.*, 2021 U.S. Dist. LEXIS 256167, at \*44 (D.N.J. Aug. 2, 2021). This is because class counsel who

undertake to litigate on a purely contingent basis take “the risk [that] they would never be able to recoup fees for any of their efforts.” *In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*71. (approving fee award where class counsel “worked on this litigation for five years but have not been paid a cent to date”); *Kyle Stechert v. Travelers Home & Marine Ins. Co.*, 2022 U.S. Dist. LEXIS 113277, at \*33-34 (E.D. Pa. Jun. 27, 2022) (approving fee award where class counsel worked on case for six years on a contingent basis).

Here, Class Counsel filed and litigated this case for more than a decade, despite the risk that they would receive zero compensation for their hard work and long hours and would never recover the millions of dollars in out-of-pocket cash outlays required to litigate this case. Nonetheless, Class Counsel represented the Class on a purely contingent basis, with no up-front retainer fees or allowance for expenses, or any compensation during the lengthy pendency of the litigation. *In re Suboxone*, ECF 990 at 29 (for over “ten years, Class Counsel devoted extensive amounts of time and resources to litigating this case, all while pursuing complex legal theories which brought with them no guarantee of recovery at trial.”); *Stechert*, 2022 U.S. Dist. LEXIS 113277, at \*34 (“Class Counsel have worked on this litigation for six years but have not yet been paid a dime. They took the risk they would never be able to recoup fees for any of their efforts...so this factor weighs in favor of awarding the requested fees”); *Vista*, 2020 U.S. Dist. LEXIS 69614 at \*86-87 (detailing risks of contingent fee representation in complex pharmaceutical class action, including risks related to denial of class certification and appeals). Absent the Settlement, the case was very near trial and while Class Counsel was confident in the Class’s claims, and remain so, there was no guarantee that a jury would find in the Class’s favor (or that a favorable jury verdict would withstand an inevitable appeal). The risks are evident in view of several pharmaceutical antitrust cases that some or all of Class Counsel have been

involved in that have been unsuccessful and yielded no recovery after Class Counsel expended thousands of hours and millions of dollars in resources.<sup>2</sup>

Additionally, as mentioned above, there was an additional layer of non-payment risk at play throughout this case due to Indivior's financial condition. Despite that additional risk, Class Counsel persevered and did not take a "lowball" settlement years ago.

Accordingly, analysis of this factor supports Class Counsel's fee request.

**6. The Significant Time Devoted to This Action Favors the Requested Fee**

Class Counsel collectively expended more than 112,000 hours litigating this case and have advanced out-of-pocket outlays of approximately \$7.5 million in that effort to date. Courts have found that where class counsel expends significant time in litigating the case, this represents a "substantial commitment" to the case that weighs in favor of approving a fee request. *In re Suboxone*, ECF No. 990 at 29 (noting EPP counsel spent over 26,000 hours prosecuting this case); *see McDonough*, 80 F.Supp.3d at 653 (class counsel devoted more than 84,000 hours over an eight-year period in price-fixing case). *See also Vista*, 2020 U.S. Dist. LEXIS 69614, at \*87 (class counsel devoted more than 41,000 hours over a twelve year period in antitrust litigation); *In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*72 (class counsel devoted more than 23,000 hours in "complex antitrust litigation that involved lengthy discovery"); *In re Mercedes-Benz*, 2021 U.S. Dist. LEXIS 256167, at \*45-46 (class counsel expended more than 25,000 hours in complex litigation); *Wallace v. Powell*, 2015 U.S. Dist. LEXIS 172326, at \*84-

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<sup>2</sup> After years of litigation, jury trials were lost in *In re HIV Antitrust Litig.*, Case No. 19-cv-02573 (N.D. Cal. Jun. 30, 2023), *In re Opana ER Antitrust Litig.*, Case No. 14-cv-10150 (N.D. Ill. Jul. 1, 2022), *In re Nexium Antitrust Litig.*, Case No. 12-md-02409 (D. Mass. Dec. 5, 2014), and *La. Wholesale Drug Co., Inc. v. Sanofi-Aventis*, Case No. 07-cv-07343 (S.D.N.Y. Nov. 20, 2008).

85 (M.D. Pa. Dec. 21, 2015) (where class counsel expended more than 40,000 hours such “a substantial commitment to this litigation...strongly favor[ed]” granting fee request).

Such was the case here. As detailed herein, from pre-complaint investigation through the time that the Court granted preliminary approval to the Settlement, Class Counsel expended an enormous amount of time over more than a decade prosecuting the Class’s claims. Moreover, since that time, Class Counsel has and will continue to expend a significant number of non-compensable hours in connection with seeking final approval of, and administering, the Settlement so that Class members can achieve immediate financial recovery. *See In re Remeron Direct Purchaser Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27013, at \*42 (D.N.J. Nov. 9, 2005) (observing that class counsel would “likely incur hundreds of additional hours in connection with administering the settlement, without [compensation]”).

Accordingly, analysis of this factor supports Class Counsel’s fee request.

#### **7. The Requested Fee is In Line With Awards in Similar Cases**

Class Counsel’s one-third fee request falls squarely in line with fee awards in this Circuit in common fund cases. “While there is no benchmark for the percentage of fees to be awarded in common fund cases, the Third Circuit has noted that reasonable fee awards in percentage-of-recovery cases generally range from nineteen to forty-five percent of the common fund.” *In re Suboxone*, ECF 990 at 30 (quoting *Stevens v. SEI Invs. Co.*, 2020 U.S. Dist. LEXIS 35471, at \*35 (E.D. Pa. Feb. 26, 2020) and citing *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995)). *See also Baez-Medina v. Judge Grp., Inc.*, 2023 U.S. Dist. LEXIS 124960, at \*20-21 (E.D. Pa. Jul. 20, 2023) (“The Third Circuit ‘has recognized fee awards in common-fund case[s] generally range from twenty percent to forty-five percent of the overall settlement fund.’”) (quoting *Starnes v. Amazon.Com., Inc.*, 2023 U.S. Dist. LEXIS 79515, at \*17-18 (E.D. Pa. May 8, 2023)). *See also Vista*, 2020 U.S. Dist. LEXIS 69614, at \*88

(noting that within the Third Circuit “courts have consistently approved such awards”). As such, fee awards of “around thirty (30) percent are routinely found reasonable.” *Morales v. Unique Beginning Caterers Ltd. Liab. Co.*, 2021 U.S. Dist. LEXIS 236744, at \*4 (D.N.J. Dec. 10, 2021).

As this Court noted in the End Payor litigation, “Class Counsels’ requested fees in this case represent 33⅓% of the total recovery — a percentage which is well within the range of reasonable fees, on a percentage basis, in the Third Circuit.” *In re Suboxone*, ECF 990 at 27. *See also In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*72 (“Courts within the Third Circuit often award fees of 25% to 33% of the recovery”) (citing cases) (internal quotation omitted); *In re Innocoll*, 2022 U.S. Dist. LEXIS 196845, at \*24-25 (one-third fee request was “within a reasonable range” and in “comparison with fee awards in other Third Circuit class action settlements”).

Moreover, Class Counsel’s fee request is in line with fees awarded in other complex pharmaceutical antitrust cases brought by direct purchasers both within and outside of this Circuit, as the chart below reflects:

Case	Settlement	Fee
<i>In re Opana ER Antitrust Litigation</i> , MDL No. 2580, (N.D. Ill. Nov. 3, 2022), ECF Nos. 1081, 1085	\$145MM	36%
<i>In re Tricor Direct Purchaser Antitrust Litig.</i> , No. 05-cv-340 (D. Del. Apr. 23, 2009), ECF Nos. 531, 543.	\$250MM	33⅓%
<i>In re Buspirone Antitrust Litig.</i> , 01-cv-7951 (S.D.N.Y. April 17, 2003), ECF No. 22	\$220MM	33⅓%
<i>La. Wholesale Drug Co. v. Pfizer, Inc. (In re Neurontin Antitrust Litig.)</i> , 2014 U.S. Dist. LEXIS 206338 (D.N.J. Aug. 6, 2014)	\$191MM	33⅓%
<i>In re Relafen Antitrust Litig.</i> , 2004 U.S. Dist. LEXIS 28801 (D. Mass. April 9, 2004)	\$175MM	33⅓%
<i>In re Novartis and Par Antitrust Litig.</i> , No. 18-cv-04361 (S.D.N.Y. Jul. 26, 2023), ECF Nos. 604, 635	\$126MM	33⅓%
<i>In re Prograf Antitrust Litig.</i> , No. 2015 U.S. Dist. LEXIS 199792	\$98MM	33⅓%

Case	Settlement	Fee
(D. Mass. May 20, 2015)		
<i>In re Celebrex (Celecoxib) Antitrust Litig.</i> , 2018 U.S. Dist. LEXIS 85125 (E.D. Va. Apr. 18, 2018)	\$94MM	33⅓%
<i>In re Remeron Direct Purchaser Antitrust Litig.</i> , 2005 U.S. Dist. LEXIS 27013 (D.N.J. Nov. 9, 2005)	\$75MM	33⅓%
<i>In re Skelaxin (Metaxalone) Antitrust Litig.</i> , 2014 U.S. Dist. LEXIS 91661 (E.D. Tenn. Jun. 30, 2014)	\$73MM	33⅓%
<i>In re Solodyn Antitrust Litig.</i> , 14-md-2503 (D. Mass. Nov. 27, 2017), ECF No. 808	\$72.5MM	33⅓%
<i>In re Terazosin Hydrochloride Antitrust Litig.</i> , No. 99-md-1317 (S.D. Fla. April 19, 2005), ECF No. 1557	\$72.5MM	33⅓%
<i>In re K-Dur Antitrust Litigation</i> , No. 01-cv-1652 (D.N.J. Oct. 5, 2017), ECF No. 1057	\$60.2MM	33⅓%
<i>Meijer, Inc. v. Abbott Labs.</i> , No. 07-cv-5985 (N.D. Cal. Aug. 11, 2011), ECF No. 514	\$52MM	33⅓%
<i>In re Wellbutrin XL Antitrust Litig.</i> , No. 08-cv-2431 (E.D. Pa. Nov. 7, 2012), ECF No. 485	\$37.5MM	33⅓%
<i>In re Nifedipine Antitrust Litig.</i> , No. 03-md-223 (D.D.C. Jan. 31, 2011), ECF No. 333	\$35MM	33⅓%
<i>Meijer, Inc. v. Barr Pharm., Inc.</i> , No. 05-cv-2195 (D.D.C. Apr. 20, 2009), ECF No. 210	\$22MM	33⅓%
<i>In re DDAVP Direct Purchaser Antitrust Litigation</i> , No. 05-cv-2237 (S.D.N.Y. Nov. 28, 2011), ECF No. 113	\$20.025MM	33⅓%
<i>In re Metoprolol Succinate Antitrust Litig.</i> , No. 06-cv-52 (D. Del. January 12, 2012), ECF No. 194	\$20MM	33⅓%
<i>In re Prandin Direct Purchaser Antitrust Litigation</i> , No. 10-cv-12141 (E.D. Mich. Jan. 20, 2015), ECF No. 68	\$19MM	33⅓%
<i>Rochester Drug Co.-Op., Inc. v. Braintree Labs, Inc.</i> , No. 07-cv-142 (D. Del. May 31, 2012), ECF No. 243	\$17.25MM	33⅓%
<i>In re OxyContin Antitrust Litig.</i> , No. 04-md-1603 (S.D.N.Y. Jan. 25, 2011), ECF No. 360	\$16MM	33⅓%
<i>Mylan Pharm., Inc. v. Warner Chilcott plc.</i> No. 12-cv-3824 (E.D. Pa. September 6, 2014), ECF No. 665	\$15MM	33⅓%
<i>In re Asacol Antitrust Litig.</i> , No. 15-cv-12730 (D. Mass. Dec. 7, 2017), ECF No. 648	\$15MM	33⅓%

Accordingly, analysis of this factor supports Class Counsel's fee request.

**8. The Benefits of the Settlement are Attributable to Class Counsel**

In evaluating a fee request, “[a] significant factor to consider is whether Class Counsel was aided by a government investigation.” *Vista*, 2020 U.S. Dist. LEXIS 69614, at \*89. Courts thus consider whether any governmental or third-party investigation preceded the plaintiffs' claims versus whether class counsel did not “ride on anyone's coattails” in initiating the litigation, such that the benefits of the settlement to class members can be said to be attributable to the work of class counsel. *In re Innocoll*, 2022 U.S. Dist. LEXIS 196845, at \*33. *See also In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*73 (that class counsel was not assisted by governmental investigation such weighed in favor of requested fee); *Stechert*, 2022 U.S. Dist. LEXIS 113277, at \*35 (same).

Here, the exact opposite is true: Class Counsel's efforts aided the government, not the other way around, and the Settlement is directly attributable to the efforts of Class Counsel, and not any governmental entity or other plaintiff group. All complaints brought by other plaintiff groups were filed after Class Counsel filed. Further and even more notably, the first direct purchaser class action complaint, filed in December 2012 by Class Counsel, *preceded* the FDA's referral of Indivior's conduct to the Federal Trade Commission, subsequent FTC investigation, and criminal prosecutions by the Department of Justice, which were not filed until April 2019. *See, e.g., U.S. v. Indivior Inc.*, 19-cr-00016-JPJ-PMS, ECF No. 3 (W.D. Va.) (original Indictment). Moreover, though the other plaintiff groups reached settlements with Indivior prior to the Settlement here, the Settlement here is entirely independent of those settlements. In sum, it cannot be said that the Settlement is attributable to the efforts of others.

Accordingly, analysis of this factor supports Class Counsel's fee request.

**9. The Requested Fee is Consistent With the Percentage Fee That Courts in This Circuit Have Held Would Have Been Privately Negotiated**

This factor compares the requested fee to that which “would have been negotiated if the case had been subject to a private contingent agreement at the time counsel was retained. Courts in the Third Circuit have found that a one-third contingency fee would fit within the customary range.” *In re Innocoll*, 2022 U.S. Dist. LEXIS 196845, at \*33-34 (granting requested fee of one third). *See also In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*73-74 (recognizing that one-third is a “standard contingency award”); *Vista*, 2020 U.S. Dist. LEXIS 69614, at \*91 (“[I]n private contingency fee cases...plaintiffs’ counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery” (internal quotation omitted)).

Here, as noted above, the requested fee of one-third is consistent with what courts have awarded in other pharmaceutical antitrust cases.

Accordingly, this factor supports Class Counsel’s fee request.<sup>3</sup>

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<sup>3</sup> Where, as here, the requested fee satisfies the *Gunter/Prudential* factors (as detailed herein), the Third Circuit declines to apply the so-called “declining percentage” approach to awarding fees, which occurs when the requested percentage is reduced simply because the settlement is “large.” *See, e.g., In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005) (“[T]here is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizeable fund. Put simply, the declining percentage concept does not trump the fact-intensive *Gunter/Prudential* analysis”); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 331 (3d Cir. 2011) (same); *In re AT&T*, 455 F.3d at 174 (same). Moreover, the proffered rationale for the “declining percentage” approach, *i.e.*, instances in which the large recovery cannot be said to be attributed to the direct efforts of counsel, is not applicable here in view of Class Counsel’s aggressive prosecution of this case for more than a decade and until the eve of trial. *See Sullivan*, 667 F. 3d at 331 (noting that cases applying declining percentage involve recoveries that have “no direct relationship” to the efforts of counsel); *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 197 (E.D. Pa. 2000) (criticizing “declining percentage” approach as “penaliz[ing] attorneys who recover large settlements,” “cast[ing] doubt on the whole process by which courts award fees by creating a separate, largely unarticulated set of rules for cases in which the recovery is particularly sizable” even if all of the relevant factors support a higher percentage). Indeed, numerous courts have recognized that downward adjustments to requested fees simply on the basis of the size of the settlement would have the perverse effect of disincentivizing class action lawyers from negotiating a large recovery for class members. *See, e.g., In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 80 (S.D.N.Y. 2000) (“[A]djusting



## 10. Innovative Terms of Settlement

Where a settlement does not contain any innovative terms, courts deem this factor as neutral. *See, e.g., McDonough*, 80 F.Supp.3d at 662; *In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at \*74; *Vista*, 2020 U.S. Dist. LEXIS 69614, at \*92 (lack of innovative terms means that this factor should not bear upon fee award request). Here, though Class Counsel spent significant time negotiating the specific terms of the Settlement, the Settlement does not contain any particularly innovative terms.

Accordingly, analysis of this factor neither weighs in favor nor against Class Counsel's fee request.

### C. A Lodestar Cross-Check Shows a 1.57 Multiplier

Class Counsel's requested fee can also be analyzed using a lodestar crosscheck, which is "a tool to 'ensure that the percentage approach does not lead to a fee that represents an extraordinary lodestar multiple.'" *In re Healthcare Servs. Grp., Inc. Derivative Litig.*, 2022 U.S. Dist. LEXIS 134005, at \*40 (E.D. Pa. Jul. 22, 2022) (internal quotation omitted). The multiplier is meant to "account for the contingent nature or risk involved in a particular case and the quality of the attorneys' work" as well as "to reward an extraordinary result, or to encourage counsel to undertake socially useful litigation." *Id.* at \*41 (internal quotations omitted).

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downward the percentage of the recovery awarded as plaintiffs' recovery increases...may give rise to an attorney incentive problem by creating declining marginal returns to effort for counsel...this method can create an incentive to settle quickly and cheaply, when the returns to effort are the highest, rather than investing additional time and maximizing plaintiffs' recovery"); *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS 25067, at \*68 (D.D.C. July 16, 2001) ("This Court agrees that it is not fair to penalize counsel for obtaining fine results for their clients. Moreover, the Court notes that a one-third recovery is a common percentage arrived at in contingency fee cases.") (citation omitted); *In re Syngenta AG MIR 162 Corn Litig.*, 2018 U.S. Dist. LEXIS 206840, at \*101 (D. Kan. Dec. 7, 2018) (articulating same "incentive problem" observations and award one-third in attorneys' fees on a \$1.5 billion settlement). *See also In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) (rejecting a "megafund cap" because "it would eliminate counsel's incentive to press for more").

As detailed in the Gerstein Declaration, Class Counsel worked over 112,000 hours on this case, which is collectively a lodestar of approximately \$80 million based on Class Counsel’s billing rates at the time a settlement-in-principle was reached. Each firm has also submitted declarations attesting to the reasonableness of their firm’s time. *See* Gerstein Decl. at Exs. A – I.

A one-third fee award would equate to a lodestar multiplier of 1.57.<sup>4</sup> The Third Circuit has recognized that “[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.” *In re Prudential*, 148 F.3d at 341. *See also Brown v. Kadence Int’l*, 2023 U.S. Dist. LEXIS 164037, at \*15 (E.D. Pa. Sep. 15, 2023) (multiplier of 1.64 fell within “the lower range of acceptability”); *In re Healthcare Servs.*, 2022 U.S. Dist. LEXIS 134005, at \*43 (collecting cases and observing that multiplier of 2.01 was “lower than those approved and acknowledged as reasonable within this Circuit and around the country”).

Accordingly, the lodestar multiplier here is well within the range of multipliers that are routinely awarded in this Circuit and have been awarded in comparable cases, as the chart below reflects.

Case	Settlement	Multiplier
<i>In re Relafen Antitrust Litig.</i> , 2004 U.S. Dist. LEXIS 28801 (D. Mass. April 9, 2004)	\$175MM	4.87
<i>In re Provigil Antitrust Litig.</i> , No. 06-cv-1797 (E.D. Pa. Oct. 15, 2015), ECF Nos. 858, 870	\$512MM	4.12
<i>In re Tricor Direct Purchaser Antitrust Litig.</i> , No. 05-cv-340 (D. Del. Apr. 23, 2009), ECF Nos. 531, 543.	\$250MM	3.93
<i>In re Prandin Direct Purchaser Antitrust Litigation</i> , No. 10-cv-12141 (E.D. Mich. Jan. 20, 2015), ECF No. 68	\$19MM	3.01
<i>In re Flonase Antitrust Litig.</i> , 951 F.Supp.2d 739, 750-51	\$150MM	2.99

<sup>4</sup> The multiplier is calculated by dividing the requested fee by Class Counsel’s lodestar.

Case	Settlement	Multiplier
(E.D. Pa. 2013)		
<i>In re Prograf Antitrust Litig.</i> , 2015 U.S. Dist. LEXIS 199792 (D. Mass. May 20, 2015)	\$98MM	2.35
<i>In re Skelaxin (Metaxalone) Antitrust Litig.</i> , 2014 U.S. Dist. LEXIS 91661 (E.D. Tenn. Jun. 30, 2014)	\$73MM	2.26
<i>In re Glumetza Antitrust Litigation</i> , No. 19-cv-5822 (N.D. Cal. Feb. 3, 2022) ECF No. 706	\$453.8MM	2.20
<i>In re Namenda Direct Purchaser Antitrust Litig.</i> , 15-cv-7488 (S.D.N.Y. May 27, 2020) ECF No. 947.	\$750MM	2.0
<i>La. Wholesale Drug Co. v. Pfizer, Inc. (In re Neurontin Antitrust Litig.)</i> , 2014 U.S. Dist. LEXIS 206338 (D.N.J. Aug. 6, 2014)	\$191MM	1.99
<i>In re Celebrex (Celecoxib) Antitrust Litig.</i> , 2018 U.S. Dist. LEXIS 85125 (E.D. Va. Apr. 18, 2018)	\$94MM	1.94
<i>In re DDAVP Direct Purchaser Antitrust Litigation</i> , No. 05-cv-2237 (S.D.N.Y. Nov. 28, 2011), ECF No. 113	\$20.025MM	1.92
<i>In re Remeron Direct Purchaser Antitrust Litig.</i> , 2005 U.S. Dist. LEXIS 27013 (D.N.J. Nov. 9, 2005)	\$75MM	1.8

Given the risks Class Counsel assumed and the amount of time, labor and expense dedicating to litigation this case for more than a decade, the requested fee is reasonable using a lodestar crosscheck.

Accordingly, the lodestar crosscheck supports Class Counsel's fee request.

**D. Class Counsel's Expenses Were Reasonable and Necessary to the Result**

"In the Third Circuit, it is standard practice to reimburse litigation expenses in addition to granting fee awards." *McDonough*, 80 F.Supp.3d at 658. *See also In re All-Clad Metalcrafters, LLC*, 2023 U.S. Dist. LEXIS 27868, at \*38 (W.D. Pa. Feb. 17, 2023) ("Class counsel are entitled to reasonable litigation expenses"); *In re Safety Components Int'l Secs. Litig.*, 166 F.Supp.2d 72,

108 (D.N.J. 2001) (class counsel “entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action”).

Here, Class Counsel’s unreimbursed expenses were reasonably incurred and necessary to the prosecution of the litigation. These expenses include fees paid to experts who were instrumental in addressing the Class’s liability, causation and damages theories and addressing Individior’s defenses as well as costs for, *inter alia*, legal research, the creation and maintenance of an electronic document database, travel and lodging, court reporting services and trial preparation activities.<sup>5</sup> Such documented expenses are of the type routinely deemed as reasonable and appropriately incurred. *See, e.g., id.* at 108; *McDonough*, 80 F.Supp.3d at 658 (noting that “[g]iven the economic complexity of class action antitrust cases...high [expert] costs are to be expected”). Accordingly, the Court should approve reimbursement of Class Counsel’s expenses in full.

**E. Service Awards for the Class Representatives are Appropriate and Reasonable**

Class Counsel request that the Court approve service awards in the amount of \$150,000 each for the class representatives BDC, RDC and Meijer, in recognition of their continuous and extensive participation in this lengthy litigation. The class representatives actively pursued the Class’s interests by filing suit on behalf of all direct purchasers and undertaking the responsibilities of serving as class representatives, including responding to discovery requests, appearing for depositions, regularly being apprised of the progress of the case and participating in mediation and settlement negotiation efforts.

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<sup>5</sup> Certain of the individual declarations of Class Counsel may list “contribution to litigation fund” (or similar phrasing) as an expense. As typically occurs, Co-Lead Counsel established a litigation fund at the inception of the litigation that was used to pay certain of the reasonable expenses herein, most particularly expert and central document database hosting fees, with various firms making regular funding contributions throughout the litigation.

It has long been recognized that private antitrust actions are critical to the enforcement of the antitrust laws for the protection of the general public. *See Am. Soc’y of Mech. Engineers v. Hydrolevel Corp.*, 456 U.S. 556, 573 n. 10 (1982); *In re Air Cargo Shipping Servs. Antitrust Litig.*, 278 F.R.D. 51, 54 (E.D.N.Y. 2010) (“[E]nforcement through private civil actions...is a critical tool for encouraging compliance with the country’s antitrust laws”). As such, “[i]ncentive awards are ‘not uncommon in class action litigation and particularly where, as here, a common fund has been created for the benefit of the entire class.’” *McDonough*, 80 F.Supp.3d at 665 (internal quotation omitted). As such, courts “routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks that they incurred during the course of the class action litigation.” *Id.* (approving service awards where named plaintiffs responded to discovery, sat for depositions, communicated with class counsel as necessary for the effective prosecution of the case and participated in settlement negotiations). Numerous other courts have approved service awards in other pharmaceutical antitrust class actions, and the amount requested here is in line with the awards in such cases.<sup>6</sup> Accordingly, the Court should approve these appropriate and reasonable service awards to the class representatives.

#### IV. CONCLUSION

For the reasons set forth above and in the Gerstein Declaration, Class Counsel respectfully request that this Court enter an Order awarding Class Counsel \$125,672,591.21 (or one-third or 33⅓% of the settlement amount net of unreimbursed expenses and service awards to the class representatives), plus a proportionate amount of any interest accrued since the settlement was escrowed. *See Gerstein Decl.* at ¶ 87. Class Counsel also respectfully request that

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<sup>6</sup> *See, e.g., In re Opana ER Antitrust Litig.*, No. 1:14-cv-10150, ECF No. 1085 (N.D. Ill. Nov. 3, 2022) at ¶ 16 (awarding \$150,000 each to two class representatives); *In re Novartis and Par Antitrust Litig.*, No. 1:18-cv-04361, ECF No. 635 (S.D.N.Y. Jul. 26, 2023) at ¶ 15 (awarding \$100,000 to each of four class representatives).

the Court approve service awards of \$150,000 to each of the three class representatives for their efforts on behalf of the Class.

Dated: December 29, 2023

Respectfully Submitted,

/s/ Bruce E. Gerstein

Bruce E. Gerstein  
Noah Silverman  
Kimberly Hennings  
Garwin Gerstein & Fisher LLP  
88 Pine Street, 28th Floor  
New York, NY 10005  
(212) 398-0055

*Co-Lead Counsel for the Direct Purchaser  
Plaintiffs and Counsel for Burlington Drug  
Company, Inc.*

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

*Co-Lead Counsel for the Direct Purchaser  
Plaintiffs and Counsel for Rochester Drug Co-  
Operative, Inc.*

Stuart E. Des Roches  
Andrew W. Kelly  
Chris Letter  
Odom & Des Roches, LLC  
650 Poydras Street, Suite 2020  
New Orleans, LA 70130  
(504) 522-0077

*Counsel for Burlington Drug Company, Inc.*

Russell Chorush  
Heim, Payne & Chorush LLP

Thomas M. Sobol  
Jessica R. MacAuley  
Kristen Johnson  
Hannah Schwarzschild  
Hagens Berman Sobol Shapiro LLP  
1 Faneuil Hall Sq., 5<sup>th</sup> Fl.  
Boston, MA 02109  
(617) 482-3700

*Co-Lead Counsel for the Direct Purchaser  
Class Plaintiffs and Counsel for Meijer, Inc.  
and Meijer Distribution, Inc.*

David P. Smith  
Susan Segura  
David C. Raphael, Jr.  
Erin R. Leger  
Smith Segura Raphael & Leger, LLP  
3600 Jackson St., Suite 111  
Alexandria, LA 71303  
(318) 445-4480

*Counsel for Burlington Drug Company, Inc.*

David F. Sorensen  
Caitlin G. Coslett

1111 Bagby Street, #2100  
Houston, TX 77002  
(713) 221-2000

*Counsel for Burlington Drug Company, Inc.*

Barry S. Taus  
Archana Tamoshunas  
Taus, Cebulash & Landau LLP  
123 William Street, Suite 1900A  
New York, NY 10038  
(212) 931-0704

*Counsel for Meijer, Inc. and Meijer  
Distribution, Inc.*

Richard Schwartz  
Berger Montague PC  
1818 Market Street, Suite 3600  
Philadelphia, PA 19103  
(215) 875-3000

*Counsel for Rochester Drug Co-Operative,  
Inc.*

Joseph M. Vanek  
David P. Germaine  
John P. Bjork  
Sperling & Slater, P.C.  
55 W. Monroe Street, Suite 3200  
Chicago, IL 60603  
(312) 641-3200

*Counsel for Meijer, Inc. and Meijer  
Distribution, Inc.*

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION**

**MDL No. 2445**

**Master File No. 2:13-MD-2445-MSG**

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**DECLARATION OF BRUCE E. GERSTEIN IN SUPPORT OF CLASS COUNSEL'S  
MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF  
EXPENSES, AND SERVICE AWARDS FOR THE CLASS REPRESENTATIVES**

**I. INTRODUCTION**

I, Bruce E. Gerstein, managing partner of the law firm of Garwin Gerstein & Fisher LLP (“GGF”), and co-lead counsel for Direct Purchaser Class Plaintiffs (“Plaintiffs” or the “Class”), respectfully submit this declaration in support of Class Counsel’s<sup>1</sup> application for:

- (1) an award of attorneys’ fees totaling 33⅓% of the settlement with Indivior (the “Settlement”) net of: (a) unreimbursed expenses; and (b) service awards to the class representatives, plus a proportionate amount of any interest accrued since the settlement was escrowed (the “Settlement”);
- (2) reimbursement of expenses that were incurred in the prosecution of Plaintiffs’ Claims; and
- (3) service awards to class representatives Burlington Drug Company, Inc. (“BDC”), Rochester Drug Co-Operative, Inc. (“RDC”), and Meijer, Inc. and Meijer Distribution, Inc. (“Meijer”).

As co-lead counsel, GGF has been involved in all aspects of this litigation from the pre-complaint investigation and filing of Plaintiffs’ initial complaint in December 2012 through the

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<sup>1</sup> “Class Counsel” include the firms listed in paragraph 83, *infra*.



filing of the Settlement with the Court (and continuing). I am therefore fully familiar with the litigation, the most significant aspects of which are outlined below for the Court's convenience.

## II. COMMENCEMENT OF THE CASE AND INITIAL PROCEEDINGS

1. Class Counsel began investigating this case in August of 2012. Class Counsel's pre-filing investigation included, *inter alia*, reviewing and analyzing the market availability of generic versions of Suboxone, including pending ANDAs for Tablets and Film; publicly available regulatory filings for Suboxone Tablets and Film, including Indivior's 2009 Citizen Petition related to Subutex, Indivior's September 2012 Citizen Petition relating to Suboxone and generic manufacturer Amneal's October 2012 response to the Citizen Petition; Indivior's annual reports; Indivior's promotional materials related to Suboxone Tablets and Film; information related to Suboxone product packaging; information related to Indivior's Risk Evaluation and Mitigation Strategies ("REMS") for Suboxone; information related to unintended pediatric exposures to Suboxone, and abuse, misuse and diversion of Suboxone; the various medical treatment options for opioid addiction; and information regarding the scope and effects of the Drug Abuse Treatment Act of 2000 ("DATA 2000") which allowed for Suboxone to be prescribed by physicians.

2. On December 21, 2012, certain Class Counsel firms, on behalf of BDC, filed the first antitrust lawsuit on behalf of a putative class of direct purchasers challenging Indivior's conduct regarding the prescription pharmaceutical product, Suboxone, which treats opioid addiction, as violative of the antitrust laws. *See Burlington Drug Co., Inc. v. Reckitt Benckiser Group plc, et al.*, Case No. 2:12-cv-282 (D. Vt.). Shortly thereafter, similar direct purchaser complaints (filed by counsel for RDC and Meijer) and indirect purchaser class complaints were filed in different districts. On June 6, 2013, the United States Judicial Panel on Multidistrict

Litigation centralized all then-pending actions in this District and assigned them to this Court. *See* MDL No. 2445, ECF No. 60.

3. Class Counsel were not assisted by any outside entities, including governmental enforcement agencies, in their pre-complaint investigations and filing of the initial complaint. Class Counsel filed their December 2012 complaint in the District of Vermont – *prior to* FDA issuing its decision on Indivior’s September 25, 2012 Citizen Petition and *prior to* Class Counsel’s knowledge of any government agency investigation into the misconduct alleged in this case. Indeed, the FDA’s referral of Indivior to the Federal Trade Commission (“FTC”), which in turn led to an FTC investigation, occurred in late February 2013, while the Department of Justice (“DOJ”) did not file indictments against Indivior and two high-ranking executives until April 2019. *See, e.g., U.S. v. Indivior Inc.*, 19-cr-00016-JPJ-PMS, ECF No. 3 (W.D. Va.). Moreover, the filing of an initial complaint by the 35 plaintiff-states and the District of Columbia, and an amended complaint adding 6 plaintiff-states, were filed in September and November 2016, respectively, years after the filing of Class Counsel’s initial complaint. *See* ECF No. 309.

4. On August 7, 2013, the Court appointed GGF, Faruqi & Faruqi LLP (“FF”) and Hagens Berman Sobol Shapiro LLP (“HBSS”) as Interim Co-Lead Counsel for the Direct Purchaser Class and GGF as Interim Liaison Counsel for same. *See* ECF No. 44.

5. On August 15, 2013, Class Counsel filed a Consolidated Amended Complaint on behalf of Plaintiffs. *See* ECF No. 47. Plaintiffs alleged that Indivior engaged in various acts and practices as a part of an overall scheme to coerce a switch of the Suboxone market from Suboxone Tablets to Suboxone Film and delay the market entry of less-expensive generic versions of Suboxone Tablets, in violation of Section 2 of the Sherman Act. *Id.*

6. Class Counsel filed this case, on a fully contingent basis, with the real risk of nonpayment and without the assurance of liability that often confers when a private civil action follows guilty pleas in an earlier-filed governmental action. Class Counsel took that risk knowing it could take years to fully prosecute the case and that millions of dollars and tens of thousands of attorney hours would be required to properly resource the case.

### **III. INDIVIOR'S MOTION TO DISMISS**

7. On September 16, 2013, Indivior filed a motion to dismiss Plaintiffs' claims. *See* ECF Nos. 55. Broadly, Indivior contended that each aspect of its conduct was independently lawful, and that Plaintiffs' claims therefore failed whether viewed individually or as part of a broader scheme. *Id.* Indivior also contended that Plaintiffs' could not adequately plead antitrust injury (*i.e.*, causation) and that Plaintiffs failed to sufficiently define a relevant market. *Id.*

8. Plaintiffs responded on October 15, 2013. *See* ECF No. 67.

9. On September 17, 2014, the Court held oral argument. *See* ECF No. 95.

10. On December 3, 2014, this Court largely denied Indivior's motion to dismiss. *See* ECF No. 97.

### **IV. DOCUMENT AND DEPOSITION DISCOVERY**

11. On October 2, 2013, while the parties were briefing Indivior's motion to dismiss, the Court ordered Indivior to produce limited discovery, including documents submitted to and from the FDA and FTC and certain categories of internal promotional and safety-related documents concerning Suboxone Tablets and Suboxone Film. *See* ECF No. 63.

12. As a result of that document production, Class Counsel sought, and were granted, leave to amend Plaintiffs' complaint based on newly discovered information which augmented

Plaintiffs' claims in various ways, and to add allegations concerning market power. *See* ECF Nos. 132, 150.

13. On March 17, 2015, following the parties' Rule 16 conference with the Court, full discovery then commenced. *See* ECF No. 143.

14. With the commencement of full discovery, Class Counsel served discovery related to all aspects of the cases, including the violation, causation and damages. Fact discovery proceeded for several years due to the complexity of the multi-pronged nature of the anticompetitive scheme alleged.

15. Class Counsel served document requests on Indivior and document subpoenas on over a dozen third parties, resulting in an enormous volume of produced documents – constituting approximately 6.7 million pages (approximately 1,300,000 documents) – that Class Counsel had to review to develop the record to build Plaintiffs' case and rebut Indivior's many defenses. Class Counsel did so by creating subject-matter teams which analyzed particular groups of documents and created scores of work product memoranda. Class Counsel also ascertained what types of expert testimony would be required.

16. Class Counsel then identified and deposed numerous fact witnesses on a wide variety of topics. In total, Class Counsel took the lead in deposing 33 fact witnesses, and defended Indivior's depositions of plaintiff fact witnesses.<sup>2</sup> The depositions, all of which required extensive preparation, are listed below:

#	Name	Party	Date(s)	Posture
1	Andry, Gerald	Third Party	Jan. 23, 2018	Took
2	Ashby, Brad	Indivior	Jul. 31, 2018	Took
3	Baxter, Timothy	Indivior	Apr. 13, 2023	Took
4	Brown, Douglas	Third Party	Aug. 1, 2018	Took

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<sup>2</sup> Class Counsel also attended additional depositions of witnesses who testified on topics that were relevant to Plaintiffs' claims, but were questioned primarily by other plaintiff groups.

5	Cairns, Graham	Indivior	Jun. 29, 2018	Took
6	Clark, Napoleon	Third Party	May 8, 2018	Took
7	Clissold, Dave	Third Party	Apr. 11, 2018	Took
8	Crossley, Mark	Indivior	Aug. 29, 2023	Took
9	Doud, Lawrence	Plaintiff	Aug. 29, 2017	Defended
10	Edwards, Candice	Third Party	Oct. 5, 2017	Took
11	Gopu, Kishore	Third Party	Feb. 21, 2018	Took
12	Higgen, Michelle	Third Party	Jun. 20, 2018	Took
13	Jadeja, Janek	Third Party	Sep. 14, 2017 & Oct. 3, 2017	Took
14	Kendall, Keith	Third Party	Aug. 30, 2018	Took
15	Kinard, Robin	Third Party	Aug. 1, 2019	Took
16	Luce, Jim	Third Party	Aug. 30, 2018	Took
17	Marks, Lee	Indivior	Jul. 20, 2018	Took
18	Mitiguy, John	Plaintiff	Jan. 18, 2018	Defended
19	McLeod, Suzanne	Third Party	Jan. 23, 2018	Took
20	Murrelle, Lenn	Third Party	Jul. 11, 2018	Took
21	Patel, Alpesh	Third Party	Aug. 31, 2017	Took
22	Pastore, Jill	Third Party	Feb. 21, 2018	Took
23	Paulson, Matt	Plaintiff	Oct. 11, 2017	Defended
24	Philo, Rob	Indivior	Nov. 8, 2017	Took
25	Pollack, Robert	Third Party	Aug. 7, 2018	Took
26	Powers, Richard	Indivior	Sep. 12, 2017	Took
27	Preziosi, Frank	Indivior	Oct. 12, 2017 & May 3, 2018	Took
28	Reinhardt, Sandra	Third Party	Jan. 24, 2018	Took
29	Reuter, Nicholas	Indivior	May 15, 2018	Took
30	Schmidt, Michael	Indivior	Jun. 19, 2018	Took
31	Schobel, Mark	Third Party	Aug. 22, 2018	Took
32	Seeger, Vicki	Indivior	Mar. 22, 2023	Took
33	Taylor, Kellie	Third Party	Aug. 4, 2017	Took
34	Thaxter, Sean	Indivior	Mar. 28, 2023	Took
35	Weston, Patti	Indivior	Apr. 24, 2018	Took
36	Yang, Ju	Indivior	Apr. 4, 2023	Took

17. Plaintiffs also responded to document requests and interrogatories served by Indivior.

18. During expert discovery, the parties exchanged a total of 15 expert reports (not including rebuttal reports). Consequently, Plaintiffs took 7 depositions of Indivior experts, and

defended 8 depositions of Plaintiffs' experts. As with fact depositions, all required extensive preparation, and are listed below:

#	Name	Party	Date(s)	Posture
1	Berndt, Ernst	Plaintiffs	Feb. 1, 2019 & May 30, 2019	Defended
2	Bradshaw, Sheldon	Indivior	Apr. 24, 2019	Took
3	Curtis, Dolores	Indivior	Apr. 19, 2019	Took
4	Fleischer, Nicholas	Indivior	Apr. 15, 2019 & Jan. 7, 2020	Took
5	Geller, Robert	Indivior	May 14, 2019	Took
6	Jaskot, Deborah	Plaintiffs	Feb. 1, 2019	Defended
7	Jewell, Nicholas	Plaintiffs	Feb. 12, 2019	Defended
8	Kwait, Andrew	Indivior	May 21, 2019	Took
9	Lamb, Russell	Plaintiffs	Oct. 30, 2018, Jan. 17, 2019 & Jun. 12, 2019	Defended
10	Murelle, Lenn	Indivior	May 9, 2019	Took
11	Normann, Parker	Indivior	Apr. 23, 2019	Took
12	Tso, Yvonne	Plaintiffs	Feb. 26, 2019	Defended
13	Verscharen, Robert	Plaintiffs	Jan. 24, 2019	Defended
14	Westreich, Laurence	Plaintiffs	Feb. 20, 2019	Defended
15	Zettler, Patti	Plaintiffs	Mar. 1, 2019 & May 21, 2019	Defended

## V. DISCOVERY-RELATED MOTION PRACTICE

19. Motion practice related to discovery occurred.

20. First, Class Counsel filed two motions to compel against Indivior. Plaintiffs' first motion sought to compel Indivior to produce transactional sales data relevant to Plaintiffs' damages claims, which was denied. *See* ECF Nos. 400, 419. Plaintiffs' second motion to compel stemmed from Plaintiffs' previous motion to exclude a document that was only disclosed to Plaintiffs for the first time during expert discovery, wherein Indivior's experts relied on the document, with the Court denying Plaintiffs' motion on the grounds that the untimely production was not done in bad faith but permitting Plaintiffs to conduct discovery pertaining to the document. *See* ECF No. 543. After Indivior asserted privilege and refused to provide a privilege

log, Class Counsel filed a motion seeking to compel Indivior to produce such documents on grounds of privilege waiver during Plaintiffs' previous motion to exclude. The motion was denied. *See* ECF Nos. 567, 595.

21. Second, Class Counsel filed two motions to compel against third-party Actavis, one of the earliest sellers of generic Suboxone Tablets, which were granted in part. *See* ECF Nos. 257, 289, 461, 471.

22. Third, Class Counsel opposed Indivior's motion seeking to compel Plaintiffs to produce so-called "downstream" discovery. *See* ECF Nos. 178, 185, 197. Indivior's motion was denied on the basis the discovery sought was irrelevant to Plaintiffs' damages claims. *See* ECF No. 198.

23. Fourth, after the parties reached impasse concerning the depositions of certain witnesses who intended to invoke their Fifth Amendment rights, Class Counsel opposed Indivior's motion to "temporarily defer" the depositions of those witnesses during the DOJ criminal investigation into Indivior's marketing of Suboxone. *See* ECF No. 359. As a result, the Court established a protocol for the depositions of such witnesses. *See* ECF No. 393.

## VI. EXPERTS

24. Class Counsel retained 8 experts as set forth below:

#	Expert	Summary of Subject Matter
1	Ernst Berndt	The economic effects of Indivior's misconduct
2	Deborah Jaskot	The regulatory frameworks governing FDA approval of generic pharmaceutical products and the filing of Citizen Petitions with the FDA, and the ability of generic Suboxone Tablet manufacturers to obtain FDA approval
3	Nicholas Jewell	Indivior's lack of statistical support for its claims that Suboxone Tablets were less safe than Suboxone Film
4	Russell Lamb	Relevant antitrust market, Indivior's monopoly power, anticompetitive effects of Indivior's conduct, class-wide impact and damages

5	Yvonne Tso	The effects of Indivior's misconduct on managed care organizations
6	Robert Verscharen	The Hatch-Waxman regulatory scheme, state substitution laws, and the workings of therapeutic substitution
7	Laurence Westreich	The field of addiction medicine, Indivior's lack of scientific evidence to support its promotional safety claims relating to Suboxone Film, Indivior's statements to prescribers concerning Suboxone Film including with the market withdrawal of such
8	Patricia Zettler	Indivior's involvement with the FDA-required Single Shared Rems System for buprenorphine products and the effects thereof, FDA regulations concerning the marketing and promotion of prescription drugs, and Indivior's lack of scientific evidence to support its promotional safety claims relating to Suboxone Film

25. Each of these experts was deposed by Indivior and defended by Class Counsel.

*See supra*, at ¶ 18.

26. Similarly, Indivior retained 7 experts as set forth below:

#	Expert	Responsive to (Name of Plaintiffs' Expert)
1	Sheldon Bradshaw	Jaskot, Zettler
2	Dolores Curtis	Berndt, Jewell, Lamb, Westreich
3	Nicholas Fleischer	Jaskot
4	Robert Geller	Jewell, Westreich
5	Andrew Kwait	n/a
6	Lenn Murrelle	Jewell, Westreich
7	Parker Normann	Berndt, Lamb, Tso

27. Class Counsel deposed each of Indivior's experts. *Id.*

28. That the parties collectively retained 15 experts in this litigation demonstrates the breadth and complexity of the case. For example, Class Counsel was required to secure expert testimony demonstrating, *inter alia*: (1) that Indivior used various deceptive and coercive acts to switch the market from Suboxone Tablets to Suboxone Film, including making false and misleading statements that Suboxone Film was safer than Suboxone Tablets, in violation of FDA regulations requiring that Indivior have the scientific data necessary to support such claims; (2)



whether various studies did, or did not, demonstrate that Suboxone Film was safer than Suboxone Tablets; (3) that Indivior's abuses of the FDA regulatory procedures regarding REMS and Citizen Petitions delayed entry of generic competition; (4) the significance of managed care coverage in the pharmaceutical market, and how Indivior manipulated managed care coverage to implement its scheme; (5) the medical and psychological issues involved in treating opioid-addicted patients; (6) the mechanics of therapeutic substitution at the pharmacy level; and (7) to proffer economic expert evidence of the anticompetitive effects of the challenged conduct and economic modeling of class-wide impact and damages.

## VII. CLASS CERTIFICATION

29. Class certification was hotly contested. On September 18, 2018, Class Counsel filed a motion seeking certification of the direct purchaser Class. *See* ECF No. 475.

30. On November 16, 2018, Indivior opposed class certification and contemporaneously filed a *Daubert* motion to exclude Plaintiffs' class certification expert. *See* ECF Nos. 486, 489.

31. On January 11, 2019, Class Counsel filed their reply brief in support of class certification and their opposition to Indivior's related *Daubert* motion. *See* ECF Nos. 503, 504.

32. On January 29, 2019, Indivior filed its reply brief in support of its class-related *Daubert* motion, and a surreply in opposition to class certification. *See* ECF No. 509.

33. The Court heard oral argument on class certification and on Indivior's related *Daubert* motion on September 3, 2019. *See* ECF No. 579.

34. On September 27, 2019, the Court granted the motion for class certification and denied Indivior's *Daubert* motion. *See* ECF Nos. 587, 588.

35. Indivior appealed this Court’s decision to the Third Circuit Court of Appeals, contending that Plaintiffs could not satisfy Rule 23’s predominance and adequacy requirements, the latter of which was grounded upon Indivior’s argument that BDC was an inadequate class representative. Additionally, Indivior’s appeal also involved challenges to the merits of the Class’s claims, thereby necessitating that Class Counsel defend not just the grant of class certification and a related *Daubert* motion, but also merits issues.

36. From January through June 2020, the parties engaged in appellate briefing. On July 28, 2020, following argument, the Third Circuit unanimously affirmed this Court’s grant of class certification in a precedential opinion. 967 F.3d 264 (3d Cir. 2020).

#### **VIII. SUMMARY JUDGMENT AND *DAUBERT* BRIEFING**

37. During the pendency of Indivior’s class certification appeal, the parties first briefed “Phase I” *Daubert* motions, *i.e.*, motions directed primarily to non-economic expert opinions that would not be impacted by the Third Circuit’s resolution of the appeal. *See* ECF No. 612 (Order).

38. In April 2020, Class Counsel filed Phase I *Daubert* motions related to certain opinions of two of Indivior’s experts (*see* ECF No. 623), and Indivior filed both an omnibus *Daubert* motion seeking to preclude any of Plaintiffs’ experts from testifying that Indivior’s safety claims concerning Film were “false,” “misleading” or the like, and a separate omnibus *Daubert* motion directed to certain opinions offered by six of Plaintiffs’ experts. *See* ECF No. 619.

39. In August 2020, subsequent to the Third Circuit’s affirmance of class certification, the Court set a schedule for the remaining *Daubert* (“Phase II”) motions and summary judgment motions. *See* ECF No. 644.

40. Just a few days later, Indivior moved to disqualify RDC as a class representative and opposed Class Counsel's motion to approve notice to the class of the pendency of this action and the grant of class certification. *See* ECF Nos. 645, 66.

41. On September 28, 2020, Indivior filed Phase II *Daubert* motions related to certain opinions offered by two of Plaintiffs' economic experts, and on October 19, 2020 Plaintiffs' filed their oppositions. *See* ECF Nos. 656, 670. During this time period, the parties continued to brief Indivior's motion to disqualify RDC. *See, e.g.*, ECF No. 663.

42. On November 24, 2020, the Court issued a 96-page opinion ruling on the "Phase I" *Daubert* motions. *See* ECF No. 677.

43. Shortly thereafter, on January 21, 2021, the Court denied Indivior's motion to disqualify RDC from serving as a class representative, and approved the notice of the certification of a direct purchaser class. *See* ECF No. 683.<sup>3</sup>

44. On February 19, 2021, the Court ruled on the balance of the parties' *Daubert* motions. *See* ECF No. 685.

45. On March 8, 2021, the parties filed lengthy summary judgment motions. Prior to these motions, in early 2016, Indivior had moved for partial summary judgment on all so-called "delay" claims, *i.e.*, claims that Indivior acted to delay the approval of commercialization of generic Suboxone Tablets, which Class Counsel successfully opposed on grounds of prematurity, resulting in Indivior's motion being denied without prejudice. *See* ECF No. 244.

46. Class Counsel's filed a motion for partial summary judgment as to the relevant antitrust market and Indivior filed two summary judgment motions (one seeking to dismiss all of

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<sup>3</sup> Indivior renewed its motion to disqualify RDC in April 2021. *See* ECF No. 735. Class Counsel successfully opposed Indivior's renewed motion, which was denied in February 2022. *See* ECF No. 790.

Plaintiffs' claims and one challenging, *inter alia*, Plaintiffs' damages calculations and the validity of Plaintiff Meijer's assignment). *See* ECF Nos. 699, 701. The parties briefed all three motions through May 2021.

47. While summary judgment motions in antitrust cases are, by their nature, inherently complex, the breadth of the motions and the volume of supporting materials in this litigation made them particularly so. While Plaintiffs' motion for partial summary judgment on relevant market was straightforward and accompanied by a relatively small number of statements of undisputed facts and exhibits (*i.e.*, under 20 apiece), Indivior's sweeping motions were accompanied by 288 statements of undisputed fact and 329 exhibits (few of which pertained only to other plaintiff groups). Accordingly, to adequately oppose Indivior's motion directed to all claims, Plaintiffs not only had to respond to Indivior's statements of undisputed fact, but also file their own affirmative statements of undisputed fact (numbering 286) and related exhibits (numbering 460), again few of which pertained only to other plaintiff groups. Indeed, the Court remarked upon the volume of materials at oral argument, observing that it was "enormous" and that "it's been a pretty big project putting all this together." *See* Dec. 2, 2021 Tr. at pp. 8-10.

48. On August 22, 2022, in an 87-page opinion, the Court denied both of Indivior's summary judgment motions. *See* ECF Nos. 812, 813. The Court subsequently denied Plaintiffs' motion for partial summary judgment as to the relevant antitrust market on August 30, 2023. *See* ECF Nos. 937, 938.

#### **IX. MOTION PRACTICE RELATING TO THE FIFTH AMENDMENT INVOCATIONS OF NUMEROUS DEFENSE WITNESSES**

49. Extensive motion practice occurred as a result of numerous defense witnesses stating that they would invoke their Fifth Amendment rights if they were to be deposed.

50. As noted above, in May 2017, Indivior moved to “temporarily defer” the depositions of 9 such witnesses in view of the then-ongoing criminal investigation by the DOJ, Class Counsel opposed the motion, and the Court resolved the motion by establishing a protocol to ascertain whether the witnesses should be deposed, with Plaintiffs having the right to request to depose (or re-depose) witnesses after the conclusion of the DOJ investigation. *See* ECF No. 393. Class Counsel followed this protocol, which resulted in no depositions going forward at that time due to the witnesses’ maintenance of their Fifth Amendment invocations.

51. In December 2022, after the DOJ investigation resulted in several indictments and guilty pleas, the Court ordered Plaintiffs to subpoena the witnesses, and if they continued to refuse to testify, to file a written challenge to such invocation(s). *See* ECF No. 850.

52. In January 2023, Plaintiffs subpoenaed these 9 witnesses. Four of the witnesses agreed to be deposed, and Class Counsel deposed those individuals in March and April 2023. Those witnesses were Indivior’s former CEO, Chief Medical Officer, Global Head of Regulatory Affairs, and Director of Medication Utilization during the relevant period of time. The remaining 5 witnesses maintained their invocations, resulting in Plaintiffs filing a motion to compel their testimony on the basis that each of the 5 witnesses were centrally involved in events that were issues in the litigation and had not demonstrated a legitimate risk that their testimony might lead to incrimination. *See* ECF No. 879. Each witness opposed the motion, and on July 19, 2023, after oral argument, the Court found that each witness justified their invocations and denied Class Counsel’s motion. *See* ECF No. 915.

53. As a result of the Court’s ruling on the motion to compel, Class Counsel filed a motion requesting that, to mitigate the prejudice to Plaintiffs resulting from Indivior’s intention to introduce evidence at trial relating to these witnesses despite Class Counsel’s inability to

depose them, the Court admit their Fifth Amendment invocations as evidence, instruct the jury that it was permitted to draw adverse inferences from those invocations and preclude Indivior from offering evidence relating to those witnesses. *See* ECF No. 941. That motion remained pending at the time the settlement-in-principle was reached. *See infra*, at ¶ 59.

## **X. TRIAL PREPARATION**

54. Class Counsel were fully prepared to try this case. On December 13, 2022, the Court held a hearing to address, *inter alia*, depositions of witnesses who had previously invoked the Fifth Amendment and the setting of a trial date, with Class Counsel informing the Court that they were ready to try the case soon and that “[h]aving the trial over both parties’ heads is very, very important. We [don’t] want to do anything to delay it.” Dec. 13, 2022 Tr. at 38:23-25. Three days later, on December 16, 2022, the Court set a trial date of September 18, 2023 with an accompanying pretrial schedule. *See* ECF No. 852.<sup>4</sup>

55. Because a settlement-in-principle was not reached until 3.5 weeks (25 days to be precise) before trial was set to commence, Class Counsel engaged in significant trial preparation beginning in January 2023, which required thousands of hours of work by dozens of attorneys and support staff. Class Counsel and Indivior exchanged witness lists, exhibit lists and exhibits, deposition designations, proposed fact stipulations, proposed Rule 1006 summaries, proposed jury instructions, proposed verdict forms, proposed jury questionnaires, and served objections to same, with the parties engaging in meet and confers concerning the above items and numerous others.

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<sup>4</sup> Subsequently, the trial date was pushed later by a few weeks to October 30, 2023. *See* ECF No. 912.

56. As noted above, during this time period, Plaintiffs also took the depositions of 4 former Indivior employees who had previously invoked their Fifth Amendment right but now represented that they were willing to testify. *See supra*, at ¶ 52.

57. Additionally, due to his late identification on Indivior's trial witness list, Plaintiffs also took the deposition of Indivior's current CEO, Mark Crossley, which occurred on August 29, 2023. *Id.* Class Counsel made the tactical decision to depose Mr. Crossley, as opposed to moving to strike him from Indivior's trial witness list, since he previously served as Indivior's CFO during a portion of the time period relevant to this case.

58. The parties also filed numerous other pretrial motions covering various topics.

59. As noted above, pursuant to a schedule set by the Court, the parties filed two sets of motions specifically relating to evidence concerning the criminal and False Claims Act proceedings against Indivior and the trial implications of the Fifth Amendment invocations of numerous former Indivior employees. Briefing on those motions occurred from September 1 through September 22, 2023, and were pending at the time a settlement-in-principle was reached. *See* ECF Nos. 941, 942, 952, 953, 959, 960.

60. On September 7, 2023, Class Counsel filed a trial presentation motion requesting that the Court preclude Indivior from offering live testimony from any witness who Indivior refused to make available to Plaintiffs live during Plaintiffs' case-in-chief, and to authorize live trial testimony via contemporaneous video transmission (*e.g.*, Zoom). *See* ECF No. 947. Indivior filed its opposition to Plaintiffs' motion on September 21, 2023, (*see* ECF No. 957), and that motion was pending at the time a settlement-in-principle was reached.

61. Between August 23, 2023 and September 26, 2023, Indivior filed four pretrial motions. Two of those motions sought to preclude certain individuals on Plaintiffs' witness list

from testifying at trial, the third motion sought leave to take a trial deposition of one of Indivior's fact witnesses who was allegedly unavailable for trial due to occupational commitments, and the fourth sought leave to supplement certain data and serve an updated expert declaration concerning such data. *See* ECF Nos. 933, 939, 940, 970. One of the above motions was withdrawn as moot, and the other three were either pending or near the completion of briefing at the time a settlement-in-principle was reached.

62. On September 22, 2023, Class Counsel and Indivior filed their respective pretrial memoranda and a total of 42 motions *in limine* (21 per side). *See* ECF Nos. 961 through 965. On the day that the settlement-in-principle was reached, the deadline for oppositions to motions *in limine* was just 2 days away, and Class Counsel was therefore actively preparing for filing oppositions. Class Counsel was simultaneously engaging in meet-and-confers with Indivior in advance of the October 13, 2023 deadline for the filing of joint and contested jury instructions/verdict forms, and preparing for the October 19, 2023 pretrial conference with the Court, at which Class Counsel was preparing to, *inter alia*, argue motions *in limine*, other pending pretrial motions and objections to exhibits and witnesses.

63. Throughout this time period, Class Counsel also issued trial subpoenas to numerous witnesses (some of which resulted in negotiations with counsel for those witnesses), prepared witness examination outlines, reviewed and culled deposition videos for use during trial, worked with their experts regarding trial testimony and associated presentations via demonstratives, prepared the opening statement and associated demonstratives, and worked with jury consultants (including conducting a full day mock jury focus session).

64. As detailed below, the parties reached a settlement-in-principle on October 4, 2023.



**X. MEDIATION AND SETTLEMENT**

65. The agreement-in-principle that resulted in the proposed Settlement was the parties' third attempt to negotiate a settlement of Plaintiffs' claims.

66. The first mediation attempt occurred in the summer of 2015, and was unsuccessful.

67. The second mediation attempt occurred in the fall of 2017, and was also unsuccessful.

68. The third and final mediation, over which this Court presided as mediator by the agreement of all parties and their counsel, commenced in January 2023 and lasted approximately ten months, ultimately culminating in the parties' agreement to a settlement-in-principle on October 4, 2023. From October 4, 2023 through October 25, 2023 – the date that Class Counsel filed the proposed Settlement with the Court – Class Counsel and Indivior engaged in lengthy, hard-fought negotiations concerning certain terms of the settlement.

**XI. THE SETTLEMENT**

69. On October 25, 2023, Class Counsel filed a motion for preliminary approval of the proposed Settlement. The Settlement provides for one immediate cash payment by Indivior of \$385 million into an interest-bearing escrow account for the benefit of the Class, which payment Indivior has already funded, in exchange for certain releases of claims.

70. In seeking preliminary approval, Class Counsel requested that the Court preliminarily approve the proposed Settlement, approve a proposed form of notice to the Class, approve the appointment of a claims administrator and set a schedule leading up to and including a Fairness Hearing.

71. On October 30, 2023, the Court granted preliminary approval to the proposed Settlement, approved an escrow agent and the proposed escrow agreement, approved the appointment of a claims administrator, authorized notice to the Class, and set a schedule up through the Fairness Hearing. *See* ECF No. 984.

72. Thereafter, Indivior deposited the settlement fund into the approved interest bearing escrow account, and Co-Lead Counsel posted all relevant documents on their websites, including the notice to the Class, which was duly mailed by the claims administrator on November 20, 2023.

73. Class members have until January 12, 2024 to object to the Settlement or any of its terms and/or to Class Counsel's request for attorneys' fees, reimbursement of expenses and service awards for the class representatives. As of the date of this Declaration, no objections have been received by Class Counsel. If any are received between the date of this Declaration and January 12, 2024, Class Counsel will promptly notify the Court and address any such objections in Plaintiffs' forthcoming submission for final approval of the Settlement, due on February 2, 2024.

## **XII. SUMMARY OF ATTORNEYS' FEES AND UNREIMBURSED EXPENSES**

74. Class Counsel are nationally reputed law firms with decades of experience representing direct purchaser classes in antitrust cases, many of which involved the same class members as here.

75. Antitrust cases are well known to be complex, and jury trials can involve a high degree of risk. Prosecuting pharmaceutical antitrust cases requires a mastering of not just antitrust law, but also an understanding of intricate FDA regulations governing the approval of brand and generic prescription pharmaceutical products, antitrust economics for purposes of

establishing a relevant market and evaluating the contours of monopoly power, the development of one or more causation models to demonstrate a “but for world” devoid of the anticompetitive behavior and the development of one or more damages models to calculate damages to class members. Such cases, as here, require substantial attorney (and support staff) hours and substantial out-of-pocket cash outlays, particularly for the retention of expert witness services.

76. Moreover, in the instant case, in order to develop a factual record to demonstrate an antitrust violation, Class Counsel had to master the treatment landscape surrounding opioid addiction, as well as FDA regulations specifically governing: (a) the comparative marketing and promotion of pharmaceutical products, and (b) safety issues concerning buprenorphine products used to treat opioid addiction.

77. At all junctures of the litigation, Class Counsel faced risk. A number of pharmaceutical antitrust cases have been dismissed at summary judgment or lost at trial after significant outlays of time and money by Class Counsel. *See, e.g., In re Wellbutrin XL Antitrust Litig.*, 868 F.3d 132 (3d Cir. 2017) (affirming summary judgment in favor of defendants); *In re Nexium (Esomeprazole) Antitrust Litig.*, 842 F.3d 34 (1st Cir. 2016) (upholding jury verdict for defendant); *In re Opana ER Antitrust Litig.*, Case No. 1:14-cv-10150 (N.D. Ill. Aug. 22, 2022), ECF No. 1067 (jury verdict for defendant); *In re HIV Antitrust Litig.*, Case No. 19-cv-02573 (N.D. Cal. Jun. 30, 2023) (jury verdict for defendant); *Louisiana Wholesale Drug Co., Inc. v. Sanofi-Aventis*, Case No. 07-cv-07343 (S.D.N.Y. Nov. 20, 2008) (jury verdict for defendant).

78. Class Counsel also faced the risk of Indivior’s sometimes perilous financial condition.

79. Thus, Class Counsel were acutely aware of the inherent risks that come with prosecuting a complex antitrust case to trial. Class Counsel were aware that Plaintiffs’ claims

could have been dismissed in their entirety at the pleading stage (as Indivior sought), at summary judgment (again, as Indivior sought), or through an adverse jury verdict. Class Counsel were also aware that Indivior would certainly appeal, potentially even to the Supreme Court, a jury verdict in favor of Plaintiffs. Consequently, absent the proposed Settlement, if a jury had found in favor of Indivior at trial or if a jury verdict in favor of Plaintiffs were vacated on appeal, Class Counsel's decade-long efforts on behalf of the Class, undertaken on a purely contingent basis at great expense, would have been for naught.

80. Despite the risks outlined above, Class Counsel diligently prosecuted this case for more than a decade. In doing so, as outlined herein, Class Counsel: (a) investigated, identified and filed this case; (b) opposed dismissal on the pleadings; (c) obtained and reviewed an enormous volume of documents; (d) took or defended 48 fact and expert depositions; (e) retained and submitted reports from 8 experts; (f) engaged in extensive discovery-related motion practice cutting across numerous topics; (g) obtained class certification; (h) moved for and opposed *Daubert* motions; (i) moved for an opposed summary judgment; (j) engaged in extensive trial preparation efforts; (k) engaged in three rounds of mediation; and (l) engaged in extensive negotiations concerning the execution of a settlement agreement that embodied the parties' agreement-in-principle.

81. Litigating this case has involved significant effort on Class Counsel's part, both in terms of time and monetary expenditures. Indivior was represented by two large, well-known law firms who vigorously defended against Plaintiffs' claims at all junctures.

82. Class Counsel believe that the Settlement with Indivior represents an outstanding result for the Class by any measure.

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

<b>Ex.</b>	<b>Firm</b>	<b>Hours</b>	<b>Lodestar</b>	<b>Expenses</b>
A	Garwin Gerstein & Fisher LLP	19,259.65	\$18,432,228.50	\$1,241,864.54
B	Faruqi & Faruqi LLP	29,041.70	\$22,134,207.00	\$994,251.78
C	Hagens Berman Sobol & Shapiro LLP	12,380.50	\$8,070,967.00	\$1,194,925.88
D	Berger Montague PC	16,066.30	\$10,251,132.52	\$1,076,436.96
E	Odom & Des Roches LLC	16,569.65	\$10,062,603.75	\$1,191,296.97
F	Smith Segura Raphael & Leger LLP	11,740.80	\$6,269,766.50	\$1,178,152.26
G	Taus Cebulash & Landau LLP	3,408.10	\$2,484,223.50	\$384,336.80
H	The Radice Law Firm PC	2,831.80	\$1,588,023.00	\$25,030.00
I	Sperling & Slater LLC	969.55	\$801,248.25	\$354,188.16
	Less litigation fund balance			(\$108,256.99)
	<b>TOTAL</b>	112,268.05	\$80,094,400.22	\$7,532,226.36

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

<b>Expense Category</b>	<b>Amount</b>
Local counsel fees (Initial Complaint)	\$3,977.90
Deposition and hearing vendors	\$180,465.61
Document databases and review platform	\$826,222.59
Process servers/subpoena costs	\$3,950.30
Experts	\$6,270,084.50
Data (used by experts)	\$38,547.16
Mediation	\$7,138.45
Trial support	\$114,172.88
Costs of notice of class certification	\$2,000.00
Reimbursement from other plaintiff group for shared expenses	(\$634,794.35)
<b>TOTAL</b>	\$6,811,765.04

85. The litigation fund has a current balance of \$108,256.99, which, as noted above, has been deducted from the total expenses sought by Class Counsel.

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

87. Class Counsel respectfully request attorneys' fees in the amount of \$125,672,591.21 (or one-third or 33⅓% of the settlement amount net of unreimbursed expenses and service awards to the class representatives), plus a proportionate amount of any interest accrued since the settlement was escrowed. The requested attorneys' fees are therefore calculated by subtracting \$7,532,226.36 in unreimbursed expenses and \$450,000 in service awards from the \$385,000,000 settlement fund and multiplying the difference by one-third. Based on Class Counsel's lodestar of \$80,094,400.22, the requested fee represents a multiplier of 1.57.

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

88. The three class representatives – BDC, RDC and Meijer – all made a significant contribution in prosecuting Plaintiffs' claims against Indivior for the benefit of all class members. The class representatives each actively protected the Class's interests by filing suit on behalf of the Class and undertaking all of the responsibilities involved in being a named plaintiff, including monitoring the progress of the case and responding to discovery requests.

89. Discovery was a significant burden to the class representatives in this case. Specifically, each class representative executed broad document searches and collections based on keywords negotiated with Indivior, which resulted in document products of thousands of pages of documents, as well as purchase and chargeback data. These discovery efforts required that employees of the class representatives take time away from their regular job functions in order to comply.

90. Each of the class representatives was also deposed. *See, supra* at ¶ 16.

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

92. In recognition of their time and efforts expended for the benefit of the Class, Class Counsel request a service award of \$150,000 for each class representative.

I, Bruce E. Gerstein, on this 29<sup>th</sup> day of December 2023, declare under penalty of perjury that the above is true and correct.

/s/ Bruce E. Gerstein  
BRUCE E. GERSTEIN

# **EXHIBIT A**



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION**

**MDL No. 2445**

**Master File No. 2:13-MD-2445-MSG**

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**DECLARATION OF BRUCE E. GERSTEIN ON BEHALF OF GARWIN GERSTEIN &  
FISHER LLP IN SUPPORT OF CLASS COUNSEL’S MOTION FOR ATTORNEYS’  
FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS FOR THE  
NAMED PLAINTIFFS**

I, Bruce E. Gerstein, subject to the penalties of perjury provided by 28 U.S.C. § 1746, hereby declare as follows:

1. I am the managing partner at the law firm of Garwin Gerstein & Fisher LLP (“GGF”). I submit this declaration in support of Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Expenses and Service Awards for the Named Plaintiffs.

2. As lead counsel, GGF has been responsible for all aspects of the prosecution of this case, including the investigation and filing of an initial complaint, managing discovery, managing experts, litigation strategy, trial preparation and mediation/settlement.

3. Attorneys at my firm, including with certain other of Class Counsel, identified this cause of action and thoroughly vetted it in 2012. This included conducting a complete pre-filing investigation and analyzing the facts known against the legal elements of an antitrust claim under Section 2 of the Sherman Act.

4. My firm then took the lead, with significant input from certain other of Class Counsel, in drafting a complaint on behalf of plaintiff Burlington Drug Company, Inc., which

was the first complaint filed on behalf of any plaintiff group, and filed it on December 21, 2012. *See* Case No. 2:12-cv-282 (D. Vt.). GGF attorneys were also centrally involved in drafting the two subsequent amended complaints that were filed in this District.

5. In August 2013, GGF, along with two other law firms, was appointed Lead Counsel for the direct purchaser class (the “Class”). *See* ECF No. 44. As Lead Counsel for the Class, GGF attorneys worked cooperatively with counsel for the other plaintiff groups (*i.e.*, End Payor Plaintiffs and the State-Plaintiffs) while simultaneously being involved in every strategic decision concerning the instant litigation and leading the efforts of Class Counsel in managing the large workload necessary to aggressively prosecute the claims of the Class in an efficient manner.

6. GGF Attorneys were involved in drafting the responses to the two motions to dismiss that Indivior filed against Plaintiffs’ complaints, both in the District of Vermont and in this District.

7. GGF attorneys organized and led regularly scheduled conference calls with other Class Counsel throughout the course of the litigation.

8. GGF attorneys took the lead role in negotiations with Indivior concerning the Protective Order and ESI protocol that governed discovery.

9. A GGF attorney directed, and participated with other Class Counsel, in conducting targeted searches of 3 million pages of documents (produced from the files of 39 current and former Indivior employees) that Indivior produced to the Federal Trade Commission (“FTC”).

10. After overseeing and participating in the targeted review of the 3 million pages in the FTC production, a GGF attorney supervised and helped draft the preparation of 108 document requests for supplemental “gap-filling” materials.

11. A GGF attorney spent months negotiating Indivior’s objections to Plaintiffs’ 108 document requests, and the scope of Indivior’s supplemental production. This included numerous letters and phone calls negotiating which document requests Indivior would respond to and revising the sub-set of requests that Indivior agreed to respond to. Once the parties negotiated the substantive scope of Indivior’s supplemental production, a GGF attorney led negotiations over: (a) the identities of the custodians whose files would be searched for responsive documents, (b) the different time frames for searches for different sets of documents requests, and (c) the electronic search terms that would be used to select documents for review and production based on several rounds of “hit” reports.

12. Upon receiving Indivior’s rolling production of an additional 1.6 million pages, a GGF attorney supervised, and participated in, the document review and analysis of Indivior’s supplemental production.

13. GGF attorneys composed several lengthy and detailed “white papers” and memoranda on several issues for the purpose of guiding strategic decisions concerning the overall prosecution of the case.

14. A GGF attorney was involved in identifying key Indivior and third-party witnesses to depose and supervised the drafting of numerous 30(b)(6) deposition topics. GGF attorneys also coordinated with other Class Counsel in drafting and issuing subpoenas to non-parties.

15. Based on the Court's order concerning the depositions of witnesses who asserted their Fifth Amendment rights, a GGF attorney was centrally involved in the drafting of targeted written questions for those witnesses.

16. A GGF attorney served as the primary questioning attorney for 7 fact depositions in the case (Timothy Baxter, Lee Marks, Rob Philo, Frank Preziosi twice, Sandra Reinhardt and Patti Weston). In addition, a GGF attorney was the primary questioner for third-party witness Doug Brown.

17. In addition to directly taking 7 depositions, a GGF attorney directed the strategy for the depositions of other witnesses (such as Richard Powers), provided assistance and information to co-counsel regarding the depositions of various other witnesses, and attended depositions of several other witnesses (such as Sarah Marche, Sean Thaxter, and Vickie Seeger).

18. GGF attorneys were centrally involved in reviewing and analyzing depositions for purposes of summary judgment and to make strategic decisions concerning the prosecution of the case.

19. A GGF attorney was centrally involved in working with several experts regarding the preparation of their reports, and the preparation for their depositions (including Yvonne Tso, Dr. Lawrence Westreich, Russell Lamb, Ernst Berndt and Patricia Zettler). A GGF attorney was the primary questioning attorney in deposing one of Indivior's experts (Dr. Andrew Kwait) and served as the defending attorney for one of the Class's expert witnesses (Yvonne Tao). In addition, a GGF attorney assisted co-counsel in preparing for the deposition of Indivior expert Dolores Curtis, and Aquestive expert Amy Harrington (whose deposition a GGF attorney attended).

20. GGF attorneys were centrally involved in drafting oppositions to Indivior's summary judgment and *Daubert* motions. This included not only helping to draft the briefs in response to those motions, but also helping to comb through a voluminous evidentiary record to: (a) respond to Indivior's Statement of Facts containing 288 paragraphs; and (b) preparing Plaintiffs' Additional Statement of Facts In Opposition Indivior's Summary Judgment motion, which contained 286 paragraphs.

21. In December 2022, when a trial date was set and a pretrial schedule ordered, GGF attorneys participated fully in all pretrial tasks. This included appointing a GGF attorney as trial team lead to oversee all trial preparation tasks, and having GGF attorneys (and as appropriate, staff) work on, *inter alia*, (a) deposition designations; (b) exhibits; (c) *voir dire*; (d) juror questionnaires; (e) jury instructions and verdict slips; (f) Rule 1006 summaries; (g) a pretrial order; (h) motions *in limine*; and (i) numerous pretrial motions. During this time period, GGF attorneys also regularly communicated with defense counsel, including participating in meet-and-confers, concerning numerous substantive and logistical pretrial matters.

22. GGF attorneys, led by me, were integrally involved in all three mediations that took place during the course of the litigation, including taking the lead role the third and final mediation that resulted in settlement. GGF attorneys took the lead in preparing for, and conducting, negotiations, making continuous assessments regarding the merits of the Class's claims and Indivior's defenses while doing so.

23. Once a settlement-in-principle was agreed to, GGF attorneys took the lead role in negotiating the terms of a formal settlement agreement and other supporting papers and preparing briefing for preliminary approval of the settlement. In addition, GGF attorneys will

take the lead role in drafting the forthcoming papers in support of final approval of the settlement.

24. All attorneys, paralegals and other support staff at my firm were instructed to keep contemporaneous time records reflecting their time spent on this case, and did so. My firm also kept books and records concerning the expenses my firm necessarily incurred in the prosecution of this litigation, prepared from receipts and other source material.

25. The schedule below reports the time spent by my firm's attorneys, paralegals and other support staff from inception until October 4, 2023 (the date that the settlement-in-principle was reached) and time thereafter through October 31, 2023 related only to the settlement. This submission does not include any time relating to this motion. All hourly rates are my firm's usual and customary rates, for this and other similar matters.<sup>1</sup>

<b>Professional</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Total Lodestar</b>
Carl Baker	Paralegal*	475.00	39.25	\$18,643.75
Samuel Bonderoff	Partner	915.00	25.75	\$23,561.25
Elena Chan	Partner*	840.00	1174.50	\$986,580.00
Claire Cimino	Paralegal	505.00	2,501.75	\$1,263,383.75
Deborah Elman	Partner	915.00	8.25	\$7,548.75

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<sup>1</sup> Former partners/employees are identified with an asterisk. For former partners/employees, the rates shown were the partners'/employees' rates at the time they left the firm. All other rates are rates as of October 4, 2023.

<b>Professional</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Total Lodestar</b>
Bruce E. Gerstein	Partner	1550.00	853.25	\$1,322,537.50
Ephraim Gerstein	Associate*	775.00	17.00	\$13,175.00
Jonathan Gerstein	Partner	915.00	54.25	\$49,638.75
Kimberly Hennings	Partner	915.00	1,601.00	\$1,464,915.00
Dan Litvin	Partner	915.00	360.25	\$329,628.75
Katie McGee	Paralegal*	350.00	27.75	\$9,712.50
Rimma Neman	Clerk	325.00	95.75	\$31,118.75
Joseph Opper	Partner	1300.00	179.25	\$233,025.00
David Rochelson	Partner	915.00	13.75	\$12,581.25
Susan Roth	Paralegal	505.00	553.50	\$279,517.50
Janet Seidman	Paralegal*	275.00	65.50	\$18,012.50
Noah Silverman	Partner	1,250.00	7,730.00	\$9,662,500.00
Anna Tydniouk	Associate	875.00	817.00	\$714,875.00
Apolinar Uriarte	Paralegal	475.00	484.50	\$230,137.50

<b>Professional</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Total Lodestar</b>
Aakruti Vakharia	Associate*	435.00	58.75	\$25,556.25
Avery Wolff	Paralegal*	125.00	101.75	\$12,718.75
Alfred G. Yates	Of Counsel	690.00	265.00	\$182,850.00
Gerald R. Rutledge	Of Counsel	690.00	2,231.90	\$1,540,011.00
<b>Total</b>			<b>19,259.65</b>	<b>\$18,432,228.50</b>

26. The schedule below reports a total of \$1,241,864.54 in unreimbursed expenses that my firm incurred. These expenses are also reflected on the books and records of my firm. These books and records and prepared from expense vouchers, receipts and other source material and accurately record the expenses incurred.

<b>Expense</b>	<b>Amount</b>
Court reporting/transcription services	\$932.07
Filing fees	\$5.00
Litigation Fund Contributions	\$1,120,000.00
Postage/FedEx	\$2,622.55
Telephone	\$2,822.36
Photocopying	\$4,889.00
Travel/hotel/meals	\$38,805.81
Legal research and databases	\$56,825.25



Consulting/Expert Fees (Laurence M. Westreich)	\$14,962.50
<b>Total</b>	<b>\$1,241,864.54</b>

Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 29th day of December, 2023

/s/ Bruce E. Gerstein

Bruce E. Gerstein

# **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE SUBOXONE (BUPRENORPHINE HYDROCHLORIDE AND NALOXONE) ANTITRUST LITIGATION</b>  <b>THIS DOCUMENT RELATES TO:</b>  <i>All Direct Purchaser Actions</i>	<b>MDL No. 2445</b>  <b>Master File No. 2:13-MD-2445-MSG</b>  <b>FILED UNDER SEAL</b>
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**DECLARATION OF PETER KOHN ON BEHALF OF FARUQI & FARUQI LLP  
IN SUPPORT OF CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES,  
REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS FOR THE NAMED  
PLAINTIFFS**

Peter Kohn, subject to the penalties of perjury provided by 28 U.S.C. § 1746, does hereby declare as follows:

1. I am a partner in the law firm Faruqi & Faruqi LLP, one of the co-lead counsel in this case. I submit this declaration in support of Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for the Named Plaintiffs.

2. During the course of this litigation, my firm has been involved in various activities on behalf of the Direct Purchaser Class:

- Investigation of the case and preparing the successive complaints on behalf of Rochester Drug Co-Operative, Inc. and the proposed Direct Purchaser Class;
- Drafting and enforcing discovery requests directed to Defendant;
- Drafting and enforcing subpoenas directed to third parties;
- Negotiating with Defendant and various third parties regarding discovery and nonparty subpoenas;
- Review of documents, creation of associated work product memoranda, and development of case theory and strategy;
- Producing discovery on behalf of named Plaintiff RDC;

- Defending the Rule 30(b)(6) deposition of RDC;
- Taking depositions of Defendants' fact witnesses Bradford Ashby, Graham Cairns, and Shaun Thaxter;
- Taking the deposition of Defendants' expert economist Parker Normann, Ph.D.
- Assisting experts Russell Lamb Ph.D., Ernst Berndt Ph.D., Nicholas Jewell Ph.D., Laurence Westreich M.D., Robert Verscharen, and Yvonne Tso in preparing their expert reports;
- Defending the depositions of experts Dr. Lamb, Dr. Berndt, and Dr. Westreich;
- Drafting briefs (1) in opposition to Defendant's motion to dismiss; (2) in opposition to Defendant's motion to compel downstream discovery; (3) in support of Plaintiffs' motion for class certification and in opposition to Defendant's Rule 23(f) petition to appeal certification of the Direct Purchaser Class; (4) in opposition to Defendant's Rule 23(f) appeal to the United States Court of Appeals for the Third Circuit; (5) in opposition to Defendant's numerous *Daubert* motions; (6) in opposition to Defendant's three motions for summary judgment; (7) in support of Plaintiffs' motions for partial summary judgment; (8) in support of Plaintiffs' motion to compel testimony from the witnesses who invoked the Fifth Amendment; (9) in support of Plaintiffs' numerous motions *in limine*; (10) in opposition to Defendant's numerous motions *in limine*; and (11) in support of Plaintiffs' positions in various trial briefing disputes;
- Oral argument before this Court and/or the Third Circuit (1) in opposition to Defendant's motion for downstream discovery; (2) in opposition to Defendant's motions for summary judgment; (3) in opposition to Defendant's Rule 23(f) appeal of class certification to the Third Circuit; (4) in support of Plaintiffs' motion to compel the witnesses who invoked the Fifth Amendment to testify;
- Trial preparation including drafting trial examinations, preparing demonstratives, and selecting trial exhibits for Dr. Berndt, Dr. Lamb, and Mr. Verscharen, assisting in preparing the trial examinations for other expert witness, drafting cross examination for Graham Cairns, assisting with preparation of outlines for numerous other witnesses, designating deposition testimony, identifying and assembling trial exhibits, drafting proposed jury instructions, reviewing and objecting to Defendant's designated testimony and proposed trial exhibits, and preparing other materials in connection with the pretrial order; and
- Settlement negotiations and participation in mediation sessions.

3. All attorneys and paralegals and other support staff at my firm were instructed to keep contemporaneous time records reflecting their time spent on this case, and did so. My firm also kept books and records concerning the expenses my firm necessarily incurred in the prosecution of this litigation, prepared from receipts and other source material.

4. The schedule below reports the time spent by my firm's attorneys, paralegals and other support staff from inception until October 4, 2023 (the date that the settlement-in-principle was reached) and time thereafter related only to the settlement. This submission does not include time relating to this motion. All hourly rates are my firm's usual and customary rates, for this and other similar matters as of October 4, 2023.<sup>1</sup>

<b>Professional</b>	<b>Position</b>	<b>Total Hours</b>	<b>Hourly Rate as of October 4, 2023</b>	<b>Total Lodestar</b>
Peter Kohn	Partner	2,739.20	\$975.00	\$2,670,720.00
Joseph Lukens	Partner	7,381.30	970.00	7,159,861.00
Adam Steinfeld	Partner	1,076.80	780.00	839,904.00
Bradley Demuth	Partner	13.80	925.00	12,765.00
Stephen Doherty	Counsel	6,009.10	725.00	4,356,597.50
Neill Clark	Counsel	1,093.80	780.00	853,164.00
Christopher Hayes*	Counsel	104.7	750.00	78,525.00
Kristyn Fields	Partner	3,064.40	650.00	1,991,860.00
Raymond Barto	Partner	381.90	650.00	248,235.00
David Calvello	Partner	1,949.40	630.00	1,228,122.00
Richard Schwartz*	Associate	2,858.00	590.00	1,686,220.00
Elizabeth Silva*	Associate	662.60	500.00	331,300.00
Sarah Westby*	Associate	130.10	495.00	64,399.50
Luke Smith*	Associate	100.20	495.00	49,599.00
Andrew Coyle*	Associate	167.20	400.00	66,880.00
Anthony Ruggeri*	Associate	36.70	375.00	13,762.50
Derek Behnke	Paralegal	406.50	440.00	178,860.00
Anthony Aloise	Paralegal	245.10	420.00	102,942.00
Matthew Gonzales*	Paralegal	7.60	375.00	2,850.00
Alex Riche*	Paralegal	1.50	340.00	510.00
Bryan Rodriguez	Paralegal	41.00	340.00	13,940.00
William Cross*	Paralegal	7.40	335.00	2,479.00
Timothy Thompson*	Paralegal	314.40	335.00	105,324.00
Daniela Mercado*	Paralegal	69.00	325.00	22,425.00
Michael LoBosco*	Paralegal	3.30	325.00	1,072.50

<sup>1</sup> Former employees are identified with an asterisk. For former employees, the rates shown were the employees' rates at the time they left the firm.

<b>Professional</b>	<b>Position</b>	<b>Total Hours</b>	<b>Hourly Rate as of October 4, 2023</b>	<b>Total Lodestar</b>
Daniel Hey*	Paralegal	3.50	325.00	1,137.50
Inha Kang*	Paralegal	2.20	300.00	660.00
Julianna Dietz*	Paralegal	122.30	300.00	36,690.00
Joy Williams*	Paralegal	21.70	275.00	5,967.50
Michelle Moyes*	Paralegal	26.90	275.00	7,397.50
Brian Giacalone*	Paralegal	0.1	375.00	37.50
<b>Total:</b>		<b>29,041.70</b>		<b>\$22,134,207.00</b>

5. The schedule below reports a total of \$994,251.78 in unreimbursed expenses that my firm incurred.

<b>Expense</b>	<b>Amount</b>
Court reporting/transcription services	\$642.60
Filing fees	537.30
Litigation Fund Contributions	945,000.00
Consulting/Expert Fees	590.70
Postage/Messenger/FedEx/UPS	1,668.59
Telephone	6,345.28
Service of Subpoenas	724.79
Travel/hotel/meals	17,962.49
Legal research and datasets	20,780.03
<b>Total:</b>	<b>\$994,251.78</b>

6. Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 27th day of December, 2023.

/s/ Peter Kohn  
Peter Kohn

# **EXHIBIT C**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION**

**MDL No. 2445**

**Master File No. 2:13-MD-2445-MSG**

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**DECLARATION OF JESSICA R. MACAULEY ON BEHALF OF HAGENS BERMAN  
SOBOL SHAPIRO LLP IN SUPPORT OF CLASS COUNSEL'S MOTION FOR  
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS  
FOR THE NAMED PLAINTIFFS**

I, Jessica R. MacAuley, subject to the penalties of perjury provided by 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner at the law firm of Hagens Berman Sobol Shapiro LLP. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees, Reimbursement of Expenses and Service Awards for the Named Plaintiffs.

2. On August 7, 2013, Hagens Berman Sobol Shapiro LLP was designated as Co-Lead Counsel for the direct purchaser class. (ECF No. 44). On September 27, 2019, Hagens Berman Sobol Shapiro LLP was confirmed as Co-Lead Counsel for the certified direct purchaser class (ECF No. 588).

3. During the course of this litigation, my firm has been involved in the following activities on behalf of the direct purchaser class:

- Researched and drafted a complaint on behalf of Meijer, Inc. and Meijer Distribution, Inc. and the class;
- Drafted and edited motions before the Judicial Panel on Multi-District Litigation;
- Participated in drafting the opposition to the defendants' motions to dismiss;
- Participated in preparation for the motion to dismiss hearing, including the creation of a slide presentation deck;



- Drafted and negotiated with the defendant regarding pretrial stipulations, including the protective order and ESI protocol;
- Participated in drafting the opposition to Reckitt's motion for reconsideration of the Court's motion to dismiss order;
- Reviewed documents produced by Reckitt from the investigation by the Federal Trade Commission that was produced before service by plaintiffs of requests for production. Review focused on issues related to the citizen petition and causation;
- Met and conferred with Reckitt counsel regarding missing metadata and other issues with the FTC production;
- Participated in drafting written discovery, including requests for production;
- Drafted white papers regarding citizen petition and causation issues;
- Drafted motions to amend and amended class complaint;
- Identified and worked closely with several consultants (financial and FDA regulatory specialists) and retained experts for scientific analysis of studies relied on by defendant for safety and other claims;
- Engaged in extensive meet and confer efforts with defendants following motion to dismiss order and written discovery service over objections;
- Drafted document and deposition subpoenas to non-parties including FOIA requests to FDA;
- Co-led lengthy meet and confer sessions with defendant regarding document search terms (spanning nearly eight months);
- Worked with class representative Meijer, Inc. to respond to requests for production and other discovery and assisted in document production;
- Met and conferred with Reckitt regarding production from class representative Meijer, drafted opposition to motion to compel and supplemental briefing regarding same;
- Reviewed and coded document production from Reckitt with a focus on treatment advocates, scientific bases for safety claims, and issues regarding pediatric safety and misuse;
- Partner, Jessica MacAuley, prepared for and was the lead examiner for three important fact depositions of witnesses:
  - Nicholas Reuter,
  - Vickie Seeger, and
  - Lenn Murrelle (30(b)(6) for non-party Venebio).
- Assisted in the preparation and second-chaired the deposition of class representative Meijer;
- Provided documents, strategy input, and drafted parts of outlines for the depositions of fact witnesses:
  - Kellie Taylor (FDA designee);
  - Patti Weston; and
  - Richard Powers.
- Researched issues related to fact witnesses who would be asserting their 5<sup>th</sup> amendment right and participated in drafting motions to the Court;

- Drafting questions to nine witnesses asserting their 5<sup>th</sup> amendment rights following the Court's order regarding same;
- Prepared for negotiations with counsel and attended multiple status conferences with court during discovery;
- Researched and drafted multiple memoranda about case theory and strategy with focus on safety and abuse/misuse claims;
- Researched potential experts and met and worked closely with retained experts, in particular Nicholas Jewell and Laurence Westreich;
- Partner, Jessica MacAuley, prepared for and was the lead examiner for two defense expert depositions:
  - Robert J. Geller; and
  - Lenn Murrelle.
- Provided documents, strategy input, and drafted parts of outlines for defense expert witness Dolores Curtis and Dr. Andrew Kwait.
- Researched and drafted potential *Daubert* motions against defense experts and edited drafts;
- Researched and drafted oppositions to *Daubert* motions filed against plaintiff experts Nicholas Jewell and Laurence Westreich;
- Worked closely with co-plaintiff groups – in particular Amneal and State Attorney Generals – including preparing for and attending strategy conferences about discovery and summary judgment;
- Drafted sections of summary judgment briefing – in particular regarding citizen petition and scientific evidence – and participated in editing briefs, statements of fact, and collecting exhibits;
- Assisted in preparations for summary judgment argument and prepared to argue summary judgment issues related to class representative Meijer, Inc.
- Led team tasked with serving subpoenas on witnesses who had previously asserted the 5<sup>th</sup> amendment and researched and drafted motions regarding implications of asserting the 5<sup>th</sup> amendment;
- Critical part of trial team with responsibility for direct testimony of key fact and expert witnesses, cross examinations of key fact and expert defense witnesses, significant leadership on pretrial filings and negotiations, and significant work on strategy and order of proof planning; and
- Prepared for and attended mediations on July 5, 2015, November 18, 2017, and January 24, 2023.

4. All attorneys, paralegals and other support staff at my firm were instructed to keep contemporaneous time records reflecting their time spent on this case and did so. My firm also kept books and records concerning the expenses my firm necessarily incurred in the prosecution of this litigation, prepared from receipts and other source material.

5. The schedule below reports the time spent by my firm's attorneys, paralegals, and other support staff from inception until October 4, 2023 (the date that the settlement-in-principle was reached) and the time thereafter, through October 31, 2023, related only to the settlement. This submission does not include time relating to this motion. All hourly rates are my firm's usual and customary rates for this and other similar matters.<sup>1</sup>

<b>Professional</b>	<b>Position</b>	<b>Hourly Rate as of October 4, 2023</b>	<b>Total Hours</b>	<b>Total Lodestar</b>
Thomas Sobol	Partner	1200.00	308.1	\$369,720.00
David Nalven*	Partner	950.00	66.9	\$63,555.00
Lauren Barnes	Partner	935.00	402.4	\$376,244.00
Kristen Johnson	Partner	935.00	380.7	\$355,954.50
Greg Arnold	Partner	935.00	2.6	\$2,431.00
Erin Burns	Partner	850.00	2.8	\$2,380.00
Jessica MacAuley	Partner	780.00	3,694.0	\$2,881,320.00
Jeniphr Breckenridge*	Partner	600.00	30.5	\$18,300.00
Hannah Schwarzschild	Of Counsel	700.00	4,478.9	\$3,135,230.00
James Nicklaus	Of Counsel	700.00	88.0	\$61,600.00
Daniel Polonsky	Associate	400.00	17.8	\$7,120.00
Kristie LaSalle*	Associate	625.00	4.2	\$2,625.00
Rachel Downey	Associate	475.00	8.1	\$3,847.50
Raffi Melanson	Associate	600.00	0.3	\$180.00

<sup>1</sup> Former employees are identified with an asterisk. For former employees, the rates shown were the employees' hourly billing rates at the time they left the firm.

<b>Professional</b>	<b>Position</b>	<b>Hourly Rate as of October 4, 2023</b>	<b>Total Hours</b>	<b>Total Lodestar</b>
Rebekah Glickman-Simon	Associate	450.00	9.8	\$4,410.00
Sophia Weaver	Associate	400.00	37.7	\$15,080.00
Audley Fuller	Staff Attorney	400.00	1.3	\$520.00
John Cruseaden*	Contract Attorney	300.00	70.7	\$21,210.00
Rickt Brown*	Contract Attorney	350.00	388.0	\$135,800.00
Ashley Folia*	Summer Associate	325.00	25.2	\$8,190.00
Manuel Rendo*	Summer Associate	325.00	13.6	\$4,420.00
Lauriane Williams	Law Clerk	390.00	0.5	\$195.00
Achebe Silva*	Paralegal	325.00	278.6	\$90,545.00
Christine Tierney	Paralegal	400.00	25.6	\$10,240.00
Dakota Snyder*	Paralegal	150.00	10.8	\$1,620.00
Daniel McGarry*	Paralegal	175.00	230.4	\$40,320.00
Erica Laning	Paralegal	350.00	1.0	\$350.00
Iman Khan	Paralegal	325.00	1.5	\$487.50
Jane MacKerron	Paralegal	350.00	22.2	\$7,770.00
Jennifer O'Brien*	Paralegal	350.00	9.4	\$3,290.00
Keiana James*	Paralegal	325.00	2.5	\$812.50
Linaris Falcon	Paralegal	375.00	50.0	\$18,750.00
Mado Glass*	Paralegal	250.00	153.3	\$38,325.00
Marcella Jackson*	Paralegal	375.00	181.7	\$68,137.50

<b>Professional</b>	<b>Position</b>	<b>Hourly Rate as of October 4, 2023</b>	<b>Total Hours</b>	<b>Total Lodestar</b>
Matthew Kavanah*	Paralegal	250.00	60.1	\$15,025.00
Megan Meyers	Paralegal	325.00	227.5	\$73,937.50
Mike Barker*	Paralegal	265.00	9.0	\$2,385.00
Nicole Swiec*	Paralegal	150.00	0.2	\$30.00
Nicolle Huerta	Paralegal	375.00	0.3	\$112.50
Taylor Largmann*	Paralegal	325.00	316.5	\$102,862.50
Valeria Alvarez	Paralegal	350.00	288.8	\$101,080.00
Radha Kerzan	Paralegal	325.00	0.2	\$65.00
Kevin Naughton	Investigator	325.00	2.0	\$650.00
Beatriz Burd*	Intern	50.00	37.9	\$1,895.00
Benjamin Mann*	Intern	50.00	14.8	\$740.00
Cayla Seder*	Intern	50.00	47.0	\$2,350.00
Genevieve McCloy*	Intern	50.00	2.3	\$115.00
Grace McGovern*	Intern	50.00	1.2	\$60.00
Jasmine Burgos*	Intern	50.00	4.2	\$210.00
Jessica Gwardschladse	Intern	50.00	61.3	\$3,065.00
Jiya Pinder*	Intern	50.00	65.0	\$3,250.00
Michael Arnold*	Intern	50.00	1.5	\$75.00
Olvia Binder*	Intern	50.00	8.2	\$410.00
Princess Dyer*	Intern	50.00	5.2	\$260.00

<b>Professional</b>	<b>Position</b>	<b>Hourly Rate as of October 4, 2023</b>	<b>Total Hours</b>	<b>Total Lodestar</b>
Sarah Wang*	Intern	50.00	25.0	\$1,250.00
Sofia Gausch*	Intern	50.00	14.1	\$705.00
Srinidhi Addanki*	Intern	50.00	91.5	\$4,575.00
Valeria Sepulveda*	Intern	50.00	18.7	\$935.00
Vittorio Penza*	Intern	50.00	7.0	\$350.00
Will Dathan	Intern	50.00	71.9	\$3,595.00
<b>Total:</b>			<b>12,380.5</b>	<b>\$8,070,967.00</b>

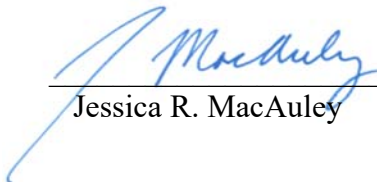
6. The schedule below reports a total of \$1,144,925.88 in unreimbursed expenses that my firm incurred.

<b>Expense</b>	<b>Amount</b>
Court reporting/transcription services	\$401.40
Filing fees	\$40.00
Litigation Fund Contributions	\$1,070,000.00
Postage/FedEx	\$1,817.17
Telephone	\$0.00
Photocopying	\$5,553.50
Travel/hotel/meals	\$38,754.19
Legal research and datasets	\$15,402.64
Process Servers and Subpoenas	\$1,641.00
Consulting and Expert Fees	\$11,315.59

<b>Total</b>	<b>\$1,194,925.88</b>
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Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 27th day of December, 2023

  
\_\_\_\_\_  
Jessica R. MacAuley

# **EXHIBIT D**



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION**

**MDL No. 2445**

**Master File No. 2:13-MD-2445-MSG**

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**DECLARATION OF DAVID F. SORENSEN ON BEHALF OF BERGER  
MONTAGUE PC IN SUPPORT OF CLASS COUNSEL’S MOTION FOR  
ATTORNEYS’ FEES, REIMBURSEMENT OF EXPENSES AND  
SERVICE AWARDS FOR THE NAMED PLAINTIFFS**

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

1. I am an Executive Shareholder at the law firm of Berger Montague PC (“BMPC”). I submit this declaration in support of Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Expenses and Service Awards for the Named Plaintiffs.
2. During the course of this litigation, BMPC has been involved in various litigation activities on behalf of Plaintiffs and the Class, including: (1) overarching litigation strategy; (2) overseeing and guiding various aspects of fact and expert discovery, including fact and expert depositions and related motion practice; (3) dispositive and *Daubert* motion briefing; (4) oral argument, including concerning the Plaintiffs’ motion for partial summary judgment; (5) class certification briefing in the District Court and on appeal in the Third Circuit; (6) trial preparation; and (7) settlement negotiations.
3. BMPC attorneys have developed specialized knowledge and experience in economic issues that arise in pharmaceutical antitrust cases such as this one, including relating to analysis and proof of monopoly power and the relevant antitrust market, class certification, and

the calculation of damages. BMPC attorneys utilized this specialized knowledge and experience on behalf of the Class in this case, to great success. BMPC attorneys led efforts to obtain discovery relevant to proving Indivior, Inc.'s ("Indivior") monopoly power, damages, and class certification, including testimony, forecasting documents, sales data, and documents showing Indivior's expectations concerning how the market would have taken shape in the but-for world free of Indivior's alleged misconduct.

4. BMPC attorneys played a significant role in reviewing, analyzing, and digesting relevant documents and data produced by Indivior and third parties, and took several fact depositions.

5. BMPC attorneys also played an active role in expert discovery, supporting Plaintiffs' economic experts, Dr. Russell E. Lamb and Dr. Ernst R. Berndt, and deposing Indivior's economic expert Dr. Parker M. Normann.

6. BMPC attorneys were among the primary drafters of Plaintiffs' motion for class certification and reply in support thereof, and of the appellate briefing when Indivior unsuccessfully appealed this Court's class certification decision. BMPC attorneys also significantly contributed to summary judgment and *Daubert* briefing, including opposing Indivior's motion for summary judgment and both *Daubert* motions to exclude Dr. Lamb. BMPC attorneys were also among the primary drafters of Plaintiffs' motion for partial summary judgment as to the relevant antitrust market (a motion argued by a BMPC attorney).

7. BMPC attorneys were actively involved in settlement efforts, including mediation discussions related to damages, "chargebacks," and other issues.

8. BMPC attorneys were actively working to prepare for trial at the time of settlement. For example, BMPC attorneys contributed significantly to the jury instruction and

motion *in limine* briefing and were preparing to present and cross-examine economic expert witnesses at trial.

9. All attorneys, paralegals and other support staff at BMPC were instructed to keep contemporaneous time records reflecting their time spent on this case, and did so. BMPC also kept books and records concerning the expenses BMPC necessarily incurred in the prosecution of this litigation, prepared from receipts and other source material.

10. The schedule below reports the time spent by BMPC attorneys, paralegals and other support staff from inception until October 4, 2023 (the date that the settlement-in-principle was reached) and time thereafter, through October 31, 2023, related only to the settlement. This submission does not include time relating to this motion. All hourly rates are BMPC's usual and customary rates, for this and other similar matters.<sup>1</sup>

<b>Professional</b>	<b>Position</b>	<b>Total Hours</b>	<b>Hourly Rate</b>	<b>Total Lodestar</b>
Sorensen, David F.	Executive Shareholder	166.3	\$1,160.00	\$192,908.00
Arteaga, Alexandra*	Paralegal	21.0	\$330.00	\$6,930.00
Boman, Laurel	Associate	10.5	\$520.00	\$5,460.00
Brew, Grace Ann	Associate	18.4	\$500.00	\$9,200.00
Brinn, Hope	Associate	1.8	\$525.00	\$945.00
Bucher, Matthew K.*	Contract Attorney	567.0	\$420.00	\$238,140.00
Caplan, Zachary	Shareholder	119.5	\$720.00	\$86,040.00
Chaudhury, Aurelia*	Associate	326.9	\$470.00	\$153,643.00
Choe, Caroline	Paralegal	269.7	\$405.00	\$109,228.50
Coslett, Caitlin G	Shareholder	3,019.0	\$770.00	\$2,324,630.00
Curley, Andrew C.	Shareholder	9.2	\$785.00	\$7,222.00
DiMaggio, James*	Contract Attorney	38.5	\$345.00	\$13,282.50
Filbert, David	Paralegal	2.6	\$420.00	\$1,092.00
Fox, Barry*	Other Staff	13.2	\$83.49	\$1,102.07
Frohbergh, Patricia L.*	Paralegal	492.3	\$390.00	\$191,997.00

<sup>1</sup> Former BMPC employees and former contract attorneys are identified with an asterisk. For those individuals, the rates shown were their rates at the time of their departure. All other rates are rates as of October 4, 2023.

Ginis, Haroula	Paralegal	162.0	\$405.00	\$65,610.00
Hollinger, J. Taylor	Associate	12.8	\$515.00	\$6,592.00
Kabacinski, Jeffrey R.*	Paralegal	2.1	\$150.00	\$315.00
Kerr, Joseph R.*	Paralegal	12.0	\$305.00	\$3,660.00
Klein, Joseph K.	Senior Counsel	2,423.8	\$690.00	\$1,672,422.00
Langer, David	Senior Counsel	140.8	\$735.00	\$103,488.00
Leo, Susan L.	Paralegal	17.0	\$375.00	\$6,375.00
Listwa, Daniel	Counsel	440.6	\$600.00	\$264,360.00
McCollum, Sandy*	Other Staff	6.5	\$57.50	\$373.75
McGrath, Julia R.	Associate	29.2	\$575.00	\$16,790.00
Moyer, Kevin X.*	Contract Attorney	389.4	\$285.00	\$110,979.00
Noteware, Ellen T.	Shareholder	1,454.9	\$825.00	\$1,200,292.50
Parker, Phyllis M.*	Shareholder	468.2	\$740.00	\$346,468.00
Parron, John D.*	Associate	97.4	\$520.00	\$50,648.00
Rajendran, Arun*	Other Staff	0.9	\$43.00	\$38.70
Rivera, Nathaniel*	Contract Attorney	36.0	\$345.00	\$12,420.00
Sauder, Karissa*	Associate	139.8	\$450.00	\$62,910.00
Schwartz, Richard D.	Senior Counsel	2,803.6	\$690.00	\$1,934,484.00
Shappell, David D.*	Paralegal	14.5	\$310.00	\$4,495.00
Simons, Daniel C.*	Senior Counsel	25.7	\$660.00	\$16,962.00
Stein, Mark*	Other Staff	2.5	\$345.00	\$862.50
Twersky, Shoshana M.*	Associate	67.6	\$550.00	\$37,180.00
Twersky, Yechiel Michael	Associate	310.4	\$645.00	\$200,208.00
Tyson, Steven G.*	Contract Attorney	51.4	\$430.00	\$22,102.00
Urban, Nick*	Shareholder	85.8	\$640.00	\$54,912.00
Valance, Nikos*	Contract Attorney	328.0	\$310.00	\$101,680.00
Wallin, Michaela	Shareholder	32.8	\$685.00	\$22,468.00
Weisblatt, Roseann E.*	Contract Attorney	22.4	\$490.00	\$10,976.00
Werwinski, Diane R.	Paralegal	1,398.6	\$410.00	\$573,426.00
Wilson, Andrea*	Contract Attorney	12.2	\$425.00	\$5,185.00
York, Mary Elizabeth	Paralegal	1.5	\$420.00	\$630.00
<b>Totals:</b>		<b>16,066.3</b>		<b>\$10,251,132.52</b>

11. The schedule below reports a total of \$1,076,436.96 in unreimbursed expenses that BMPC incurred.

<b>Expense</b>	<b>Amount</b>
Court reporting/transcription services	\$180.50
Filing fees	\$237.25
Litigation Fund Contributions	\$960,000.00
Postage/FedEx/Delivery/Freight	\$702.90
Consulting/Expert fees	\$7,845.83
Telephone	\$593.43
Photocopying/Reproduction	\$19,966.58
Travel/hotel/meals	\$17,746.17
Research fees (including legal research, data, and business entity search fees for class certification)	\$69,164.30
<b>Total</b>	<b>\$1,076,436.96</b>

Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 20th day of December, 2023

  
 /s/ \_\_\_\_\_  
 David F. Sorensen

# **EXHIBIT E**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION**

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**MDL No. 2445**

**Master File No. 2:13-MD-2445-MSG**

**Declaration of Stuart E. Des Roches in Support of  
Direct Purchaser Class Plaintiffs' Motion for Attorneys' Fees, Reimbursement of  
Expenses, and Incentive Awards for the Named Plaintiffs**

I, Stuart E. Des Roches, subject to the penalties of perjury provided by 28 U.S.C. § 1746, hereby declare as follows:

I am a managing member of the law firm Odom & Des Roches, LLC (“ODR”), co-counsel for the Direct Purchaser Class Plaintiffs (“DPC Plaintiffs”) in the above-captioned case. I submit this declaration in support of Direct Purchaser Class Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses, and Incentive Awards for the Named Plaintiffs.

**Firm Background and Experience.**

1. ODR has engaged in antitrust litigation for many years, including twenty-five (25) years of litigating antitrust cases on behalf of individual and classes of plaintiffs who purchase FDA-approved drugs directly from pharmaceutical manufacturers. ODR was a member of the litigation team that first challenged reverse payments on behalf of the direct purchaser class starting in 1998, and later challenged for the first time other types of conduct, such as product-hopping, improper Orange Book listings, and the filing of sham Citizen Petitions and patent lawsuits, all of which artificially delay or impair market entry of less-expensive generic drugs in contravention of the antitrust laws and the Hatch-Waxman regulatory scheme that governs prescription drugs in the United States (collectively, “Hatch-Waxman antitrust cases”).

2. In particular, the firm has extensive experience with: (a) the Hatch-Waxman Act and the Medicare Modernization Act (“MMA”), as well as associated regulations, guidances, manuals, practices and procedures pertaining to the filing,



maintenance, and FDA approval of Abbreviated New Drug Applications (“ANDA” or “ANDAs”) filed by generic drug manufacturers and New Drug Applications (“NDA” or “NDAs”) filed by branded drug manufacturers; (b) operational issues associated with the processes and procedures employed by pharmaceutical manufacturers in preparing for, launching, and maintaining commercial quantities of pharmaceutical products on the U.S. market; and (c) organizing, preparing for and being trial-ready in Hatch-Waxman antitrust cases.

3. ODR’s attorneys and paralegals leveraged their Hatch-Waxman antitrust experience in this case to efficiently and effectively assist in evaluating this case prior to filing, conducting fact and expert discovery, engaging in motion practice, commencing extensive trial preparations, and participating in multiple mediation processes that resulted in the settlement presented to this Court for approval.

**Work in this Case.**

4. From the outset of this case, the efforts of co-counsel for the DPC Plaintiffs were organized, coordinated, and monitored by Co-Lead Counsel. Most of the class counsel representing the DPC Plaintiffs in this case have worked together for 25 years on Hatch-Waxman antitrust cases. Efforts here were generally divided into issue teams according to the expertise that each firm has built over the years, with each issue team interacting with other teams to ensure that overall strategies were consistent throughout and that key facts were developed and exploited across all aspects of the case, which was particularly important in that the DPC Plaintiffs alleged that the defendant engaged in an inter-connected, over-arching scheme in violation of Section 2 of the Sherman Act. Co-

counsel for the DPC Plaintiffs worked together to devise and implement an overall litigation plan and ensured that all litigation tasks were appropriately staffed, pursued, and executed in an effective manner.

5. Prior to filing this case, ODR conducted research and analysis pertaining to Indivior's product hop from Suboxone Tablets to Suboxone Film by evaluating, *inter alia*, Citizen Petitions filed by Indivior and oppositions thereto, FDA's publicly-available review package relating to Suboxone Film, and other public information relating to the relative safety of tablet versus film dosage forms and child-resistant bottles versus unit-dose packaging in terms of accidental pediatric exposures and abuse, misuse, and diversion. ODR also evaluated certain causation-related issues, including the prospects that generic pharmaceutical manufacturers could and would have earlier launched less-expensive generic versions of Suboxone Tablets "but for" the FDA's mandated shared Risk Evaluation and Mitigation Strategies ("shared REMS") requirement and Indivior's September 2012 Citizen Petition filed with the FDA regarding Suboxone Tablets.

6. After filing of the case and its transference to this Court, ODR was part of the team effort that successfully opposed Indivior's comprehensive Fed.R.Civ.P. Rule 12 motion to dismiss and the undersigned took the lead in presenting arguments to this Court during the hearing on that matter on behalf of the DPC Plaintiffs.

7. Once discovery commenced, and at the direction of Co-Lead Counsel, ODR was responsible for portions of the case involving, *inter alia*: (a) the regulatory background underlying and pertaining to Suboxone Tablets and Film, and generic versions thereof; (b) regulatory exclusivities Indivior possessed in connection with its

Suboxone Tablet NDA, as well as FDA's mandated shared REMS requirement; (c) the ANDAs filed by generic competitors to Indivior's Suboxone Tablets, namely Amneal and Actavis; (d) the failed negotiations between Indivior and Amneal/Actavis (and other manufacturers of buprenorphine-containing products) regarding the shared REMS requirement, and the subsequent FDA waiver of that requirement in terms of Indivior's participation; (e) Indivior's September 2012 Citizen Petition, oppositions thereto, and FDA's ruling thereon and referral to the Federal Trade Commission ("FTC"); (f) the readiness, ability, and willingness of Amneal and Actavis to enter the market earlier and/or enter with greater volumes of generic Suboxone Tablets than they actually launched and sold "but for" Indivior's over-arching scheme; (g) the legal framework and FDA regulations governing comparative marketing and promotional efforts for pharmaceuticals (which was a component of evaluating Indivior's false marketing statements and illegal promotion of its film product, as part of its product hop scheme); and (h) advice obtained by Indivior from third-party regulatory consultants that revealed the intent, operation, and purpose of their product hop scheme.

8. More specifically, Amneal and Actavis' "readiness, willingness and ability" to enter the market earlier with greater volumes of product comprised gathering evidence regarding and evaluations of: (a) earlier FDA regulatory approval of the Amneal/Actavis ANDAs in light of the shared REMS negotiations with Indivior and Indivior's September 25, 2012 Citizen Petition regarding Suboxone Tablets; (b) commercial manufacturing capabilities and supplies; (c) business incentives and objectives; and (d) business strategies to counteract Indivior's launch of Suboxone Film.

This work necessarily required ODR to have an in-depth understanding of the nature and details of the REMS negotiations that occurred between Indivior and Actavis/Amneal (and others), as well as the nature of the requests and supporting data in Indivior's Citizen Petition filed in September 2012. ODR also conducted discovery regarding other generic competitors potentially delayed by the scheme, and which also provided information on the shared REMS negotiations and Indivior's actions, communications, and efforts relating thereto.

9. In order to understand the interrelatedness of the component parts of Indivior's scheme, it was also necessary for ODR to coordinate efforts with co-counsel to assist in other aspects of the case, particularly the timing and types of efforts undertaken to force the market switch from Suboxone Tablets to Suboxone Film over a period of time (and prior to formal withdrawal of Suboxone Tablets), the nature of Indivior's false marketing statements, Indivior's scientific support (or lack thereof) for their unlawful and misleading comparative marketing and promotional efforts, discovery of Indivior's development partner and supplier on this drug product (Monosol/Aquestive Therapeutics), and related whistleblower/relator cases and criminal matters involving Suboxone and Indivior.

10. Consistent with the above discovery (and eventual trial responsibilities), ODR took multiple depositions of party and non-party fact witnesses in the case. In total, ODR actively participated in 16 of the approximately 53 fact depositions taken by all parties in this case – in most instances, taking the lead in the examinations on behalf of all plaintiffs. Specifically, ODR deposed the following:

<b>Name</b>	<b>Party</b>	<b>Date(s)</b>
Andry, Gerald	Third Party – Roxane/West Ward Senior Director of Regulatory Medical Affairs	Jan. 23, 2018
Clissold, Dave	Third Party – Indivior’s outside regulatory counsel	Apr. 11, 2018
Crossley, Mark	Indivior’s current CEO (and former CFO)	Aug. 29, 2023
Edwards, Candis	Third Party – Amneal Senior Vice President of Regulatory Affairs/Compliance	Oct. 5, 2017
Gopu, Kishore	Third Party – Teva Director of REMS Operations	Feb. 21, 2018
Higgin, Michelle	Third Party – PharmaDirections Managing Principal (Indivior’s outside regulatory consultant)	Jun. 20, 2018
Jadeja, Janek	Third Party – Actavis Director of Regulatory Affairs	Sep. 14, 2017 & Oct. 3, 2017
Kendall, Keith	Third Party – Monosol/Aquestive Therapeutics CEO	Aug. 30, 2018
Kinard, Robin	Third Party – PPD project manager regarding the BTOD REMS	Aug. 1, 2019
Luce, Jim	Third Party – Amneal Executive Vice President of Sales & Marketing	Aug. 30, 2018
McLeod, Suzanne	Third Party – Roxane/West Ward Manager of REMS and Drug Safety	Jan. 23, 2018
Pastore, Jill	Third Party – Teva Senior Director of Regulatory Affairs	Feb. 21, 2018
Patel, Alpesh	Third Party – Amneal Vice President of Global Regulatory Affairs	Aug. 31, 2017
Pollock, Robert	Third Party – Lachman Consultants Executive Vice President (Monosol/Aquestive Therapeutics’ outside regulatory consultant)	Aug. 7, 2018
Schobel, Mark	Third Party – Monosol/Aquestive Therapeutics CEO and President	Aug. 22, 2018 & Aug. 23, 2018
Yang, Ju	Indivior Global Head of Regulatory Affairs	Apr. 4, 2023

11. ODR also attended the depositions of other fact witnesses, and assisted the examining attorneys for those depositions with preparation for and/or taking of the depositions.<sup>1</sup>

12. ODR further assisted in other discovery tasks, including: (a) drafting numerous requests for production, interrogatories, and third-party subpoenas; (b) participating in meet-and-confer processes with multiple generic ANDA filers regarding their responses and objections to discovery requests; (c) assisting in the review of 6-7 million pages of documents obtained from Indivior and third parties, which was an especially substantial undertaking; (d) constructing an efficient deposition strategy that identified key witnesses with relevant knowledge of the facts while minimizing the total number of depositions plaintiffs would have to take in the case; and (e) engaging and working with experts.

13. Regarding experts, ODR worked closely with two highly-qualified experts specializing in the pharmaceutical industry and the Hatch-Waxman Act regulatory scheme, Ms. Deborah Jaskot and Prof. Patricia Zettler. Ms. Jaskot, a former executive with over 30 years of pharmaceutical regulatory affairs experience, opined regarding the general regulatory framework pertaining to brand and generic drug products, whether there were regulatory impediments to earlier final approval of the ANDAs of Amneal and Actavis, as well as the merits of Indivior's September 2012 Citizen Petition. Prof. Zettler,

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<sup>1</sup> Fact witnesses, Dr. Tim Baxter (Indivior Global Medical Director), Lenn Murrelle (Venebio President and CEO), and Nicholas Reuter (Indivior Manager of Risk Mitigation and Public Policy).

who at the time was teaching at the Moritz College of Law (Ohio State University) and was recently named Deputy General Counsel for U.S. Department of Health and Human Services, opined regarding issues involving FDA's required shared REMS for buprenorphine-containing products, the FDA regulations concerning the marketing and promotion of prescription drugs, and Indivior's lack of scientific evidence to support its promotional safety claims relating to Suboxone Tablets and Film.

14. ODR was also responsible for preparing Ms. Jaskot and Prof. Zettler for their depositions and defending their three depositions (Prof. Zettler was deposed twice). In addition, ODR was primarily responsible for deposing those experts put forward by Indivior to counter Ms. Jaskot and Prof. Zettler, namely Sheldon Bradshaw and Nicholas Fleischer (Mr. Fleischer was also deposed twice). ODR also participated in the deposition of Dolores Curtis on related issues, in conjunction with the state attorneys general. In total, ODR either took or defended 7 of the approximately 29 expert depositions in the case. In addition, ODR also attended the depositions of an additional two expert witnesses, and assisted the examining attorneys for those depositions with preparation for and/or taking of the deposition.<sup>2</sup>

15. ODR was tasked to lead the oppositions to *Daubert* motions filed by Indivior seeking to exclude the opinions of Ms. Jaskot and Prof. Zettler, assisted with any causation-related aspects of other *Daubert* oppositions, and assisted in drafting and

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<sup>2</sup> Indivior's expert Lenn Murrelle (who was also deposed separately as a fact witness) and DPC Plaintiffs' expert Dr. Laurence Westreich.

editing Plaintiffs' affirmative *Daubert* motion seeking to exclude certain opinions of Indivior's experts, Sheldon Bradshaw and Nicholas Fleischer.

16. ODR was also involved in drafting aspects of Plaintiffs' opposition to Defendants' motion for summary judgment, Plaintiffs' responses to Defendants' statements of material facts submitted in support of their motions for summary judgment, and Plaintiffs' responsive statement of facts opposing summary judgment.

17. ODR was also part of the core team that engaged in extensive trial preparations and was prepared to materially participate in all aspects of trial. Those trial efforts started in the Fall of 2022 and continued until the matter was settled through a mediation process in October 2023.

18. The undersigned was designated as the lead trial lawyer, while firm member Dan Chiorean was designated to lead the direct or cross examination of several fact and expert witnesses. Our firm's paralegal, Kimberly Fontenot, was designated as the lead paralegal for the combined, multi-firm trial team.

19. These trial responsibilities required ODR attorneys and paralegals to be involved in extensive trial preparations, including (a) organizing and overseeing the entire trial team; (b) negotiating deadlines and sequencing with Indivior regarding pre-trial deliverables; (c) creation of and quality control over an extensive exhibit list, and associated preparation of the actual exhibits for trial use; (d) deciding which fact and expert witnesses to present as well as the ordering of those witnesses; (e) designating deposition testimony of witnesses who would not be available to testify live during trial; (f) researching the evidentiary bases for introduction of, or opposition to, key pieces of



testimony and exhibits; (g) preparing for the examination of fact and expert witnesses, including preparing expert witnesses for their testimony; (h) selecting trial vendors for various technical needs; (i) researching and selecting a hotel and war room for counsel, paralegals, and other support staff; (j) preparing the opening statement; (k) structuring a mock jury focus session; (l) working with jury and demonstrative-graphics consultants; and (m) coordinating and leading the overall team of paralegals for trial preparations.

20. Finally, ODR through the undersigned was a core member of the DPC Plaintiffs' settlement and mediation team. This work involved, among other things, working closely with Co-Lead Counsel (Mr. Gerstein in particular) in charge of settlement negotiations on behalf of the DPC Plaintiffs, drafting portions of mediation statements and other communications, and engaging with the mediator.

**ODR's Fees and Expenses.**

21. Contained below is a chart demonstrating the time spent on this case by each ODR attorney and paralegal, and the lodestar calculation based on the firm's 2023 billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by all attorneys, paralegals, and staff at our firm, which are available for the Court's *in camera* inspection if necessary. The chart reports the time spent on the case from its inception until October 31, 2023. This does not include time spent preparing documentation for this motion. The total number of hours expended on this litigation by the firm is 16,569.65 and the total lodestar for the firm is \$10,062,603.75.

Name	Position	Hours	2022 Rate (\$/ Hour)	Lodestar (\$)
Stuart Des Roches	Partner	3000.5	\$985.00	\$2,955,492.50
Andrew Kelly	Partner	59.75	\$930.00	\$55,567.50
Chris Letter	Partner	364.5	\$765.00	\$278,842.50
Dan Chiorean	Partner	3121.65	\$700.00	\$2,185,155.00
Craig Glantz	Associate	65.75	\$650.00	\$42,737.50
Annie Schmidt	Associate	1986.5	\$525.00	\$1,042,912.50
Christopher Stow-Serge	Associate	97.5	\$550.00	\$53,625.00
Amanda Hass	Associate	179.0	\$525.00	\$93,975.00
Caroline Hoffmann	Associate	574.25	\$450.00	\$258,412.50
John Fitzpatrick	Associate	3367.5	\$400.00	\$1,347,000.00
TJ Maas	Of Counsel	1479.25	\$750.00	\$1,109,437.50
Kimberly Fontenot	Paralegal	1478.75	\$290.00	\$428,837.50
Amy Kennelly	Paralegal	794.75	\$265.00	\$210,608.75
<b>TOTAL</b>		<b>16,569.65</b>		<b>\$10,062,603.75</b>

22. In addition to the lodestar, our firm has also incurred a total of \$1,191,296.97 in un-reimbursed expenses reasonably and necessarily incurred in connection with the prosecution of the litigation. The expenses and costs incurred in this action are reflected in the firm's detailed Work-In-Progress ("WIP") Report, which is also available to the Court for *in camera* inspection upon request. The WIP Report is prepared from expense vouchers, check records, receipts, and other source materials and are an accurate recordation of the actual expenses and costs incurred. No "premium" or other additional charge has been added to these figures. The breakdown of the un-reimbursed costs and expenses is as follows:

<b>Expense</b>	<b>Amount</b>
Travel/Hotel/Meal Expenses	\$80,753.98
Service of subpoenas	\$1,894.01
Filing fees or other court costs	\$40.00
Litigation fund contributions	\$1,090,000.00
Reproduction Costs	\$16,155.57
Postage	\$1,386.36
Legal Research (Pacer)	\$887.10
Miscellaneous (FDA- Freedom of Info Request)	\$179.95
<b>TOTAL</b>	<b>\$1,191,296.97</b>

23. The expenses incurred in this action are also reflected on the books and records of our firm. These books and records are prepared from expense vouchers, receipts and other source material and accurately record the expenses incurred.

Executed this 27<sup>th</sup> day of December, 2023.

/s/ Stuart E. Des Roches  
Stuart E. Des Roches

# **EXHIBIT F**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION

MDL No. 2445

Master File No. 2:13-MD-2445-MSG

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**DECLARATION OF DAVID C. RAPHAEL ON BEHALF OF SMITH,  
SEGURA, RAPHAEL & LEGER LLP IN SUPPORT OF CLASS  
COUNSEL'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT  
OF EXPENSES AND SERVICE AWARDS FOR THE NAMED  
PLAINTIFFS**

I, David C. Raphael, Jr., subject to the penalties of perjury provided by 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner in the law firm Smith Segura Raphael & Leger, LLP ("SSRL"), attorneys for the Direct Purchaser Class Plaintiffs and class representative Burlington Drug Company, Inc., LLC ("Burlington"). I am admitted to practice *pro hac vice* in this matter. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees, Reimbursement of Expenses and Service Awards for the Named Plaintiffs. The factual matters set forth and the assertions made herein are true and correct to the best of my knowledge, information, and belief.

2. SSRL has over twenty-five years of experience in representing drug wholesalers in antitrust litigation related to the delayed market entry of generic products. This experience includes decades of assisting wholesaler clients (many of whom are members of the class in this case) in efforts to investigate potential violations of antitrust law in the pharmaceutical industry and prosecuting such violations from the drafting of initial complaints through trial. SSRL has

been extensively involved in the development and prosecution of the Direct Purchasers' claims in the case. Chief among those activities were:

- Discovering the potential violation involved in the case, initiating investigation into the case, preparing case development memoranda, and preparing the initial complaints filed in the District of Vermont in December 2012, including monitoring the 2012 public announcements by Defendant's predecessor in interest, Reckitt Benckiser Pharmaceuticals, Inc. and other affiliated entities ("Reckitt" or "Defendant") regarding its intention to discontinue the orally dissolving tablet version of Suboxone; analyzing the filings associated with Reckitt's 2009 Citizen Petition related to Subutex and its 2012 Citizen Petitions related to Suboxone; reviewing and analyzing publicly available and client information regarding the market availability for generic versions of Suboxone; analyzing publicly available information related to Suboxone tablet and film NDA filings; investigating the status of ANDAs for Suboxone tablets pending in 2012; analyzing Reckitt's SEC filings; researching and reviewing promotional material related to Reckitt's Suboxone tablets and film, material related to Suboxone product packaging, material related to pediatric exposure to Suboxone, and publicly available information related to Reckitt's Risk Evaluation and Mitigation Strategies ("REMS") for Suboxone;
- Managing and coordinating discovery and document production by direct purchaser class representative Burlington and other direct purchaser plaintiffs by utilizing the expertise and proficiency developed over many years in connection with discovery directed to plaintiffs. This included drafting responses to written discovery requests, negotiating with Defendant regarding the scope of discovery directed to Plaintiffs, drafting various communications and participating in numerous meet-and-confer discussions with counsel for Defendant, participating in numerous conference calls and frequently corresponding with co-counsel regarding discovery directed to direct purchaser plaintiffs; participating in briefing and argument related to discovery motions; coordinating with counsel for other class representatives and plaintiffs with respect to Defendant's discovery requests, coordinating Burlington's search and collection of responsive data and documents, and conducting attorney review of Burlington's data and documents for production;
- Communicating regularly with the principals of Burlington throughout the litigation to keep them informed of all developments in the case;
- Preparing Burlington's corporate designee for Rule 30(b)(6) deposition and defending that deposition;
- Reviewing and analyzing thousands of pages of documents and data produced by the Defendant focusing on issues related to unit-dose packaging of the Suboxone tablet

product in the United States and Reckitt's efforts to coerce doctors into prescribing the Suboxone film product over the tablet formulation;

- Preparing memoranda summarizing production on issues related unit-dose packaging of the Suboxone tablet product and preparing for and taking the deposition of Reckitt's Global Manufacturing Director, Michael Schmidt, on those issues;
- Assisting with briefing related to class certification with respect to Defendants' arguments on adequacy of class representatives;
- Preparing for trial, including drafting of numerous motions *in limine*, drafting of oppositions to Defendant's motion *in limine*, review of deposition testimony for designations; selecting exhibits and assisting in the assembly of the trial exhibit list; preparation for the live examination of Defendant witness Michael Schmidt; preparation for the live examination of Plaintiff witness for Burlington; issuing trial subpoenas to witnesses within the subpoena power of the Court; participating in meet and confer conferences and otherwise negotiating and coordinating with counsel for subpoenaed trial witnesses;
- Participating in numerous conference calls and frequently corresponding with co-counsel regarding case management and litigation strategies; and
- Participating in mediation discussions with counsel for the Defendant and consulting with lead counsel and direct purchaser class representative, Burlington, in connection with settlement discussions.

3. All attorneys, paralegals and staff at my firm were instructed to keep contemporaneous time records reflecting their time spent on this case and did so. SSRL also kept books and records concerning the expenses SSRL necessarily incurred in the prosecution of this litigation, prepared from receipts and other source material.

4. The schedule below reports the time spent by my firm's attorneys, paralegals, and staff in this case from inception until October 4, 2023 (the date that the settlement-in-principle was reached) and time thereafter, through October 31, 2023, related only to the settlement. This

submission does not include time relating to this motion. All hourly rates are SSRL's usual and customary rates, for this and other similar matters.<sup>1</sup>

Name	Status	Total Hours	Current Hourly Rate	Total Lodestar
David P. Smith.	Partner	154.40	\$800	\$123,520.00
Susan C. Segura	Partner	853.30	\$785	\$669,840.50
David C. Raphael, Jr.	Partner	1686.90	\$785	\$1,324,216.50
Erin R. Leger	Partner	2054.60	\$675	\$1,386,855.00
Brian D. Brooks *	Former Partner	2633.40	\$575	\$1,514,205.00
Mittie J. Bolton *	Former Associate	295.40	\$500	\$147,700.00
Betty R. Owens *	Contract Attorney	330.50	\$475	\$156,987.50
Michael L. Martin *	Contract Attorney	1002.70	\$375	\$376,012.50
Kristal A. Horne *	Contract Attorney	161.70	\$350	\$56,595.00
Jason Harrington *	Contract Attorney	15.90	\$350	\$5,565.00
Nancy Blackwell	Paralegal	983.00	\$250	\$245,750.00
Mark Windham *	Paralegal	282.20	\$200	\$56,440.00
Jessica Chiasson *	Paralegal	59.70	\$185	\$11,044.50
Aruna Patel *	Paralegal	57.60	\$165	\$9,504.00
Megal Lord *	Paralegal	470.90	\$165	\$77,698.50
Donna Thompson	Paralegal	207.10	\$155	\$32,100.50
David Cannon	Paralegal	401.40	\$155	\$62,217.00
Carolee Neal *	Paralegal	90.10	\$150	\$13,515.00
<b>Total:</b>		<b>11740.80</b>		<b>\$6,269,766.50</b>

<sup>1</sup> Former SSRL employees and former contract attorneys are identified with an asterisk. For those individuals, the rates shown were their rates at the time of their departure. All other rates are rates as of October 31, 2023.

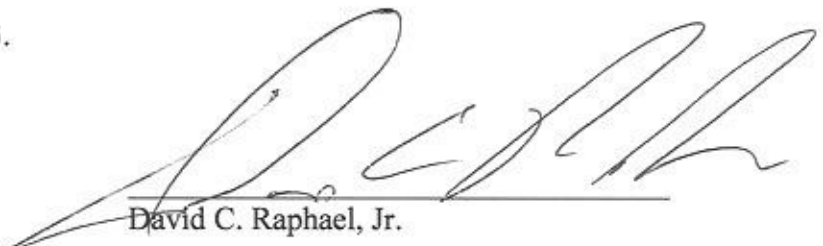


5. SSRL has also incurred a total of \$1,178,152.26 (as of October 31, 2023) in unreimbursed expenses in connection with the prosecution of the litigation. These expenses were reasonably and necessarily incurred in connection with this litigation and include:

Expenses	Amount
Filing Fees/Court Costs	\$450.19
Litigation Fund Assessments	\$1,110,000.00
Postage/Air Express/Messengers	\$1,123.11
Process Server/Subpoena Expenses	\$467.29
Reproduction Costs	\$11,615.29
Research and Datasets	\$10,080.98
Court Transcripts	\$344.85
Telephone/Teleconference/Facsimile	\$8,192.29
Travel/Hotel/Meals	\$35,878.26
<b>Total:</b>	<b>\$1,178,152.26</b>

6. Pursuant to 28 U.S.C § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 29<sup>th</sup> day of December, 2023.



David C. Raphael, Jr.

# **EXHIBIT G**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION**

**MDL No. 2445**

**Master File No. 2:13-MD-2445-MSG**

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**DECLARATION OF ARCHANA TAMOSHUNAS ON BEHALF OF TAUS, CEBULASH  
& LANDAU, LLP IN SUPPORT OF CLASS COUNSEL’S MOTION FOR ATTORNEYS’  
FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS FOR THE  
NAMED PLAINTIFFS**

I, Archana Tamoshunas, subject to the penalties of perjury provided by 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner at the law firm of Taus, Cebulash & Landau, LLP. I submit this declaration in support of Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Expenses and Service Awards for the Named Plaintiffs.

2. During the course of this litigation, my firm has been involved in the following activities on behalf of the direct purchaser class:

- **Document review:** developing document requests and document review protocols; reviewing and analyzing party and third-party documents related to REMS, delay causation and product hop;
- **Discovery:** co-head of an issue team relating to REMS; responsible for managing the team, analyzing documents and developing evidence and deposition strategy, and handling all REMS-related aspects throughout discovery, motions, class certification, experts and summary judgment;
- **Experts:** principal handler for plaintiffs’ expert on REMS, including for the expert’s work on reports, review of evidence, and preparing for depositions; defending REMS expert depositions; working with and defending depositions of plaintiffs’ experts on generic substitution and statistics;

- **Motions:** drafting and editing sections of plaintiffs' opposition to the motion to dismiss; research and drafting for plaintiffs' class certification motion and appeal; responsible for *Daubert* motions and oppositions related to REMS experts; responsible for summary judgment facts and briefing related to REMS.

3. All attorneys, paralegals and other support staff at my firm were instructed to keep contemporaneous time records reflecting their time spent on this case and did so. My firm also kept books and records concerning the expenses my firm necessarily incurred in the prosecution of this litigation, prepared from receipts and other source material.

4. The schedule below reports the time spent by my firm's attorneys and legal assistant from inception until October 4, 2023 (the date that the settlement-in-principle was reached). This submission does not include time relating to this motion. All hourly rates are my firm's usual and customary rates, for this and other similar matters as of October 4, 2023.<sup>1</sup>

<b>Professional</b>	<b>Position</b>	<b>Total Hours</b>	<b>Hourly Rate as of October 4, 2023</b>	<b>Total Lodestar</b>
Archana Tamoshunas	Partner	2049.9	\$750.00	\$1,537,425.00
Barry Taus	Partner	591.2	\$875.00	\$517,300.00
Miles Greaves	Partner	639.1	\$610.00	\$389,851.00
Tess Bonoli*	Associate	83.4	\$350.00	\$29,190.00
Neisha Brown	Legal Assistant	44.5	\$235.00	\$10,457.50
<b>Total:</b>		<b>3408.1</b>		<b>\$2,484,223.50</b>

5. The schedule below reports a total of \$384,336.80 in unreimbursed expenses that my firm incurred.

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<sup>1</sup> Former employees are identified with an asterisk. For former employees, the rates shown were the employees' rates at the time they left the firm.

<b>Expense</b>	<b>Amount</b>
Court reporting/transcription services	
Filing fees	
Litigation Fund Contributions	\$370,000.00
Postage/FedEx	
Telephone	
Photocopying	\$3,448.75
Travel/hotel/meals	\$8,698.07
Legal research and datasets	\$2,189.98
<b>Total</b>	<b>\$384,336.80</b>

Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 19th day of December, 2023



Archana Tamoshunas

# **EXHIBIT H**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION**

**MDL No. 2445**

**Master File No. 2:13-MD-2445-MSG**

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**DECLARATION OF JOHN D. RADICE ON BEHALF OF MEIJER, INC., AND MEIJER  
DISTRIBUTION, INC. IN SUPPORT OF CLASS COUNSEL'S MOTION FOR  
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS  
FOR THE NAMED PLAINTIFFS**

I, John D. Radice, subject to the penalties of perjury provided by 28 U.S.C. § 1746, hereby declare as follows:

1. I am John D. Radice at the law firm of Radice Law Firm, PC. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees, Reimbursement of Expenses and Service Awards for the Named Plaintiffs.

2. During the course of this litigation, my firm has been involved in the following activities on behalf of the direct purchaser class:

- drafting of complaint, subpoenas, and related pleadings and documents;
- reviewing and analyzing documents and evidence concerning product hop, tentative approval, market power and related issues;
- analyzing treatment advocate evidence and working on outline collecting best evidence; and
- interviewing experts for possible retention.

3. All attorneys, paralegals and other support staff at my firm were instructed to keep contemporaneous time records reflecting their time spent on this case, and did so. My firm also kept books and records concerning the expenses my firm necessarily incurred in the prosecution of this litigation, prepared from receipts and other source material.

4. The schedule below reports the time spent by my firm's attorneys, paralegals and other support staff from inception until October 4, 2023 (the date that the settlement-in-principle was reached) and time thereafter related only to the settlement. This submission does not include time relating to this motion. All hourly rates are my firm's usual and customary rates, for this and other similar matters as of October 4, 2023.<sup>1</sup>

<b>Professional</b>	<b>Position</b>	<b>Total Hours</b>	<b>Hourly Rate as of October 4, 2023</b>	<b>Total Lodestar</b>
John Radice	Partner	149.9	\$895	\$134,160.50
Eva Kane	Of Counsel	2,343.6	\$520	\$1,218,672.00
Kenneth Pickle	Partner	335.9	\$695	\$233,450.50
April Lambert	Partner	2.4	\$725	\$1,740.00
<b>Total:</b>		<b>2,831.8</b>		<b>\$1,588,023.00</b>

5. The schedule below reports a total of \$25,030 in unreimbursed expenses that my firm incurred.

<b>Expense</b>	<b>Amount</b>
Court reporting/transcription services	
Filing fees	

<sup>1</sup> Former employees are identified with an asterisk. For former employees, the rates shown were the employees' rates at the time they left the firm.



Litigation Fund Contributions	\$25,000.00
Wire fees	\$30.00
Telephone	
Photocopying	
Travel/hotel/meals	
Legal research and datasets	
<b>Total</b>	<b>\$25,030.00</b>

Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 19th day of December, 2023

/s/ John D. Radice

# **EXHIBIT I**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE SUBOXONE (BUPRENORPHINE  
HYDROCHLORIDE AND NALOXONE)  
ANTITRUST LITIGATION**

**MDL No. 2445**

**Master File No. 2:13-MD-2445-MSG**

**THIS DOCUMENT RELATES TO:**

*All Direct Purchaser Class Actions*

**DECLARATION OF DAVID P. GERMAINE ON BEHALF OF SPERLING & SLATER,  
LLC IN SUPPORT OF CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES,  
REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS FOR THE NAMED  
PLAINTIFFS**

I, David P. Germaine, subject to the penalties of perjury provided by 28 U.S.C. § 1746, hereby declare as follows:

1. I am a shareholder in the law firm of Sperling & Slater, LLC. I submit this declaration in support of Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Expenses and Service Awards for the Named Plaintiffs.

2. During the course of this litigation, my firm has been involved in the following activities on behalf of the direct purchaser class:

- Investigate the background information and preparation of the complaint and case timeline.
- Responding to Rule 34 Requests for Production directed to class representative Meijer.
- Document review and production for class representative Meijer.
- Respond to Interrogatories directed to class representative Meijer.
- Litigate class representative discovery issues.
- Prepare for and defend class representative Meijer to testify at deposition.
- Assist in the preparation of class certification briefing with regard to Meijer.

- Keep class representative Meijer informed as to the status of the litigation.

3. All attorneys, paralegals and other support staff at my firm were instructed to keep contemporaneous time records reflecting their time spent on this case and did so. My firm also kept books and records concerning the expenses my firm necessarily incurred in the prosecution of this litigation, prepared from receipts and other source material.

4. The schedule below reports the time spent by my firm's attorneys, paralegals and other support staff from inception until October 4, 2023 (the date that the settlement-in-principle was reached) and time thereafter related only to the settlement. This submission does not include time relating to this motion. All hourly rates are my firm's usual and customary rates, for this and other similar matters as of October 4, 2023.<sup>1</sup>

<b>Professional</b>	<b>Position</b>	<b>Total Hours</b>	<b>Hourly Rate as of October 4, 2023</b>	<b>Total Lodestar</b>
Alberto Rodriguez	Shareholder	88.5	835.00	\$73,897.50
David Germaine	Shareholder	196.6	905.00	\$177,923.00
John Bjork	Shareholder	279.8	835.00	\$233,633.00
Joseph Vanek	Shareholder	133.1	1125.00	\$149,737.50
Mitch Macknin	Shareholder	13	955.00	\$12,415.00
Martin Amaro	Sr. Attorney	173.8	645.00	\$112,101.00
Scott Ruksakiati*	Shareholder	35.2	705.00	\$24,816.00
Lisa Fridgeirsson	Paralegal	.25	395.00	\$98.75
Chelsey Parrott-Sheffer*	Paralegal	14.6	200.00	2,920.00
Diane Fan	Paralegal	34.7	395.00	\$13,706.50
<b>Total:</b>		<b>969.55</b>		<b>\$801,248.25</b>

<sup>1</sup> Former employees are identified with an asterisk. For former employees, the rates shown were the employees' rates at the time they left the firm.

5. The schedule below reports a total of \$354,188.16 in unreimbursed expenses that my firm incurred.

<b>Expense</b>	<b>Amount</b>
Expert & Consulting Fees	\$88,783.55
Litigation Fund Contributions	\$150,000.00
Database & Hosting Charges	\$110,250.00
Postage/FedEx	\$203.48
Photocopying	\$668.00
Travel/hotel/meals	\$3,218.09
Legal research	\$823.50
Miscellaneous (Articles, Deposition Space)	\$241.54
<b>Total</b>	<b>\$354,188.16</b>

Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed this 19<sup>th</sup> day of December, 2023

