UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE OPANA ER ANTITRUST LITIGATION	MDL No. 2580 Lead Case No. 14-cv-10150
THIS DOCUMENT RELATES TO: All End-Payor Actions	Hon. Harry D. Leinenweber

DECLARATION OF CO-LEAD COUNSEL KARIN E. GARVEY AND ROBERT J. WOZNIAK IN SUPPORT OF END-PAYOR PLAINTIFFS' MOTION FOR PAYMENT OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

Karin E. Garvey and Robert J. Wozniak, under penalty of perjury, declare and state as follows:

1. Our firms, DiCello Levitt LLC ("DiCello Levitt") and Freed Kanner London & Millen LLC ("Freed Kanner") are co-lead counsel for the End-Payor Plaintiffs ("EPP") ("Co-Lead Counsel"). We submit this Declaration in support of EPPs' motion for an award of attorneys' fees, reimbursement of costs and expenses, and for class representative service awards in this case.

2. On April 2, 2015, the Court appointed Labaton Sucharow LLP[1] and Freed Kanner as Interim Co-Lead Counsel for the then-proposed End-Payor Plaintiff Class. *See* ECF No. 78. Co-Lead Counsel, with the assistance of other firms (collectively, "Class Counsel"), proceeded to vigorously and efficiently prosecute this complex antitrust case for more than seven years. At all times, the work of Class Counsel was directed and authorized by Co-Lead Counsel.

[1] On March 9, 2022, the Court granted EPPs' Motion to Amend Appointment of Co-Lead Counsel to substitute DiCello Levitt for Labaton Sucharow when the attorneys principally working on the case switched law firm affiliations. *See* ECF No. 786.

3. In this Declaration, we describe:

a. All Class Counsel's efforts in advancing this litigation and achieving the settlement with Impax Laboratories, Inc. ("Impax");

b. All Class Counsel's time and expense reporting, total time and expenses incurred, and our maintenance of a common cost litigation fund;

c. Class representatives' contribution to the prosecution of this case; and

d. The significant risk Class Counsel faced of nonpayment in this litigation.

I. CLASS COUNSEL'S EFFORTS IN PROSECUTING THIS LITIGATION

4. Class Counsel's work in this litigation is categorized in this Declaration as follows: (A) Commencement of the Case, (B) Case Management, (C) Fact Discovery, (D) Class Certification, (E) Expert Discovery, (F) Summary Judgment and *Daubert* Motions, (G) Pre-Trial Submissions and Trial Preparation, (H) Trial, and (I) Settlement Negotiation and Administration. Each category is described in further detail below.

A. Commencement of the Case

5. In 2014, Class Counsel began its investigation into the underlying 2010 Settlement and License Agreement resolving patent litigation between Impax and Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Penwest Pharmaceuticals Co. (together, "Endo"). Based on the results of this investigation, Class Counsel filed several complaints on behalf of persons and entities that indirectly purchased or paid for certain strengths of brand or generic Opana ER.

6. On December 12, 2014, the United States Judicial Panel on Multidistrict Litigation issued an order transferring all filed actions by end-payors, direct purchasers, and certain retailer plaintiffs to this Court. *See* Transfer Order, *In re: Opana ER Antitrust Litigation*, MDL No. 2580, ECF No. 54 (Dec. 12, 2014).

7. On April 2, 2015, the Court consolidated all end payor actions and appointed Labaton Sucharow[2] and Freed Kanner as Interim Co-Lead Counsel. ECF No. 78.

8. Class Counsel then filed a Consolidated Amended Class Action Complaint ("Amended Complaint") on May 4, 2015. ECF No. 102. The Amended Complaint brought claims for violations of various state antitrust, consumer and unjust enrichment laws.

9. The Amended Complaint alleged that Endo induced Impax to stay off the market with a three-part reverse payment: (a) a promise by Endo not to launch its own authorized generic version of Opana ER when Impax belatedly came to market (the "No AG agreement"); (b) a cash payment to compensate Impax if the market for Opana ER (and, thus, the market for Impax's generic) diminished before Impax's delayed launch (the "Endo Credit"); and (c) an immediate $10 million cash payment under the Development and Co-Promotion Agreement ("DCA").

10. Class Counsel alleged that Endo's payment to Impax delayed market entry of generic Opana ER, causing end-payors to incur overcharges on their brand and generic Opana ER purchases.

11. Class Counsel further alleged that reverse payment from Endo to Impax violated antitrust laws, as set forth in *FTC v. Actavis, Inc.*, 570 U.S. 136 (2013). The FTC eventually pursued litigation under a similar theory, filing its own complaint almost two years later.

12. Class Counsel pursued this case on a fully contingent basis, with a real risk of nonpayment and without any assurance of establishing liability, which is more likely when a civil case follows indictments or guilty pleas in a government enforcement action. Class Counsel assumed that risk knowing it could take many years, tens of thousands of hours of attorney time, and millions of dollars of advanced expenses in order to fully prosecute the case.

[2] *See supra* n. 1.

13. On July 3, 2015, Defendants filed their motion to dismiss EPPs' claims. ECF Nos. 121-22. Defendants argued that (1) the "Endo Credit," no-AG agreement, and Endo's non-refundable upfront $10 million cash payment under the DCA did not constitute large reverse payments under *Actavis*; (2) EPPs could not plausibly allege that Impax would have launched its generic Opana ER earlier absent the reverse payment agreement, which contained a so-called "broad license;" and (3) certain of EPPs' state law claims failed as a matter of law. ECF No. 122.

14. Co-Lead Counsel responded on August 21, 2015, raising, among other things, a newly issued decision in the Third Circuit, which directly refuted Defendants' theory that a no-AG agreement should not constitute a large, reverse payment actionable under *Actavis*. ECF No. 129 at 3, n.6 (*citing King Drug Co. of Florence, Inc. v. Smithkline Beecham Corp*., 791 F.3d 388, 395 (3d Cir. 2015)).

15. On February 10, 2016, the Court rejected most of Defendants' arguments and largely denied the motions but did dismiss certain of EPPs' state law claims while granting leave to replead. *See In re Opana ER Antitrust Litig.*, 162 F. Supp. 3d 704 (N.D. Ill. 2016).

16. On March 2, 2016, Class Counsel filed a Second Consolidated Amended Class Action Complaint ("Second Amended Complaint"). ECF No. 164. Defendants then filed a partial motion to dismiss EPPs' unjust enrichment and consumer protection claims under the laws of certain states. ECF No. 188. EPPs filed a response in Opposition (ECF No. 203) and Defendants filed a reply brief in support of their motion (ECF No. 207). On August 11, 2016, the Court issued an order that largely rejected Defendants' arguments and upheld most of EPPs' claims. *See In re Opana ER Antitrust Litig.*, 2016 WL 4245516 (N.D. Ill. Aug. 11, 2016).

B. Case Management

17. In their application to be appointed lead counsel, Co-Lead Counsel told the Court that they would efficiently litigate this case and would implement protocols to avoid duplication

of effort and unnecessary time and expenses. With these objectives in mind, after their appointment, Co-Lead Counsel implemented a time and expense protocol and supervised all facets of the litigation, including the assignment of work to Class Counsel.

18. To promote the efficient prosecution of this case, Co-Lead Counsel convened weekly calls to ensure both firms were aligned regarding case strategy and work assignments. These calls only included Class Counsel when a particular task was assigned that required Co-Lead Counsel to efficiently supervise the litigation. Co-Lead Counsel avoided unnecessary time and expense by canceling calls when there was nothing of particular importance to discuss during a given week.

C. Fact Discovery

19. As in most complex antitrust cases, the majority of time invested in the case related to fact discovery, which was critical to seeking certification of the EPP Classes, establishing liability, opposing Defendants' summary judgment and *Daubert* motions, preparing for and going to trial, and ultimately negotiating the Impax settlement. There were three primary phases of discovery in this matter: (1) written discovery, (2) document review and analysis, and (3) depositions. Each stage and the work involved is discussed below.

1. Written Discovery

20. At the outset of discovery, working in conjunction with counsel for the Direct Purchaser Plaintiffs and Retailer Plaintiffs, Co-Lead Counsel negotiated a comprehensive protocol for electronically stored information produced by all parties. Additionally, Co-Lead Counsel negotiated and drafted a Stipulated Protective Order governing confidential information.

21. Thereafter, Co-Lead Counsel served their First Set of Requests for Production of Documents ("RFPs") on Endo and Impax on April 19, 2016. By October 2017, Co-Lead Counsel

had served each Defendant with 119 RFPs. Co-Lead Counsel also responded to 94 RFPs served on EPPs by Defendants.

22. By January 2018, Co-Lead Counsel served Endo and Impax with 16 and 15 interrogatories, respectively, and responded to 10 interrogatories on behalf of EPPs. Co-Lead Counsel also prepared and served discovery requests on third parties Actavis Pharma, Inc., OptumRx, Caremark, and Express Scripts. Co-Lead Counsel was required to file numerous motions to compel compliance with document requests, interrogatories, and deposition requests served on Endo, Impax, and third parties. *See, e.g.*, ECF Nos. 262 & 268 (motion to compel Endo to produce documents), 279 (motion to compel non-party, Actavis, to comply with subpoena), 281 (motion to compel 30(b)(6) testimony and interrogatory responses from Endo), 285 (motion to compel testimony and document productions from Endo and Impax), 291 (motion to compel testimony and interrogatory responses from Impax), 347 & 361 (motion to compel Endo to produce forecasting documents withheld for privilege), 359 & 365 (motion to compel Impax to provide responses to interrogatories 14 and 15 and produce relevant documents), 372 (motion to compel Endo to provide responses to interrogatories 15 and 16), and 417 (motion to compel Express Scripts to respond to Co-Lead Counsel's subpoena).

2. Document Review and Analysis

23. Co-Lead Counsel, together with counsel for the DPPs and Retailer Plaintiffs, secured the production of approximately 4.5 million pages of documents from Defendants and another 20,000 documents from third parties. In addition, hundreds of thousands of lines of transactional data were produced, reflecting sales, credits, returns, chargebacks, and price adjustments.

24. To organize the document review, Co-Lead Counsel drafted a coding manual that provided consistent "tags" or issues that reviewers assigned to documents in targeted sets or

"batches" within the review platform. For each batch of documents (typically about 500), reviewers prepared a memo for Co-Lead Counsel. These batch memos highlighted key documents, enabling Co-Lead Counsel to focus on certain Defendant employees for purposes of requesting additional document custodians, and were integral to the process of identifying which Defendant employees to depose.

25. Co-Lead Counsel also identified, collected, reviewed, and produced thousands of documents from the Class Representatives. This involved in-person meetings to collect hard copy documents and identify electronic data sources subsequently collected by a retained vendor. Once Co-Lead Counsel responded to Defendants' document requests on behalf of the Class Representatives and negotiated search terms with Defendants, Co-Lead Counsel used filters to narrow down the universe of documents collected for review and production.

26. Over the course of eight months in 2016 and 2017, Co-Lead Counsel also challenged Endo's privilege log, consisting of over 50,000 entries, through an extensive meet and confer process involving numerous calls and written correspondence before Endo eventually agreed to revise its log and produce additional documents.

3. Depositions

27. While depositions are always an important aspect of an antitrust case, most witnesses in this matter were not within the Court's power to compel testimony at trial. Therefore, the only evidence such witnesses would provide for trial was obtained through video deposition testimony that was ultimately played for the jury. Given the importance of this evidence, Class Counsel took responsibility for participating in all Class Representative depositions as well as taking Defendant and third-party depositions.

28. In preparation for the many important depositions in this case, Class Counsel (a) identified key documents to be used at each deposition, (b) prepared extensive deposition outlines,

(c) coordinated deposition strategy and questioning with counsel for the Direct Purchaser Class Plaintiffs and Retailer Plaintiffs, and (d) participated in 29 depositions.

29. Below is a table listing each fact witness deposition in which Class Counsel played a role (either lead or supporting):

	Deponent	**Party Affiliation**	**Deposition Date**	**Location**
1.	Tara Chapman	Endo	2/7/2018	Philadelphia, PA
2	Kevin Sica	Impax	2/23/2018	Philadelphia, PA
3.	Caroline Manogue	Endo	3/16/2018	Philadelphia, PA
4.	David Myers	Actavis (Teva)	4/25/2018	Roseland, NJ
5.	Theodore Smolenski	Impax	5/11/2018	Philadelphia, PA
6.	John Anthony	Impax	5/22/2018	Wayne, PA
7.	Todd Engle	Impax	6/14/2018	Philadelphia, PA
8.	Arthur Koch	Impax	6/21/2018	Philadelphia, PA
9.	David Bohl	EPP – Wisconsin Masons	7/31/2018	Madison, WI
10.	Christopher Mengler	Impax	8/1/2018	New York, NY
11.	Lissette Priegues-Granado	EPP – FOP	8/7/2018	Ft. Lauderdale, FL
12.	Mark McCarty	EPP – Local 178	8/18/2018	Springfield, MO
13.	David Berman	Impax	9/5/2018	San Francisco, CA
14.	Robert Cuca	Endo	9/6/2018	Philadelphia, PA
15.	Joseph Camargo	Impax	9/7/2018	Menlo Park, CA
16.	Alan Levin	Endo	9/20/2018	New York NY
17.	Guy Donatiello	Endo	9/28/2018	Philadelphia, PA
18.	Stephens Barnett	EPP – IUOE	10/4/2018	New York, NY
19.	Robert Cobuzzi	Endo	10/11/2018	New York, NY
20.	Kathryn Farley	EPP – PEBTF	10/11/2018	Harrisburg, PA
21.	Mark Bradley	Impax	10/18/2018	Philadelphia, PA
22.	Demir Bingol	Endo	10/23/2018	Philadelphia, PA
23.	Brian Lortie	Endo	10/26/2018	Philadelphia, PA
24.	Brian Lortie	Endo	11/7/2018	Philadelphia, PA
25.	Justin Thomas	EPP – BCBSLA	12/6/2018	Baton Rouge, LA
26.	Larry Hsu	Impax	12/18/2018	Menlo Park, CA
27.	Margaret Snowden	Impax	12/19/2018	Menlo Park, CA
28.	Margaret Snowden	Impax	12/20/2018	Menlo Park, CA
29.	Mollie Carby	EPP – BCBSLA	1/23/2019	Baton Rouge, LA

D. Class Certification

30. Given the importance of class certification, Co-Lead Counsel spent significant time strategizing during discovery and briefing, including working with their retained experts. During the discovery phase of this case, Co-Lead Counsel worked with economist Meredith Rosenthal to estimate prices and quantities in a but-for-world and compare those estimates to prices and quantities in the actual world.

31. EPPs' motion for class certification was filed on March 25, 2019. ECF No. 438. Defendants filed their opposition to class certification on September 25, 2020. ECF No. 451. EPPs' reply in support of class certification was filed on October 2, 2020. ECF No. 469. Class Counsel took great effort to ensure that all facts supporting certification were marshalled during the document review and deposition process and shared with the attorneys responsible for overseeing the preparation of EPPs' class certification papers.

32. Because of certain unique issues involving classwide impact and damages for end payors, in addition to Dr. Rosenthal, Class Counsel also retained Laura Craft to opine on specific issues relating primarily to the ascertainability of EPP class members. Dr. Rosenthal and Ms. Craft prepared a total of three reports submitted in conjunction with EPP class certification briefs and sat for a total of four depositions. Co-Lead Counsel worked extensively with Dr. Rosenthal and Ms. Craft to prepare for and defend their depositions. Co-Lead Counsel also spent a considerable amount time and effort preparing for and deposing Defendants' opposing experts, which included economist James Hughes, who solely addressed issues concerning the EPP Classes.

33. As reflected in the Court's June 4, 2021, class certification order (ECF No. 726), Co-Lead Counsel's hard work paid off. But significant additional effort was required because in the weeks that followed, there were numerous motions for clarification or for reconsideration. ECF

Nos. 727, 729, 731. On June 21, 2021, Defendants filed a petition for permission to appeal pursuant to Fed. R. Civ. P. 23(f). *See In Re: Opana ER Antitrust Litigation*, No. 21-8017, (7th Cir.), CA7 Dkt. 2. Thus, Co-Lead Counsel was required to devote substantial time and effort defending the Court's class certification ruling. On July 1, 2021, EPPs' filed a response in opposition. CA7 Dkt. 14. On July 13, 2021, the Seventh Circuit issued its ruling remanding the case to this Court for further consideration of EPPs' proposed amended class definition. CA7 Dkt. 17. On August 11, 2021, the Court amended its June 4, 2021 certification order to include EPPs' proposed exclusions to the class definition. ECF No. 746.

34. Co-Lead Counsel also oversaw notice to the Classes, working with the Court-appointed administrator A.B. Data, and only three Class members opted out.

E. Expert Discovery

35. In addition to retaining Dr. Rosenthal and Ms. Craft, prior to trial, Co-Lead Counsel jointly retained with counsel for the Direct Purchaser Class Plaintiffs and Retailer Plaintiffs another 11 experts who collectively issued 22 reports, as detailed below.[3]

	Plaintiff Expert	**Topic(s)**
1.	Glen P. Belvis	(1) A reasonable and experienced patent litigator would have concluded that it was very likely there would be a final determination of no infringement and invalidity in the *Endo v. Impax* litigation; (2) A reasonable and experienced patent litigator would have concluded that Impax had an overall greater than 85% likelihood of success in prevailing in the *Endo v. Impax* litigation;

[3] Prior to trial, Co-Lead Counsel also jointly retained Keith Leffler, who opined on the value of the no-AG and Endo Credit payments to Impax and the relevant product market. Previously, Dr. Leffler was retained exclusively by counsel for the Retailer Plaintiffs.

		(3) Timing of a final decision (December 17, 2010) and appeal (December 17, 2011) in the *Endo v. Impax* litigation; and (4) Endo's and Impax's expected litigation costs saved by settling the *Endo v. Impax* litigation.
2.	James R. Bruno	(1) Impax (from manufacture and supply perspective) could have launched all strengths of Opana ER as early as December 2010 and could have continued to sell thereafter; (2) Endo could have launched an AG simultaneously with an earlier Impax launch and stayed on the market thereafter; (3) Actavis could have launched 181 days after Impax's launch and stayed on the market; and (4) Endo could have used its DEA API quota for Opana ER to manufacture Opana ER AG.
3.	Stephen R. Byrn	The patent claims Endo asserted against Impax in the *Endo v. Impax* litigation were invalid and not infringed.
4.	Janet K. DeLeon	(1) When Impax and Actavis would have obtained final regulatory approval for their generic versions of Opana ER; (2) The lack of regulatory hurdles Impax would have faced in the event of an earlier launch; and (3) The lack of regulatory hurdles preventing Endo from launching an authorized generic version at any time.
5.	Jeffrey J. Leitzinger	Endo had market power in the market for brand and generic Opana ER.
6.	Martin A. Lessem	(1) It would be reasonable for Impax to launch its generic Opana ER product even if an FDA-approved risk management program (*i.e.*, a RiskMAP or REMS) was not put in place until a later date; and (2) The reasonable timeline for Impax to put a risk management plan into place.
7.	Thomas G. McGuire	(1) The large unexplained value of the reverse payments from Endo to Impax is anticompetitive and there were no procompetitive benefits; and (2) Economic evidence predicts that absent the reverse payments it would have been economically rational for profit-seeking companies like Endo and Impax to have

		reached a settlement without a reverse payment and with an earlier generic entry (April – July 2011), including an Endo AG followed by Actavis.
8.	Luis A. Molina	The lack of reliable therapeutic interchangeability of Opana ER with other drugs.
9.	Seddon R. Savage	The significant differences between Opana ER and other opioid drugs, including both short- and long-acting opioids, that can be clinically important in treating patients.
10.	John R. Tupman, Jr.	(1) The DCA (development and co-promotion agreement) was not subject to typical due diligence; (2) The structure of the DCA disproportionately favored Impax; and (3) No reasonable pharmaceutical company would have entered into the DCA, and its $10M upfront payment is a conservative estimate of Endo's overpayment for the DCA.
11.	Patricia J. Zettler	The FDA's risk management efforts and requirements would not have impeded launch (or continued sales) by Impax of its generic Opana ER product after final approval of Impax's ANDA.

36. The need for multiple experts illustrates the complexities of this case, which required Co-Lead Counsel to grapple with and overcome numerous obstacles, including:

a. a settlement agreement that contained a purported "broad license" for later issued patents;

b. Endo's success litigating patent infringement lawsuits against other generic manufacturers for those later-issued patents (evidence of which was admitted at trial over Plaintiffs' objection);

c. a complicated payment provision called the "Endo Credit" contained in the settlement agreement;

d. the DCA signed in conjunction with the settlement agreement and disputes over its related payments;

e. Endo's efforts to convert the market from original Opana ER to reformulated Opana ER and disputes over each product's safety and abuse deterrence, related petitions filed with and decisions issued by the FDA, and Endo's ultimate decision to remove reformulated Opana ER from the market.

37. Co-Lead Counsel ultimately assisted in preparing nine[4] of the expert witnesses to testify at trial, including extensive sessions to prepare for lengthy direct and cross-examinations on very complex topics presented to a lay jury in a clear and comprehensible fashion.

38. Defendants proffered 12 expert witnesses of their own:

	Defense Expert	**Topic(s)**
1.	Sumanth Addanki	(1) The relevant market for the rule-of-reason analysis; (2) Endo's purported lack of monopoly power; (3) The purported lack of anticompetitive effects from the settlement between Endo and Impax; (4) The claimed absence of a "large, unjustified payment" between Endo and Impax; and (5) The supposed procompetitive effects of the settlement between Endo and Impax.
2.	Louis P. Berneman	The commercial reasonableness of the DCA.
3.	Reza Fassihi	(1) Overview of the science and background concerning the claimed inventions of the '456, '933, '122, '216, and '779 patents; (2) The claimed validity of the '933 and '456 patents; and (3) Opinion concerning infringement of Impax's generic oxymorphone hydrochloride product(s) of the '122, '216, and '779 patents.
4.	E. Anthony Figg	(1) Impax's decision to settle the litigation with Endo; (2) The likely result of the Impax-Endo patent litigation; (3) Saved litigation costs from settling the Impax-Endo patent litigation; and

[4] In additional to Dr. Rosenthal, Plaintiffs jointly prepared another eight experts named on their Second Amended Trial Witness List: Glen Belvis, James Bruno, Stephen Byrn, Janet DeLeon, Jeffrey J. Leitzinger, Thomas McGuire, Seddon Savage, and John Tupman. *See* ECF No. 895-3. All but Mr. Bruno and Ms. DeLeon ultimately testified at trial.

		(4) At-risk launches.
5.	Christopher J. Gilligan	The substitutability of long-acting opioid analgesics for almost all patients.
6.	Jody L. Green	(1) Assertion that contrary to the findings of the FDA, reformulated Opana ER was safer than original Opana ER; and (2) The FDA's decision to ask Endo to withdraw reformulated Opana ER from the mark.
7.	Margaret E. Guerin-Calvert	EPP Damages
8.	James Hughes	EPP Class Certification
9.	Anthony Lowman	(1) Overview of the science and background concerning the claimed inventions of the '456 and '933 patents; and (2) The supposed infringement of Impax's generic oxymorphone hydrochloride product(s) of the '456 and '933 patents.
10.	Edward Michna	(1) The therapeutic substitutability of ER Opioids; and (2) Reasons that prescribers choose between ER Opioid options.
11.	Nita U. Patel	The risk management and regulatory requirements related to Impax's generic Opana ER product.
12.	Jonathan Singer	(1) Endo's chance of winning the underlying patent litigation; (2) Response to the opinions of Glen Belvis; (3) Litigation timing and timeline; and (4) Opinions concerning the effect of the purported broad license to the later-issued patents.

39. Co-Lead Counsel took or participated in the depositions of each of Defendants' experts, obtaining testimony needed for class certification, to oppose summary judgment, for

Daubert motions, and to cross-examine at trial. Additionally, Co-Lead Counsel, working together with counsel for the Direct Purchaser Class and Retailer Plaintiffs, prepared to cross-examine Defendants' experts at trial.

F. Summary Judgment and *Daubert* Motions

40. Defendants filed a summary judgment motion on causation and damages. Defendants argued that Plaintiffs suffered no antitrust injury because the patent settlement allegedly promoted competition by granting Impax a purported broad license that permitted Impax to continue selling generic Opana ER after Endo acquired the later-issued patents and enforced them against other generics. They also argued that EPPs were barred from seeking damages under certain of EPPs' state law claims. ECF Nos. 539, 540.

41. Endo also moved for partial summary judgment on several complex issues related to the prior patent litigation, seeking to prevent Plaintiffs (a) from recovering damages after the issuance of its two later issued patents; and (b) from presenting certain arguments and defenses related to Impax's purported patent infringement. ECF Nos. 532, 533. Along with its summary judgment motions and replies, Defendants collectively submitted 160 pages of undisputed facts and 138 exhibits. ECF Nos. 562, 581.

42. In connection with summary judgment, Defendants also filed 11 *Daubert* motions and an additional 103 exhibits. ECF Nos. 510 & 512 (Tupman), 513 & 515 (DeLeon), 516 & 518 (Molina), 529 & 531 (Leitzinger), 537 & 542 (Bruno), 541 & 544 (Belvis), 545 & 560 (Rosenthal), 546 & 549 (Byrn), 550 & 554 (Zettler and Lessem), 556 & 559 (McGuire).

43. Plaintiffs filed 10 *Daubert* motions of their own, supported by 98 exhibits. ECF Nos. 519 (Patel), 520 (Singer), 521 (Figg), 522 (Lowman), 523 (excluding opinions based on facts that post-date the June 2010 settlement ("Postdate")), 524 (Fassihi), 525 (Gilligan), 526 (Addanki),

527 (Green), 528 (Berneman), 534 (Declaration and Exhibits in support of *Daubert* motions) 565 (Patel reply) 566 (Singer reply), 568 (Figg reply), 569 (Lowman reply), 571 (Postdate reply), 572 (Fassihi reply), 573 (Gilligan reply), 575 (Addanki reply), 576 (Green reply), 577 (Berneman reply).

44. Plaintiffs jointly opposed Defendants' summary judgment motions with their own statements of undisputed facts and responses to Defendants' statements, as well as extensive briefing accompanied by 138 exhibits. ECF Nos. 615 & 617-21, 639, 644.

45. Plaintiffs also jointly opposed each of Defendants' 11 *Daubert* motions in separate briefs supported by 59 exhibits. ECF Nos. 598 (Rosenthal), 600 (Tupman), 602 (DeLeon), 603 (Molina), 604 (Bruno), 605 (Belvis), 609 (Leitzinger), 613 (McGuire), 614 (Zettler & Lessem), 616 (Byrn).

46. On June 4, 2021, in conjunction with the class certification ruling, the Court issued a comprehensive opinion denying Defendants' summary judgment motions and denying, at least in part, all but one of Defendants' *Daubert* motions, while granting several of Plaintiffs' *Daubert* motions to exclude or partially exclude testimony by Dr. Patel, Mr. Singer, Mr. Figg, Dr. Fassihi, Dr. Green, and Dr. Berneman. *See In re Opana ER Antitrust Litig.*, 2021 WL 2291067 (N.D. Ill. June 4, 2021).

G. Pre-Trial Submissions and Trial Preparation

47. On July 29, 2021, the Court rescheduled trial for June 2022. *See* ECF No. 744. After the Court's Summary Judgment and *Daubert* Order, EPPs served a supplemental damages report from Dr. Rosenthal. After conducting a third deposition of Dr. Rosenthal, Defendants filed a renewed *Daubert* motion seeking to exclude the supplemental report of Dr. Rosenthal. ECF No.

760. EPPs opposed that *Daubert* motion. ECF No. 763. On December 2, 2021, the Court denied Defendants' motion. ECF No. 765.

48. Throughout nearly all of 2022, Co-Lead Counsel devoted an enormous amount of time and expenses preparing to go to trial. In addition to the work described above relating to discovery, class certification, summary judgment, and *Daubert* issues, Co-Lead Counsel, with assistance from certain Class Counsel, and in coordination with counsel for the Direct Purchaser Plaintiff Class and the Retailer Plaintiffs, did the following in preparation for trial:

a. Worked extensively with a jury consultant; prepared for and conducted an in-person mock trial before multiple jury panels; participated in several telephonic or Zoom meetings with jury consultant to review results of mock trial and discuss strategy relating to same;

b. Prepared briefs in support of eight motions *in limine* while Defendants filed 23 motions *in limine*. ECF Nos. 801-05, 813, 814-15, 817-20, 822, 824-25, 827, 829, 831. Plaintiffs briefed oppositions to seven of Defendants' motions. ECF Nos. 839, 842-43, 845-46, 848, 865;

c. Met and conferred with defense counsel and exchanged witness lists, deposition designations, exhibit lists, proposed jury instructions, and proposed verdict forms, objecting to each other's submissions and trying to narrow areas of dispute. On May 24, 2022, the Joint Final Pretrial Order was filed (ECF No. 895);

d. Named 27 fact witnesses and nine expert witnesses. ECF No. 895-3. Endo and Impax named 44 witnesses. ECF No. 895-4, 895-5. Co-Lead Counsel prepared to examine these witnesses either live or via video depositions;

e. Submitted a 186-page spreadsheet of deposition designations, to which Defendants objected and counter-designated deposition testimony. ECF No. 895-6. Co-Lead Counsel responded to Defendants' objections, objecting and providing reply-designations in response to Defendants' counter-designations. *Id.* Endo submitted a 104-page spreadsheet of deposition designations and Impax submitted a 105-page spreadsheet. ECF Nos. 895-7, 895-8. For each, Co-Lead Counsel responded with objections and counter-designations. *Id.*;

f. Prepared general jury instructions, Phase I jury instructions, and Phase II jury instructions, as well as statements for the Court in support of their jury instructions, totaling more than 250 pages. ECF Nos. 895-12, 895-13, 895-14, 895-15. Co-Lead Counsel also prepared objections to Endo's and Impax's separate, opposing jury

instructions and responses to Endo's and Impax's objections to Plaintiffs' proposed jury instructions. ECF Nos. 895-16, 895-17, 895-18, 895-19, 895-20;

g. Prepared verdict forms for Phase I and Phase II, along with a statement and objections to Endo's and Impax's separate proposed verdict forms. ECF Nos. 895-21, 895-23; and

h. Prepared a final exhibit list with 1,664 exhibits, while Endo offered 618 and Impax offered 190, which Co-Lead Counsel responded to with objections as appropriate. ECF Nos. 895-9, 895-10, 895-11.

H. Trial

49. With the final pre-trial conference scheduled for June 2, 2022, Co-Lead Counsel convened in Chicago a few days beforehand to submit to court-mandated COVID testing and further coordinate with other Plaintiff groups on trial strategy. Co-Lead Counsel telephonically attended the pretrial conference, where the Court ruled on motions *in limine* and provided instructions related to jury selection and trial logistics, among other things. ECF No. 909.

50. Co-Lead Counsel prepared for jury selection by reviewing more than 200 pages of juror information and questionnaire responses.

51. The trial began on June 9, 2022, with *voir dire*. A jury was selected that morning and Co-Lead Counsel, along with counsel for the Direct Purchaser Class and the Retailer Plaintiffs, offered opening statements that afternoon.

52. Throughout trial, which would continue against Endo until July 1, 2022, Co-Lead Counsel attended trial during the day, examining witnesses, countering any objections raised by Defendants, and proffering objections of their own. In the evening, Co-Lead Counsel would exchange with Defendants exhibit lists, deposition designations, related objections, counter-designations, and reply-designations for witnesses whose deposition testimony was presented at trial by video.

53. On the morning of June 15, 2022, as the fifth day of trial was underway, Co-Lead Counsel and Impax reached a tentative settlement that they announced to the Court.[5]

54. The trial continued thereafter against Endo, and the jury ultimately returned a jury verdict in favor of Endo on July 1, 2022. ECF No. 1047 (amended in ECF Nos. 1053, 1067). Plaintiffs' post-trial motions are pending, ECF No. 1048, though stayed due to Endo's bankruptcy filing. ECF No. 1064.

I. Settlement and Administration

55. On July 19, 2019, Co-Lead Counsel and Impax executed the Settlement Agreement. ECF No. 1060-2. The settlement provides for Impax to pay $15,000,000 in cash for the benefit of all Class members in exchange for dismissal of the litigation between EPPs and Impax with prejudice.

56. Having reached settlement with Impax, Co-Lead Counsel selected both an escrow agent, Huntington National Bank, and settlement administrator, A.B. Data, Ltd. ("A.B. Data"). Co-Lead Counsel assisted A.B. Data in preparing a settlement website for the benefit of the Classes, and then worked with A.B. Data to devise a Notice Program consisting of multiple forms of notice to the Classes: by mail, publication (via both print and online media), and email. The proposed Notice Program also included social media ads.

57. Co-Lead Counsel filed a motion for preliminary approval with a supporting memorandum and declarations on August 12, 2022. ECF No. 1060. In the motion, Co-Lead Counsel requested that the Court preliminarily approve the settlement, approve notice to the Classes, and set a schedule leading up to and including a Fairness Hearing.

[5] Co-Lead Counsel and Impax had sporadic discussions about settlement throughout the course of the litigation.

58. On August 24, 2022, the Court entered an order preliminarily approving the Impax settlement and scheduling a Fairness Hearing for December 15, 2022. ECF No. 1069. The order also approved the Notice Program and forms of notice to be issued to the EPP Classes. Co-Lead Counsel continued working with A.B. Data to finalize the forms of notice and the Notice Program commenced on September 7, 2022, when A.B. Data began notifying Class members of the settlement with Impax and their various rights.

59. Class members have until November 7, 2022, to object to the settlement or any of its terms and/or to Co-Lead Counsel's request for attorneys' fees, unreimbursed expenses, and service awards to the class representatives. As of the date of this Declaration, no objections have been received. If any objections are received after the filing of this Declaration, such objections will be addressed in Co-Lead Counsel's upcoming submission for final approval of the settlement, due on November 28, 2022.

II. CLASS COUNSEL'S TIME INVESTED IN THIS MATTER

A. Time and Expense Reporting Procedures

60. Co-Lead Counsel was responsible for collecting the contemporaneously prepared attorney and paralegal time and expense reports of all Class Counsel.

61. Shortly after being appointed by the Court, Co-Lead Counsel submitted a time and expense protocol to all Class Counsel in May 2015, with templates of the required Microsoft Excel reporting form and detailed instructions ("Time and Expense Protocol").

62. Pursuant to the Time and Expense Protocol, each firm was required to contemporaneously record and transmit to Co-Lead Counsel each month, via email, a detailed, task-based spreadsheet with time entries. The reports contain a chronological listing of time reported for work performed by attorneys and paralegals in specified activity categories, a

complete and accurate categorization of work performed, the name and title of the person who performed the work, the hourly rate associated with each attorney and paralegal at the time the work was performed (*i.e.*, the professional's "historical" rate), and the firm's resulting lodestar reported for that month.

63. To control Class Counsel's lodestar, the Time and Expense Protocol instructed Class Counsel not to submit time for work not specifically assigned by Co-Lead Counsel, duplicative work, general review of pleadings, preparing time and expense reports, routine clerical tasks, or for work related to any client not retained in the case. Additionally, the Time and Expense Protocol required that each firm submit, via email, all litigation-related expenses incurred by the firm for the month. Finally, time included in the fee petition that was spent on first-level document review and coding was capped at $350 per hour.

64. To ensure that time and expense entries submitted by each firm were reported in a uniform matter, the Time and Expense Protocol required that all reports be submitted to Co-Lead Counsel in a Microsoft Excel format, by the 20th day of each month for time and expenses incurred in the preceding month. This uniform, electronic monthly reporting simplified our review of each firm's reports.

65. Co-Lead Counsel reviewed the monthly time and expense reports from Class Counsel to ensure their compliance with the Time and Expense Protocol.

66. All monthly attorney and paralegal time and expense reports submitted by Class Counsel was retained and preserved on a computer server.

B. Class Counsel's Lodestar Time Incurred in Prosecuting this Matter

67. Based on the monthly attorney and paralegal time reports submitted to Co-Lead Counsel from April 2, 2015 (the date of appointment of Co-Lead Counsel) through August 24,

2022 (the date the Impax settlement was preliminary approved), Class Counsel devoted 51,298.45 hours of professional time for the benefit of the Class. This represents a lodestar of $25,071,514.50 based on Class Counsel's historic hourly rates. All such work was performed on an entirely contingent basis.

68. Attached as Exhibit A to this Declaration is a summary chart showing lodestar for attorney and paralegal time reported by each firm from April 2, 2015 through August 24, 2022. The total lodestar figure for each firm is reflected in the Lodestar column of the chart, and at the bottom of that column is the combined lodestar for all firms. Also included are the expenses incurred to date by each Class Counsel, which total $2,704,270.40.

69. Exhibit A was prepared by Co-Lead Counsel, based on data reported in the monthly attorney and paralegal time reports submitted by Class Counsel and in the attached Declarations of Class Counsel (Exhibits C-P).

70. Based on the data available, the lodestar amounts reported in Exhibit A accurately reflect the data reported by Class Counsel and audited by Co-Lead Counsel. The underlying detailed time entries are available for the Court's *in camera* review, if requested.

71. The Declarations from Class Counsel attest that the time and expenses reported to Co-Lead Counsel by each such firm complied with the reporting requirements in the Time and Expense Protocol and to the truth and accuracy of the numbers reported by each such firm. Each Class Counsel Declaration also identifies the attorneys and paralegals that worked on the case and reported time in the monthly reports submitted to Co-Lead Counsel, as well as the historic hourly rates for each such professional.

III. CLASS COUNSEL'S UNREIMBURSED COSTS AND EXPENSES

72. In the course of fulfilling their obligations to the Classes, Class Counsel litigated this matter purely on a contingent basis, fronting all necessary expenses. This includes $2,704,270.40 in expenses paid to date.

73. In connection with the fact and expert discovery referenced above, Class Counsel incurred costs for computerized legal research, the creation and maintenance of an electronic document database, economic and industry experts in connection with proving liability and damages and, of course, to demonstrate that class certification is appropriate, travel and lodging expenses, copying, court reporters, transcripts, and mediation. Additionally, trial expenses were incurred, such as a jury consultant, trial graphics personnel, and a workspace and lodging in Chicago for over a month.

74. Costs also includes $132,137.52 that Class Counsel must set aside for their share of potential taxed costs sought by Endo, which are currently the subject of motion practice and an automatic stay due to Endo's bankruptcy proceedings. ECF No. 1064.

75. In connection with class notice in this case, A.B. Data has invoiced Class Counsel $235,283.61 for class certification and $352,632.54 for settlement notice. It has estimated that settlement administration for the consumer and third-party payor classes will total up to an additional $275,000.

76. As the $2,704,270.40 in expenses already paid by Class Counsel were reasonable and necessary to the successful prosecution of this action, including the creation of a $15 million Settlement Fund, so too are the unpaid expenses totaling $1,374,823.30 as the parties proceeded through trial. Thus, the request for reimbursement of $4,005,833.95 for incurred expenses is

reasonable. Detailed expense vouchers/receipts are available to the Court *in camera* should the Court wish to examine them

IV. CLASS REPRESENTATIVES' CONTRIBUTIONS TO THE PROSECUTION OF THIS CASE

77. The Class Representatives' involvement in this case was instrumental to the outstanding result achieved and justifies service awards for each one of them. In short, the recovery of $15 million for indirect purchasers of Opana ER or its generic equivalent would not be possible if the Class Representatives had not stood up and agreed to represent all end-payors in this matter. Throughout the case, the Class Representatives: approved pleadings; responded to written discovery; searched for, gathered, preserved, and produced documents; prepared for and sat for depositions; kept apprised of the progress of the case; in the case of Wisconsin Masons' Health Care Fund, appeared at trial and testified in EPPs' case-in-chief; and performed other similar activities on behalf of the Classes, including considering and approving the Impax settlement. A more specific summary of the efforts of each Class Representative is provided below.

78. The Class Representatives devoted their time and efforts to recover some portion of their own alleged overcharges and to enable other Class members to do the same. The time and effort devoted by the six Class Representatives was instrumental in obtaining this result for the Classes, and they are deserving of a total service award of $65,000 to be shared among them as set forth below.

A. Wisconsin Masons' Health Care Fund

79. Wisconsin Masons' Health Care Fund ("Wisconsin Masons") responded to numerous discovery requests from Defendants, provided information for Rule 26 initial disclosures, and responded to requests for production and interrogatories propounded by Defendants.

80. Throughout the discovery process, Wisconsin Masons dedicated time and effort assisting Class Counsel and their electronic discovery partners with retrieval of e-mails and other data in its possession in response to Defendants' requests for production. In addition to producing documents and responding to written discovery, Wisconsin Masons spent substantial time preparing its witness, David Bohl, for a deposition that occurred on July 31, 2018. Mr. Bohl himself spent considerable time and effort reviewing Wisconsin Masons' documents and discovery responses. Moreover, Mr. Bohl, on behalf of all named EPPs, offered to testify live at trial, which he did on June 10, 2022, during Plaintiffs' case-in-chief. Mr. Bohl spent several days with Class Counsel preparing for his trial testimony and traveled to Chicago for an in-person prep session the day prior to testifying. In recognition of these various efforts, Co-Lead Counsel believe a $15,000 service award for Wisconsin Masons is reasonable and warranted.

B. Plumbers and Pipefitters Local 178 Health & Welfare Trust Fund

81. Plumbers and Pipefitters Local 178 Health & Welfare Trust Fund ("Local 178") responded to numerous discovery requests from Defendants, provided information for Rule 26 initial disclosures, and responded to requests for production and interrogatories propounded by Defendants.

82. Throughout the discovery process, Local 178 dedicated time and effort assisting Class Counsel and their electronic discovery partners with retrieval of e-mails and other data in its possession in response to Defendants' requests for production. In addition to producing documents and responding to written discovery, Local 178 spent substantial time preparing its witness, Mark McCarty, for a deposition that occurred on October 2, 2018. Mr. McCarty himself spent considerable time and effort reviewing Local 178's documents and discovery responses. In

recognition of these various efforts, Co-Lead Counsel believe a $10,000 service award for Local 178 is reasonable and warranted.

C. Louisiana Health Service & Indemnity Company, d/b/a Blue Cross and Blue Shield of Louisiana

83. Louisiana Health Service & Indemnity Company, d/b/a Blue Cross and Blue Shield of Louisiana ("BCBSLA") responded to numerous discovery requests from Defendants, provided information for Rule 26 initial disclosures, and responded to requests for production and interrogatories propounded by Defendants.

84. Throughout the discovery process, BCBSLA dedicated time and effort assisting Class Counsel and their electronic discovery partners with retrieval of e-mails and other data in its possession in response to Defendants' requests for production. In addition to producing documents and responding to written discovery, BCBSLA spent substantial time preparing its witnesses, Justin Thomas and Mollie Carby for depositions that occurred on December 6, 2018 and January 23, 2019, respectively. Mr. Thomas and Ms. Carby each spent considerable time and effort reviewing BCBSLA's documents and discovery responses. In recognition of these various efforts, Co-Lead Counsel believe a $10,000 service award for BCBSLA is reasonable and warranted.

D. Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund

85. Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund ("Fraternal Order of Police") responded to numerous discovery requests from Defendants, provided information for Rule 26 initial disclosures, and responded to requests for production and interrogatories propounded by Defendants.

86. Throughout the discovery process, Fraternal Order of Police dedicated time and effort assisting Class Counsel and their electronic discovery partners with retrieval of e-mails and other data in its possession in response to Defendants' requests for production. In addition to

producing documents and responding to written discovery, Fraternal Order of Police spent substantial time preparing its witness, Lissette Priegues-Granado, for a deposition that occurred on August 7, 2018. Ms. Priegues-Granado herself spent considerable time and effort reviewing documents produced by Fraternal Order of Police produced and its discovery responses. In recognition of these various efforts, Co-Lead Counsel believe a $10,000 service award for Fraternal Order of Police is reasonable and warranted.

E. Pennsylvania Employees Benefit Trust Fund

87. Pennsylvania Employees Benefit Trust Fund ("PEBTF") responded to numerous discovery requests from Defendants, provided information for Rule 26 initial disclosures, and responded to requests for production and interrogatories propounded by Defendants.

88. Throughout the discovery process, PEBTF dedicated time and effort assisting Class Counsel and their electronic discovery partners with retrieval of e-mails and other data in its possession in response to Defendants' requests for production. In addition to producing documents and responding to written discovery, PEBTF spent substantial time preparing its witness, Kathryn Farley, for a deposition that occurred on October 11, 2018. Ms. Farley herself spent considerable time and effort reviewing PEBTF's documents and discovery responses. In recognition of these various efforts, Co-Lead Counsel believe a $10,000 service award for PEBTF is reasonable and warranted.

F. International Union of Operating Engineers, Local 138 Welfare Fund

89. International Union of Operating Engineers, Local 138 Welfare Fund ("Local 138") responded to numerous discovery requests from Defendants, provided information for Rule 26 initial disclosures, and responded to requests for production and interrogatories propounded by Defendants.

90. Throughout the discovery process, Local 138 dedicated time and effort assisting Class Counsel and their electronic discovery partners with retrieval of e-mails and other data in its possession in response to Defendants' requests for production. In addition to producing documents and responding to written discovery, Local 138 spent substantial time preparing its witness, Stephens Barnett, for a deposition that occurred on October 4, 2018. Mr. Barnett himself spent considerable time and effort reviewing Local 138's documents and discovery responses. In recognition of these various efforts, Co-Lead Counsel believe a $10,000 service award for Local 138 is reasonable and warranted.

V. CLASS COUNSEL FACED THE RISK OF NONPAYMENT

91. Class Counsel undertook this case on a wholly contingent basis and ran a substantial risk of no recovery whatsoever. That very real risk, magnified here because there was no preceding DOJ investigation or prosecution, is an important consideration.

92. At numerous junctures, Class Counsel faced this very substantial risk of nonpayment. Indeed, other reverse payment cases have been lost at the motion to dismiss or summary judgment stage. *See, e.g.*, *Ark. Carpenters Health & Welfare Fund v. Bayer AG*, 604 F.3d 98 (2d Cir.), *reh'g denied*, 625 F.3d 779 (2d Cir. 2010) (affirming summary judgment for defendants in reverse payment case); *In re Wellbutrin XL Antitrust Litig.*, 133 F. Supp. 3d 734 (E.D. Pa. 2015) (same); *In re Actos End Payor Antitrust Litig.*, 2015 WL 5610752 (S.D.N.Y. Sept. 22, 2015) (pre-answer dismissal in reverse payment case); *In re Effexor XR Antitrust Litig.*, 2014 WL 4988410 (D.N.J. Oct. 6, 2014) (same); *In re Lipitor Antitrust Litig.*, 46 F. Supp. 3d 523 (D.N.J. 2014) (same); *In re Loestrin 24 Fe Antitrust Litig.*, 45 F. Supp. 3d 180 (D.R.I. 2014) (same); *In re Lamictal Direct Purchaser Antitrust Litig.*, 18 F. Supp. 3d 560 (D.N.J. 2014) (same). *See also Mylan Pharm. Inc. v. Warner Chilcott Pub. Ltd. Co.*, 838 F.3d 421 (3d Cir. 2016) (affirming

summary disposition of product hop case). Some of these dismissals were affirmed in whole or part, while others were reversed.

93. And of course, assuming a case survives summary judgment and proceeds to trial, there is no guarantee of success, as demonstrated by the jury's verdict in favor of Endo in this case. Even without the benefit of hindsight, however, antitrust cases alleging delayed generic entry have proven difficult for plaintiffs to win at trial. *See, e.g.*, *In re Nexium (Esomeprazole) Antitrust Litig.*, 842 F.3d 34, 39 (1st Cir. 2016) (upholding jury verdict "that although the plaintiffs had proved an antitrust violation in the form of a large and unjustified reverse payment from AstraZeneca to Ranbaxy, the plaintiffs had not shown that they had suffered an antitrust injury that entitled them to damages").

94. Antitrust cases are by their very nature risky and complex. Here, this matter involved aspects of Hatch-Waxman procedure, FDA regulations and the drug application approval process, patent law and patent litigation, the economics of monopoly power and relevant market, the development of factual evidence and an economic model to demonstrate a "but-for world" devoid of the alleged anticompetitive behavior, and the calculation of damages to the Classes caused by the alleged misconduct.

95. Co-Lead Counsel had to overcome numerous facts particular to this case, including a settlement agreement that contained a so-called "broad license" for later-issued patents; Endo's success litigating patent infringement lawsuits against other generic manufacturers for those later-issued patents; a complicated payment provision called the "Endo Credit" contained in the settlement agreement; the Development and Co-Promotion Agreement ("DCA") signed in conjunction with the settlement agreement and disputes over its related payments; Endo's efforts to convert the market from original Opana ER to reformulated Opana ER and disputes over each

product's safety and abuse deterrence, related petitions filed with and decisions issued by the FDA, and Endo's ultimate decision to remove reformulated Opana ER from the market at the FDA's request. Co-Lead Counsel had to understand the due diligence typically involved in drug investment partnerships and conduct an investigation into the due diligence analysis (or lack thereof) undertaken by Defendants for the DCA at issue. Co-Lead Counsel also had to investigate and understand the safety and dangers associated with different formulations of Opana ER for abuse deterrence and analyze Endo's claims of safety associated with its reformulated Opana ER. It is hard to overstate the challenges Co-Lead Counsel faced endeavoring to present the complexities of this massive litigation to a lay jury in a comprehensible manner.

96. EPPs' claims could have been dismissed in their entirety at any time, and, absent this settlement with Impax, the Classes would be left without any recovery whatsoever (pending any reversal on appeal) in light of the jury's verdict in favor of Endo.

97. Despite the risks outlined above, Co-Lead Counsel diligently prosecuted this case for nearly eight years. In doing so, Co-Lead Counsel, frequently in coordination with counsel for the other Plaintiff groups: (a) reviewed a voluminous amount of documents; (b) successfully defeated Defendants' motions to dismiss and for summary judgment; (c) participated in dozens of fact and expert depositions; (d) consulted with 14 experts; (e) briefed and argued several discovery motions; (f) obtained class certification, even after Defendants appealed that order to the Seventh Circuit; (g) prepared the case for trial, including fact witness, expert witness, and exhibit work; (h) participated in briefing over 30 motions *in limine*; (i) presented the full case to a jury; and (j) engaged in negotiations concerning the execution of a settlement agreement.

98. Impax and Endo were represented by some of the country's leading law firms—Venable, and then Kirkland & Ellis, for Impax, and Dechert and Williams & Connolly for Endo—

with extensive experience in pharmaceutical antitrust litigation. Those firms and their lawyers vigorously opposed EPPs' claims at every turn.

99. Co-Lead Counsel believe that the settlement with Impax represents an outstanding outcome for the EPP Classes, on a risk-adjusted basis and otherwise. The value cannot be exaggerated in light of the now-certain alternative—loss at trial and no recovery whatsoever (absent reversal on appeal).

I, Karin E. Garvey, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the above is true and correct.

/s/ Karin E. Garvey
Karin E. Garvey

I, Robert J. Wozniak, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the above is true and correct.

/s/ Robert J. Wozniak
Robert J. Wozniak