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

IN RE LIPITOR ANTITRUST
LITIGATION

MDL No. 2332

This Document Relates To:

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

All End-Payor Class Actions

**MEMORANDUM OF LAW IN SUPPORT OF END-PAYOR CLASS
COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND GRANT OF SERVICE
AWARDS TO THE CLASS REPRESENTATIVES**

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Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Cohen Milstein Sellers & Toll, PLLC, Wexler Boley & Elgersma LLP, Motley Rice LLC, and Grant & Eisenhofer P.A. (collectively, “Co-Lead Counsel”), along with Liaison Counsel, Dilworth Paxon LLP,¹ respectfully submit this motion for an attorneys’ fee award of 33 $\frac{1}{3}$ % of the \$35 million common fund established by the settlement between the End-Payor Class Plaintiffs (“EPPs”) and defendant Pfizer,² reimbursement of reasonable expenses incurred in prosecution of this litigation, and a grant of service awards to the Class Representatives.³

I. INTRODUCTION

At the intersection of patent and antitrust law, this litigation has been challenging, complex, and protracted. EPPs originally filed their consolidated

¹ The collective efforts of all counsel for the End-Payor Class Plaintiffs (collectively, “Class Counsel”) are described in further detail below and in the accompanying Declaration of Co-Lead Counsel in Support of Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Expenses, and Grant of Service Awards to the Class Representatives (the “Co-Lead Declaration”) and individual law firm declarations (Co-Lead Decl., Exs. A through T), filed contemporaneously therewith.

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

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

complaint roughly a dozen years ago—on behalf of themselves and similarly situated third-party payors (“TPPs”) and consumers—alleging that Pfizer and first-filing generic manufacturer Ranbaxy⁴ (together with Pfizer, “Defendants”) engaged in anticompetitive conduct to prevent or delay market entry of generic Lipitor and caused EPPs to pay higher prices for Lipitor and its generic equivalents than they would have in a competitive market.

Now, after close to a dozen years of hard-fought litigation, EPPs have reached a \$35 million settlement with Pfizer that will bring compensation to the TPP and Consumer Classes, which were preliminarily certified for settlement purposes by this Court’s June 3, 2024 Preliminary Approval Order. ECF No. 1412. As described in detail below, Class Counsel invested significant time and resources to achieve this recovery, including by, *inter alia*, filing three amended consolidated complaints, contesting multiple rounds of motion to dismiss briefing, successfully appealing adverse rulings to the Third Circuit, propounding requests for discovery from Defendants and non-parties, filing and contesting multiple discovery motions, taking depositions of Defendants’ experts, defending eleven EPP depositions, moving for

⁴ “Ranbaxy,” as used herein, refers to Ranbaxy Inc., Ranbaxy Laboratories Limited, and Ranbaxy Pharmaceuticals, Inc. As noted in Plaintiffs’ preliminary approval papers, defendant Ranbaxy is not part of the Settlement and so litigation will continue against Ranbaxy. *See* ECF No. 1398 at 6. Unless otherwise stated, “ECF No. ___” refers to the docket entry in this Action, *In re Lipitor Antitrust Litigation*, Case No. 3:12-cv-2389-ZNQ-JBD (D.N.J.).

certification of the Classes, opposing Defendants' motion for summary judgment, retaining and defending the depositions of two experts to address impact, damages, and ascertainability of the EPP Classes, conducting a day-long evidentiary hearing, and participating in years-long mediation.

Accordingly, Class Counsel now move for an award of attorneys' fees, reimbursement of reasonable expenses, and a grant of service awards for the Class Representatives.

First, the requested fee award of 33 $\frac{1}{3}$ % of the common fund, amounting to a total of \$11,666,666, provides reasonable compensation to Class Counsel from the common fund created by their efforts and is both well within the range of fee awards within this Circuit and in complex pharmaceutical antitrust cases more broadly. Class Counsel expended more than 23,291.65 hours prosecuting the Classes' claims, resulting in a lodestar at historic rates of \$14,393,275.46. Co-Lead Decl. ¶¶ 76-82. Notably, Class Counsel's fee request does not provide Class Counsel with *any* multiplier—as it would only provide Class Counsel with 81% of their total lodestar (*i.e.*, a negative multiplier of 0.81) in prosecuting this Action. *Id.* ¶ 87.

Second, Class Counsel's request for reimbursement of \$2,202,611.05 in expenses is appropriate. *Id.* ¶¶ 77-86. These expenses were reasonable and necessary

as they were incurred in connection with the prosecution of the Classes' claims from the inception of this case through May 31, 2024.⁵

Third, Class Counsel also seek service awards of \$15,000 for each of the Class Representatives in acknowledgement of the service and commitment they provided throughout the long course of this litigation. *Id.* ¶¶ 88-90.

As described more fully below and in the accompanying declarations, the requested fees, expenses, and service awards are (1) consistent with previous awards in end-payor pay-for-delay cases, (2) reflect counsel's skill and work and the financial risk borne by Class Counsel for over a decade, and (3) reflect the public's interest in compensating lawyers who prosecute antitrust actions on a contingency basis and in compensating named plaintiffs for the services they have provided and the risks they have incurred. Accordingly, Class Counsel's motion for attorneys' fees, expenses, and service awards to the Class Representatives should be granted.

⁵ Co-Lead Counsel use May 31, 2024 as the lodestar cutoff date because it is a conservative date by which all substantial Settlement-related work was completed. The Settlement Agreement was signed on April 29, 2024, and preliminary approval papers were filed on May 3, 2024. ECF No. 1398. On June 3, the Court held oral argument for Preliminary Approval of the EPP Settlement with Pfizer, which was granted that same day. *See* ECF No. 1398 (Order Granting Preliminary Approval of Settlement).

II. SUMMARY OF CLASS COUNSEL’S LITIGATION EFFORTS

A. CASE INVESTIGATION, INITIAL PLEADINGS, AND MOTION TO DISMISS BRIEFING

Beginning in late 2011, Class Counsel began conducting factual investigations regarding whether Pfizer engaged in an anticompetitive scheme to maintain and extend monopoly power in the Lipitor market by: (1) fraudulently obtaining a patent and wrongfully listing it in the Food and Drug Administration (“FDA”) Orange Book; (2) engaging in serial sham patent litigation; (3) filing a sham citizen petition; (4) entering into an unlawful reverse payment “pay-for-delay” market-allocation agreement with Ranbaxy; and (5) thwarting efforts to obtain judicial declarations that Lipitor patents were invalid, unenforceable, and/or would not be infringed by generic Lipitor formulations. Co-Lead Decl. ¶ 3. Class Counsel also conducted legal research concerning the universe of relevant state laws under which they could bring end-payor claims, including, *inter alia*, research regarding which states had repealed by statute *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977). Co-Lead Decl. ¶ 4. Based on Class Counsel’s work, EPPs filed class-action complaints on behalf of themselves and similarly situated classes of third-party payors and consumers in early 2012, ultimately leading to the filing of EPPs’ Consolidated Complaint on September 10, 2012. *Id.*; ECF No. 150.

Class Counsel litigated three rounds of motions to dismiss briefing. On November 16, 2012, Pfizer and Ranbaxy each filed separate motions to dismiss

EPPs’ Consolidated Complaint. *See* ECF Nos. 243, 245. On September 5, 2013, the Court granted in part and denied in part Pfizer’s motion to dismiss the direct purchasers’ complaint, leaving intact their claims to the extent they were based on the purportedly anticompetitive settlement between Pfizer and Ranbaxy. ECF No. 455. In a docket annotation accompanying the Order, the Court indicated that “the law set forth in the Memorandum most likely applies to the indirect purchaser group complaint” and “request[ed] that the parties confer and determine which allegations of the indirect purchaser groups complaint are dismissed and which apply to the reverse payment allegations.” *Id.*

While reserving their objections to the Court’s adverse rulings, ECF No. 457, Class Counsel subsequently amended and narrowed EPPs’ complaint to claims rooted in the alleged reverse payment between Pfizer and Ranbaxy, ECF No. 473. Defendants renewed their motions to dismiss. ECF Nos. 491, 494. On October 31, 2014, the Court granted Defendants’ Motions to Dismiss, dismissing the EPPs’ Amended Complaint with prejudice. ECF No. 601.

Class Counsel continued to fight on behalf of the Classes, however, appealing the Court’s decision to the Third Circuit. On appeal, the Third Circuit reversed and remanded the case for further proceedings. ECF No. 669.

EPPs then filed a Second Amended Complaint (“SAC”), reviving their patent and reverse-payment claims. ECF No. 700. Defendants moved to dismiss the SAC;

the Court granted in part and denied in part Defendants' motion but permitted EPPs to file a Third Amended Complaint ("TAC"). *See* ECF Nos. 755, 813. EPPs filed the operative TAC on September 20, 2018. ECF No. 815.

B. DISCOVERY

The parties proceeded with document, class certification, and causation discovery. These discovery efforts were substantial. Plaintiffs took the depositions of Defendants' two experts and defended the depositions of three of their own experts, eleven named EPPs, and various class certification-related witnesses. Co-Lead Decl. ¶ 60. In addition, Class Counsel carefully reviewed and analyzed over 10 million pages of documents produced by the Defendants, and organized this evidence for various purposes, including in working with experts and taking and defending expert depositions, in seeking class certification and in opposing summary judgment, while conducting the evidentiary hearing before this Court, and during the extensive and lengthy briefing that took place during mediation. *Id.* ¶¶ 51-52.

Class Counsel also prevailed in discovery disputes. For example, when discovery began, EPPs requested from Defendants five narrow categories of documents, including the production of settlement agreements resolving Pfizer's lawsuits with generic companies Ranbaxy, Teva, Cobalt, Apotex, Mylan, and Actavis. *Id.* ¶ 46. Pfizer produced its settlement agreement with Ranbaxy but declined to produce any of the other requested settlement agreements. *Id.* ¶ 47. After

a round of briefing, the Court granted EPPs' Motion to Compel, finding that the settlement agreements at issue were relevant and that Defendants' position that the requests amounted to an "impermissible fishing expedition," was undermined by the fact that Pfizer already agreed to produce documents from the underlying litigations preceding each of the settlements. ECF Nos. 377, 388, 447. Co-Lead Counsel also briefed, argued, and successfully opposed a rogue effort by a small group of lawyers seeking intervention by a purported California sub-class of consumers. Co-Lead Decl. ¶ 54.

C. CLASS CERTIFICATION AND SUMMARY JUDGMENT

Class Counsel developed the evidence necessary to support their motion for certification of the EPP Classes and EPPs moved for class certification, seeking to represent two classes—a TPP Class and a Consumer Class—under the antitrust and consumer protection laws of 24 states and the District of Columbia in connection with Pfizer and Ranbaxy's anticompetitive conduct.⁶ During the evidentiary hearing before the Court, Class Counsel questioned two experts they had retained specifically for end-payor purchaser issues—Ms. Laura Craft and Dr. Singer—cross-examined Defendants' expert, Dr. James Hughes, and argued for certification

⁶ EPPs moved alternatively for certification of a single issues class on anti-competitive effects pursuant to Rule 23(c)(4). ECF No. 1251.

of the Classes. ECF No. 1251. Defendants moved for summary judgment on causation, which all plaintiffs opposed. ECF Nos. 1183, 1217.

D. MEDIATION AND SETTLEMENT

With mutual agreement of the parties, the Court appointed the Honorable Faith Hochberg (Ret.) as mediator. Co-Lead Decl. ¶ 57. Throughout the process leading up to the execution of a written agreement, Class Counsel and Pfizer diligently advocated their respective positions and engaged in rigorous, arm's-length negotiations. Even after agreeing on a settlement framework, the parties continued to negotiate intensely over specific terms for several months. *Id.* ¶¶ 68-70.

The settlement discussions took place concurrently with pending class certification and summary judgment motions, while negotiations involving EPPs, Pfizer, and Ranbaxy unfolded. With the guidance of Judge Hochberg, and then-serving, now-retired, Magistrate Judge Douglas E. Arpert, EPPs and Pfizer eventually reached a resolution. EPPs' litigation against Ranbaxy remains ongoing. *Id.* ¶ 68.

III. ARGUMENT

A. THE *GUNTER/PRUDENTIAL* FACTORS SUPPORT CLASS COUNSEL'S REQUESTED FEE.

In common-fund cases, the attorneys that secure a recovery for the class are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Third Circuit law permits courts to award

attorneys' fees in common-fund cases under the lodestar method or the percentage of-the-fund method. Although either method may be employed, the "[t]he Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases." *Glaberson v. Comcast Corp.*, 2015 U.S. Dist. LEXIS 127370, at *37 (E.D. Pa. Sep. 22, 2015) (collecting cases); accord *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)); *Kanefsky v. Honeywell Int'l Inc.*, 2022 U.S. Dist. LEXIS 80328, at *28 (D.N.J. May 3, 2022) (common-fund settlements "best analyzed using the percentage-of-recovery methodology" (internal quotation omitted)); *In re Philips/Magnavox TV Litig.*, 2012 U.S. Dist. LEXIS 67287, at *43 (D.N.J. May 14, 2012) ("The percentage-of-recovery method is preferred in common fund cases"). The ultimate question is whether the fee request is reasonable. Fed. R. Civ. P. 23(h).

Under Third Circuit law, district courts have considerable discretion in setting a reasonable percentage-based fee award in common-fund cases. *See, e.g., Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d Cir. 2000) ("We give [a] great deal of deference to a district court's decision to set fees."). Nonetheless, in exercising that broad discretion, the Third Circuit has noted that a district court should consider the following factors in determining a fee award:

- (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 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 plaintiffs' counsel; and (7) the awards in similar cases.

Gunter, 223 F.3d at 195 n.1. 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 Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 336-40 (3d Cir. 1998), *Kanfesky*, 2022 U.S. Dist. LEXIS 80328, at *28-29; *cf. In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2022 U.S. Dist. LEXIS 116290, at *31-32 (D.N.J. Jun. 30, 2022) (noting courts in the Third Circuit consider “the *Gunter-Prudential*” factors).

Courts are not bound to apply these factors in a rigid formulaic manner, and certain factors may carry more weight than others. Additionally, courts in this District are encouraged to assess the reasonableness of percentage fee awards against the lodestar method. *In re Prudential*, 148 F.3d at 333; *Kanfesky*, 2022 U.S. Dist. LEXIS 80328, at *32; *In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *48;

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

1. The Size of the Fund Created and the Number of Beneficiaries Favor the Requested Fee.

The result achieved is a critical factor to be considered in making a fee award. *See In re ViroPharma Inc. Secs. Litig.*, 2016 U.S. Dist. LEXIS 8626, at *48 (E.D. Pa. Jan. 25, 2016). Here, the Settlement achieved on behalf of the Classes provides for a substantial and certain payment of \$35 million that will benefit a large number of TPPs and consumers. *See, e.g.*, ECF No. 1297-2, Expert Report of Laura R. Craft, MPH (“Craft Report”), ¶¶ 4, 54 (from November 30, 2011 through December 31, 2012, pharmacy benefit manager Prime Therapeutics processed Lipitor transactions within the Class States that were associated with 229,207 unique Member IDs). The Settlement thus provides recovery to the Classes that is in line with other end-payor reverse-payment class actions and proper when in light of the risks Class Counsel faced in prosecuting the Classes’ claims. *See generally Kanefsky*, 2022 U.S. Dist. LEXIS 80328, at *30 (\$10 million settlement in securities class action created a significant fund benefitting the class); *Hall v. AT&T Mobility LLC*, 2010 U.S. Dist. LEXIS 109355, at *55 (D.N.J. Oct. 13, 2010) (one-third fee award reasonable in \$18 million settlement in consumer protection class action); *In re Suboxone Antitrust Litig.*, 2023 U.S. Dist. LEXIS 215754, at *40 (E.D. Pa. Dec. 4, 2023) (one-third fee award reasonable in \$30 million settlement benefitting class of purchasers in pharmaceutical antitrust class action); *In re Vitamins Antitrust Litig.*, MDL No. 1285

(D.D.C. July 16, 2001), ECF No. 2162 (awarding fees equal to 34% of common fund).

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

2. There Have Been No Objections to the Requested Fee.

The robust notice campaign implemented by Claims Administrator Epiq Class Action and Claims Solutions, Inc. ("Epiq") advised Class Members that Class Counsel could apply for an award of attorneys' fees in the amount not to exceed 34% of the Settlement Fund; the notices also explained how Class Members could object to that fee request. *See* Decl. of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Plan, submitted in connection with the End-Payor Class Plaintiffs' Motion for Final Approval of Settlement and Other Relief ("Motion for Final Approval"). The deadline for objecting has passed, and no objections directed to the contemplated fee request have been received. Co-Lead Decl. ¶¶ 73-74.⁷ The absence of fee-related objections under these circumstances weighs heavily in favor of approval of the requested award. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) ("The vast disparity between the number of potential class

⁷ As the Court is aware, a single objection to the fairness of the settlement has been filed by non-class members. *See* ECF No. 1461. Plaintiffs preliminarily address that objection in their Motion for Final Approval and firmly believe it will be rejected because the objectors lack standing and the objections otherwise are meritless.

members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement”).

3. Class Counsel Are Highly Skilled in Antitrust Litigation.

The Third Circuit has emphasized that the purpose of the percentage fee-award mechanism is to ensure that “competent counsel continue to undertake risky, complex, and novel litigation.” *In re Suboxone*, 2023 U.S. Dist. LEXIS 215754, at *41 (quoting *Gunter*, 223 F.3d at 198) (quotations omitted). Class Counsel have vigorously and capably prosecuted this case at every stage and were fully prepared to try it against Pfizer, just as they continue to litigate against the remaining Defendant, Ranbaxy. *See In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *16-17, 50-51 (noting class counsel’s extensive experience litigating and settling complex consumer class actions); *Kanefsky*, 2022 U.S. Dist. LEXIS 80328, at *30 (highlighting the “zealous advocacy” by counsel from “highly reputable firms with experience in complex class actions”).

The quality of representation is best measured by results, which include both the recovery obtained and the backgrounds of the lawyers involved. *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 209 55 (2nd Cir. 2000); *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008). Here, the Settlement provides \$35 million to the Classes, a significant recovery achieved through Class Counsel’s dedication, skill, and perseverance from early investigation in 2011

through finalization of the settlement in 2024. EPPs are represented by seasoned counsel experienced in litigating complex class actions, including similar antitrust cases involving delayed generic competition. *See* Co-Lead Decl., Exs. A-T (Firm Resumes). Over the course of this decade-long litigation, Class Counsel consistently have demonstrated their ability to fairly and adequately represent the EPP Classes, successfully navigating multiple motions to dismiss, prevailing on appeal, engaging in extensive discovery, and vigorously advocating for the interests of the Classes.

The quality of opposing counsel is also relevant when evaluating the quality of representation. Defendants are represented by some of the top law firms in the United States, and their counsel have fiercely defended their clients, committing significant resources to counter EPPs' allegations. The value of the Settlement is thus particularly significant given the caliber of defense counsel. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (noting counsel's achievement in securing valuable compensation despite the formidable opposition); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998) (approving attorneys' fee award where defendants were represented by "several dozen of the nation's biggest and most highly regarded defense law firms").

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

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

“[A]ntitrust class actions are among the most complex to litigate.” *In re Remicade*, 2023 U.S. Dist. LEXIS 43284, at *71 (E.D. Pa. Mar. 15, 2023) (citing cases). This case exemplifies that complexity for several reasons.

First, shortly after the case was filed, the Supreme Court granted *certiorari* on a case from the 11th Circuit to address the antitrust framework for evaluating pharmaceutical pay-for-delay “reverse payment” agreements, culminating in the landmark *Actavis* decision. *See* ECF No. 496. Plaintiffs thus had to address numerous issues raised by new precedent. Second, EPPs’ case generally is complex, involving, *inter alia*, detailed regulatory schemes, patent-law issues, and factually complicated theories of liability. Class Counsel also had to navigate highly complex regulatory issues and legal arguments during early summary judgment briefing. *See generally Kanfesky*, 2022 U.S. Dist. LEXIS 80328, at *12 (securities class action involving “thorny issues regarding the accounting for asbestos liabilities”); *In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *23-24, 50 (consumer class action involving “many complex legal and technical issues” related to design defects in flat-screen televisions).

Furthermore, the duration of this litigation—spanning roughly twelve years—is significant by any measure and weighs in favor of granting Class Counsel’s fee request. *See, e.g., In re Suboxone*, 2023 U.S. Dist. LEXIS 215754, at *42 (noting

litigation pending for more than ten years); *Kanfesky*, 2022 U.S. Dist. LEXIS 80328, at *12, 29 (litigation pending three years, including during the COVID-19 pandemic); *In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *51 (litigation pending for three years).

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

5. The Risk of Nonpayment Favors the Requested Fee.

Taking on a case on a contingency basis inherently involves significant risk, as payment is not guaranteed. *In re Mercedes-Benz Emissions Litig.*, 2021 U.S. Dist. LEXIS 256167, at *44 (D.N.J. Aug. 2, 2021). Courts consistently have recognized the risk of non-payment as a major factor in determining attorneys' fee awards. *In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *51; *Hall*, 2010 U.S. Dist. LEXIS 109355, at *66 ("Counsel's contingent fee risk is an important factor in determining the fee award. Success is never guaranteed, and counsel faced serious risks since both trial and judicial review are unpredictable. Counsel advanced all of the costs of litigation, a not insubstantial amount, and bore the additional risk of unsuccessful prosecution.").

Class Counsel initiated this Action against two large and sophisticated families of pharmaceutical companies, which retained highly experienced law firms for their defense. Despite these formidable opponents, Class Counsel vigorously prosecuted the case, investing significant time and financial resources through

partial discovery, class certification briefing, summary judgment motions, an evidentiary hearing, and appellate practice—all on a contingency basis with no assurance of recovery. Indeed, Class Counsel have not been compensated for *any* of their time or expenses since the case began a decade ago.

Furthermore, although it certified the Classes for settlement purposes, the Court subsequently denied EPPs’ motion for certification of litigation classes. In addition, it granted Defendants’ summary judgment motion, rendering uncertain any future recovery for the Classes from the remaining defendant, Ranbaxy. Plaintiffs have appealed both of the Court’s decisions, ECF Nos. 1454, 1455, but even if Class Counsel ultimately succeeds in obtaining class certification and defeating Defendants’ summary judgment motion, the risks of an antitrust trial remain considerable.⁸ While Class Counsel remains confident in their ability to overturn the Court’s summary-judgment and class-certification opinions on appeal and to prove their case at trial, these outcomes underscore the substantial risks faced by EPPs.

⁸ Recent outcomes in similar cases highlight these risks. For example, in July 2022, a Chicago jury found that although plaintiffs had proved the brand manufacturer had market power and made a large reverse payment, the settlement’s procompetitive benefits outweighed its anticompetitive effects. *In re Opana ER Antitrust Litig.*, No. 14-cv-10150 (N.D. Ill. July 1, 2022), ECF No. 1005. Similarly, in June 2023, a San Francisco jury delivered a verdict even more favorable to the defendants, finding plaintiffs failed to demonstrate an unlawful reverse payment and the brand manufacturer did not have market power. *In re HIV Antitrust Litig.*, No. 3:19-cv-02573 (N.D. Cal. June 30, 2023), ECF No. 2057.

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 23,291.65 hours litigating this case and have advanced out-of-pocket outlays and outstanding invoices totaling approximately \$2,202,611.05 in that effort to date. Courts have recognized that when class counsel invest substantial time and effort litigating a case, it demonstrates a strong commitment to the matter, which is a compelling factor supporting the approval of a fee request. *See, e.g., Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 U.S. Dist. LEXIS 69614, at *87 (E.D. PA. Apr. 21, 2020) (class counsel devoted more than 41,000 hours over a twelve-year period in antitrust litigation); *In re Suboxone*, 2023 U.S. Dist. LEXIS 215754, at *44 (class counsel spent over 26,000 hours prosecuting case); *McDonough v. Toys "R" Us, Inc.*, 80 F. Supp. 3d 626, 653 (E.D. Pa. 2015) (class counsel devoted more than 84,000 hours over an eight-year period in price-fixing case); *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 *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).

There can be no argument that Class Counsel did not devote significant time to this Action over the last dozen years. From pre-complaint investigation through preliminary approval of the Settlement, Class Counsel expended an enormous amount of time prosecuting the Classes’ claims and demonstrated a strong commitment to the Action.

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

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

Courts in this Circuit have observed that fee awards generally range from 19% to 45% of the settlement fund. *Kanefsky*, 2022 U.S. Dist. LEXIS 80328, at *31 (“The Third Circuit has found that, in common fund cases . . . in which the percentage-of-recovery methodology is used, the fees typically awarded to class counsel generally range between 19% to 45% of the settlement fund.”); *In re Suboxone*, 2024 U.S. Dist. LEXIS 33018, at *42-43 (same and noting that “[c]ourts have consistently approved such awards”). A 33 $\frac{1}{3}$ % fee is thus well within the range of fees typically approved as reasonable by courts in the Third Circuit. *See, e.g., Davis v. Kraft Foods N. Am., Inc.*, 2007 WL 9807445, at *2 (E.D. Pa. Aug. 10, 2007) (“[a]pplying the *Gunter* and *Prudential* factors to the instant case demonstrates that the fee request [of 34%] is reasonable and justified.” (citing cases)).

As the chart below shows, Co-Lead Counsel’s 33⅓% request also is in line with numerous awards in similar complex pharmaceutical antitrust cases brought by end-payor plaintiffs both within and outside of this Circuit:

Case	Settlement	Fee Percentage
<i>In re Novartis and Par Antitrust Litig.</i> , No. 1:18-cv-04361, ECF No. 641 (S.D.N.Y. Oct. 12, 2023)	\$30MM	33⅓%
<i>In re Namenda Indirect Purchaser Antitrust Litig.</i> , No. 1:15-cv-6549, ECF. No. 967 (S.D.N.Y. Mar. 23, 2023)	\$54.4MM	33⅓%
<i>In re Opana ER Antitrust Litig.</i> , No. 14- cv-10150, ECF No. 1091 (N.D. Ill. Dec. 15, 2022); <i>In re Opana ER Antitrust Litig.</i> , No. 14-cv-10150, ECF No. 1077 (N.D. Ill. Oct. 11, 2022)	\$15MM	33⅓%
<i>In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.</i> , No. 18-MD-2819, 2022 WL 3043103, at *5, 9 (E.D.N.Y. August 2, 2022)	\$30MM	“one-third”
<i>In re Loestrin 24 Fe Antitrust Litig.</i> , 1:13-md-2472, 2020 WL 4038942, at *2-8 (D.R.I. July 17, 2020), <i>Report and Recommendation adopted by</i> , 2020 WL 5201275 (D.R.I. Sept. 1, 2020)	\$62.5MM	33⅓%
<i>In re Lidoderm Antitrust Litig.</i> , No. 14- md-02521, 2018 WL 3725636 (N.D. Cal. July 31, 2018); <i>In re Lidoderm Antitrust Litig.</i> , No. 14-md-02521, 2018 WL 4620695 (N.D. Cal. Sept. 20, 2018)	\$104.75MM	“one-third”
<i>In re Aggrenox Antitrust Litig.</i> , No. 3:14 MD 2516, 2018 WL 10705542, at *3, 5 (D. Conn. July 19, 2018)	\$50.2MM	33⅓%

<i>In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.</i> , No. 1:14-md-02503, ECF No. 1157 (D. Mass. June 1, 2018); <i>In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.</i> , No. 1:14-md-02503, ECF No. 1176 (D. Mass. July 18, 2018) ⁹	\$43MM	33 $\frac{1}{3}$ %
<i>In re Flonase Antitrust Litig.</i> , 291 F.R.D. 93, 106, 113 (E.D. Pa. 2013)	\$35MM	33 $\frac{1}{3}$ %
<i>In re Relafen Antitrust Litig.</i> , 231 F.R.D. 52, 77, 82 (D. Mass. 2005)	\$67MM	33 $\frac{1}{3}$ %

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, courts consider whether any governmental investigation preceded the plaintiffs’ claims. *Kanfesky*, 2022 U.S. Dist. LEXIS 80328, at *32. Here, this litigation did not follow any government investigation or enforcement action. Co-Lead Decl. ¶ 5. The benefits of the Settlement are attributable solely to Class Counsel; 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.

If this were an individual action, the customary contingent fee would likely range between 30% and 40% of the recovery. *See, e.g., In re Remeron*, 2005 U.S.

⁹ The court’s Order did not disclose the size of the settlement, but settlement was separately disclosed in the related Memorandum of Law. ECF No. 1157.

Dist. LEXIS 27013, at *46 (“Attorneys regularly contract for contingent fees between 30% to 40% with their clients in non-class, commercial litigation”); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) (“[I]n private contingency fee cases, particularly in tort matters, plaintiffs’ counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery.”).

Here, the requested fee of 33⅓% is consistent with these non-class cases; accordingly, this factor supports Class Counsel’s fee request.

10. Any Lack of Innovative Settlement Terms Is of No Import.

The Settlement Agreement with Pfizer does not contain any particularly innovative terms; accordingly, this factor is neutral as to Class Counsel’s fee request. *See, e.g., Kanfesky*, 2022 U.S. Dist. LEXIS 80328, at *32; *In re Suboxone*, 2024 U.S. Dist. LEXIS 33018, at *46 (where a settlement does not contain any innovative terms, courts deem this factor as neutral).

B. A CROSS CHECK OF CLASS COUNSEL’S LODESTAR CONFIRMS THE REASONABLENESS OF THE REQUESTED FEE.

Class Counsel’s fee request also is reasonable considering their lodestar, which although not a preferred method of fee calculation, *see supra* at Section III.A, “is a tool to[] ensure that the percentage approach does not lead” to a windfall. *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). There clearly is no windfall here.

As detailed in each firm’s declaration attesting to both the reasonableness of the firm’s time and its compliance with the Time and Expense Order, Class Counsel for the EPPs collectively have spent 23,291.65 hours prosecuting this case for roughly a dozen years, resulting in a historical lodestar value of \$14,393,275.46.¹⁰ See Co-Lead Decl. ¶¶ 81-82, Exs. A-T. Based on a fee award of 33⅓% (or \$11,666,666), the lodestar multiplier on the fee award using historical rates is 0.81.¹¹ This reflects a negative multiplier (*i.e.*, less than one), and even with the requested fee award, Class Counsel will be well short of recouping their total investment. Class Counsel’s request for a negative multiplier of 0.81 means they will “receive *less* under a percentage fee award than their regular billing rates,” which signals there is no real danger of over compensation. *In re Remicade Antitrust Litig.*, 2023 U.S. Dist. LEXIS 43284, at *79 (internal quotation omitted); *see also O’Hern v. Vida Longevity Fund, LP*, 2023 U.S. Dist. LEXIS 76789, at *29 (D. Del. May 2, 2023) (negative multiplier provided “strong additional support for approving the attorneys’ fee request” (internal quotation omitted)); *In re Valeant Pharms. Int’l Third-Party*

¹⁰ Lodestar is calculated by multiplying the reasonable hours billed by a reasonable hourly rate. *In re Healthcare Servs. Grp.*, 2022 U.S. Dist. LEXIS 134005, at *40.

¹¹ The lodestar multiplier is calculated by dividing the requested fee award by the lodestar.

Payor Litig., 2022 U.S. Dist. LEXIS 31090, at *23 (D.N.J. Feb. 22, 2022) (negative multiplier is “strong evidence that the requested fees are reasonable”). The same is true here, especially given that the collective Class Counsel lodestar is being calculated using historical rates. If current attorney rates were being used, the negative multiplier would grow, resulting in even greater loss on each firm’s investment. Again, there is no windfall here.

Given the risks Class Counsel assumed and the amount of time, labor, and expense Class Counsel reasonably spent litigating for roughly a decade, the requested fee is reasonable using a lodestar cross check.

C. THE REQUESTED AWARD FOR CLASS COUNSEL’S EXPENSES IS ALSO REASONABLE.

Under the common-fund doctrine, class counsel customarily are entitled to reimbursement of reasonable expenses incurred in the litigation. Fed. R. Civ. P. 23(h); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (recognizing the right to reimbursement of expenses where a common fund has been produced or preserved for the benefit of a class); *In re Safety Components Inc. Secs. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (Class counsel are “entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately

incurred in the prosecution of the class action.”); *In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *55 (same).

Class Counsel are requesting to be reimbursed for their incurred and unreimbursed expenses in the amount of \$2,202,611.05. That amount was calculated by adding together expenses incurred and paid, outstanding expenses invoiced but not yet paid, and a modest holdback for possible future administrative expenses,¹² then subtracting the amount remaining in the litigation fund. Co-Lead Decl. ¶¶ 84-85. These expenses conform with the Court’s Time and Expense Order, ECF No. 801, and are the type routinely deemed as reasonable and appropriately incurred, *see, e.g., In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *56 (expenses for court fees, experts, computerized research, long distance telephone calls, photocopies, postage, couriers and travel expenses were reasonably and appropriately incurred); *Kanfesky*, 2022 U.S. Dist. LEXIS 80328, at *34 (noting that expenditures for travel, computer research, and expert witnesses were routine and reimbursable).

The vast majority of these expenses were incurred in connection with experts retained by Co-Lead Counsel for the benefit of the Classes, including two experts

¹² Class Counsel are holding back \$40,000 in the event Epiq, the Claims Administrator, incurs additional expenses for a second distribution. Any unused amount will be distributed to the Classes.

retained specifically to address impact, damages, and ascertainability of the Classes: Ms. Craft and Dr. Singer. Each expert submitted reports and provided testimony to the Court during the evidentiary hearing covering discrete, non-duplicative matters at issue. In addition, Co-Lead Counsel incurred expenses as a result of retaining a summary judgment expert with the other plaintiffs and the protracted years-long mediation for this litigation.

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

D. SERVICE AWARDS FOR THE CLASS REPRESENTATIVES ARE APPROPRIATE AND REASONABLE.

Class Counsel request that the Court approve service awards of \$15,000 to each Class Representative, payable from the Settlement Fund, in recognition of their service and commitment to this litigation. These awards would reimburse representative plaintiffs, who take on a variety of risks and tasks when they commence representative actions, such as complying with discovery requests, sitting for deposition, and participating in the litigation. Throughout the twelve years of this litigation, the Class Representatives have shouldered a substantial burden in pursuing the interests of the Classes, including review and approval of the Complaints, responding to and producing documents in connection with dozens of

Defendants' discovery requests, spending several days preparing for and sitting for Rule 30(b)(6) depositions, and reviewing and approving pleadings and the Settlement. *See* Co-Lead Decl. ¶¶ 88-90. Because the Class Representatives provided valuable services that benefitted the Classes as a whole, Co-Lead Counsel request that the proposed service awards be approved. Similar amounts have been awarded in other antitrust cases. *In re Suboxone*, 2024 U.S. Dist. LEXIS 33018, at *51 (approving award to compensate named plaintiffs for the services they provided and the risks that they incurred during the course of the class action litigation); *In re Neurontin Mktg. & Sales Practices Litig.*, 58 F. Supp.3d 167, 173 (D. Mass. 2014) (awarding \$25,000 to indirect purchaser class representative); *In re Novartis and Par Antitrust Litig.*, No. 1:18-cv-04361, ECF No. 641 (S.D.N.Y. Oct. 12, 2023) (awarding \$25,000 to the EPP class representatives).

IV. CONCLUSION

For the reasons set forth above and in the Co-Lead Declaration, Class Counsel respectfully request that this Court enter an Order awarding Class Counsel \$11,666,666 (33⅓% of the common fund) and \$2,202,611.05 in unreimbursed expenses, plus a proportionate amount of any interest accrued since the settlement was escrowed. Co-Lead Counsel also respectfully request that the Court approve service awards of \$15,000 for each of the Class Representatives for their efforts on behalf of the Classes.

DATED: August 27, 2024

Respectfully submitted,

/s/ Lisa J. Rodriguez

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 27, 2024, a copy of the foregoing Memorandum of Law in support Class Counsel's Motion for An Award of Attorneys' Fees, Reimbursement of Expenses, and Grant of Service Awards to the Class Representatives was filed with the Court electronically. Those attorneys who are registered with the Electronic Filing System may access this filing through the Court's System and notice of this filing will be sent to these parties by operation of the Court's Electronic Filing System.

/s/ Lisa J. Rodriguez _____