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

MYLAN PHARMACEUTICALS, INC., *et al*.,	:	
	:	Civ. No. 12-3824
Plaintiffs,	:	CONSOLIDATED
	:	
v.	:	Relates to: Indirect Purchaser Action
	:	
WARNER CHILCOTT PUBLIC LIMITED COMPANY, *et al*.,	:	
	:	
Defendants.	:	

DECLARATION OF WALTER W. NOSS IN SUPPORT OF INDIRECT PURCHASER PLAINTIFFS' MOTION FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS; AND (2) AWARD OF ATTORNEYS' FEES AND EXPENSES

TABLE OF CONTENTS

I, Walter Noss, pursuant to 28 U.S.C. §1746, declare:

1. I am an attorney duly licensed to practice before all of the courts of the State of California, and I have been admitted in this case *pro hac vice*. I am a member of the law firm of Scott+Scott, Attorneys at Law, LLP ("Scott+Scott" or "Class Counsel"),[1] counsel for Plaintiff International Brotherhood of Electrical Workers 38, Health and Welfare Fund ("IBEW 38") and the Class.[2] I have been intimately involved in prosecuting and resolving this litigation, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon actively supervising and participating in all material aspects of the above-captioned action (the "Action").

2. I submit this Declaration in support of the Indirect Purchaser Plaintiffs' motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for: (a) final approval of the Settlement Agreement, which provides for a cash settlement of $8,000,000, and the Plan of

---

[1] Unless otherwise defined herein, all capitalized terms have the same meaning as set forth in the Settlement Agreement dated July 11, 2014 ("Settlement Agreement").

[2] By Order dated September 4, 2014 ("Preliminary Approval Order"), the Court appointed Scott+Scott to serve as Class Counsel, IBEW 38, International Union of Operating Engineers Local 132, Health and Welfare Fund ("Local 132"), and Laborers Health and Welfare Trust Fund for Northern California ("Laborers Trust") (collectively, "Indirect Purchaser Plaintiffs," "Plaintiffs" or "Class Representatives") to serve as Class Representatives, and preliminarily certified for settlement purposes the following class:

> All persons and entities in the United States who reimbursed for, or indirectly purchased, other than for resale, branded Doryx ("Indirect Purchasers") at any time during the period September 21, 2008 to May 30, 2014. Excluded from the Indirect Purchaser Class are: (1) Defendants and their directors, officers, employees, subsidiaries or affiliates; (2) fully-insured health plans, *i.e.*, plans that purchased 100% of the Plan's reimbursement obligations to its members; (3) all federal, state and municipal government entities, except for government funded employee benefit plans; (4) insured individuals covered by plans imposing a flat dollar co-pay that was the same dollar amount for generic as for brand drug purchases; and (5) insured or uninsured individuals who purchased branded Doryx with a coupon and never purchased branded Doryx without a coupon. Also excluded are purchases made through Prisons, Federal Facilities, Clinics (as defined by IMS), and/or Medicaid programs.

ECF No. 663, at 4 and 6.

Allocation of settlement proceeds; as well as (b) Class Counsel's application for attorneys' fees and expenses.

I. PRELIMINARY STATEMENT

3. After nearly two years of litigation, extensive motion practice, substantial merits and expert discovery, and vigorous arm's-length negotiation with the assistance of a distinguished private mediator, Jonathan B. Marks, Esq. of Marks ADR, LLC, the Indirect Purchaser Plaintiffs have achieved a substantial and valuable Settlement of this Action, which this Court preliminarily approved on September 4, 2014. ECF No. 663. For the reasons set forth below, Class Counsel believes that final approval of the Settlement and Plan of Allocation is warranted and that the application for an award of attorneys' fees and expenses should be granted. Likewise, Class Counsel believes that the Class Representatives' requests for service awards are appropriate and should be authorized in light of the fact that each of the representatives was deposed, produced documents to Defendants, responded to interrogatories, and actively participated in achieving the Settlement.

4. This case has been vigorously litigated from the outset. The Settlement was achieved only after Plaintiffs, among other things: (a) conducted a detailed investigation of potential claims against Defendants that resulted in the filing of the original three complaints;[3] (b) prepared a detailed amended complaint with respect to IBEW 38; (c) successfully opposed Defendants' comprehensive motions to dismiss; (d) collected and conducted a targeted review of over six million pages of documents; (e) responded and produced documents in response to three sets of document requests, comprising of over 7,400 pages of documents; (f) responded to three sets of interrogatory requests; (g) engaged experts in economics, pharmacoeconomics, pharmaceutics, FDA regulations, and drug manufacturing, dermatology, biostatistics, gastroenterology, and damages; (h) prepared for and provided deposition testimony; (i) engaged

[3] Defendants are: Warner Chilcott (US) LLC, Warner Chilcott Public Limited Company, Warner Chilcott Company LLC, Warner Chilcott Holdings Company III, Ltd., and Warner Chilcott Laboratories Ireland Limited (collectively, "Warner Chilcott"), and Mayne Pharma Group Limited and Mayne Pharma International Pty. Ltd. (collectively, "Mayne").

in numerous meet-and-confer teleconferences regarding the scope of discovery; (j) participated in the vast majority of the 110 depositions conducted in the Direct and/or Indirect actions; (k) engaged in third-party discovery; (l) briefed class certification two times; (m) moved for and opposed summary judgment; (n) engaged in intensive trial preparation, which included production of witness lists, trial exhibit lists, deposition designations of the largest number of depositions taken in the case, and motions *in limine*; (o) opposed three motions to strike or exclude Plaintiffs' expert reports or declarations; (p) submitted 20 expert reports including joint reports on behalf of all plaintiffs and reports specific to Indirect Purchaser Plaintiffs; (q) prepared for and defended eight expert depositions; (r) participated in the depositions of 22 of Defendants' experts, including taking lead; (s) filed or opposed 13 Daubert motions; (t) prepared a detailed mediation brief and participated in a full-day mediation; (u) negotiated and drafted the Settlement Agreement and associated notice and proof of claim forms; (v) worked with experts to craft the notice plan and Plan of Allocation; and (w) drafted preliminary approval papers and presented argument at the preliminary approval hearing.

5. In view of the foregoing, there is no question that the Settlement is the result of negotiations by counsel who possess a full understanding of both the strengths and weaknesses of their respective cases and takes into consideration the significant risks specific to this Action. When balanced against the substantial risks Plaintiffs faced in surviving summary judgment, obtaining a favorable jury verdict, and defending a favorable verdict against appeals, the Settlement of $8,000,000 plus interest represents an excellent result for the Class, especially considering the circumstances of this case as discussed herein. Investigation, discovery, motion practice, and legal research informed Class Counsel that, while they believed the case was meritorious, there were also weaknesses that had to be carefully evaluated in determining what course of action was in the best interests of the Class (*i.e.*, whether to settle and on what terms, or to continue to litigate through, potentially, class certification, summary judgment, and a trial on the merits). As set forth in further detail below, despite the fact that Plaintiffs' allegations and claims were supported by legal authority, expert opinion, and evidence discovered during

extensive pre-trial investigation and discovery, the specific circumstances involved here presented uncertainties with respect to Plaintiffs' ability to prevail through class certification, summary judgment, and trial, and, even in the event of success at trial, to defend a successful verdict against appeal.

6. Further evidence that the Settlement represents an excellent result for the Class is the fact that, as of the filing of this Declaration, no Class Members have contacted Class Counsel to object to the Settlement or to opt out of the Class.

7. Likewise, the Plan of Allocation of Settlement proceeds, which was developed with the assistance of Plaintiffs' damages consultant, should be approved as it equitably distributes the proceeds of the Settlement among Class Members on a pro rata basis based on unreimbursed expenditures for Doryx by each Class Member during the Class Period. Again, no objections to the Plan of Allocation have been filed.

8. Finally, the requested attorneys' fees of 33.33% of the Net Settlement Fund and expenses in the amount of $2,367,416 are reasonable and appropriate. This fee request is within the range of fee percentages frequently awarded in this type of litigation and, under the particular facts of this case, is fully justified in light of the substantial benefits that Class Counsel conferred on the Class, the risks they undertook, the quality of their representation, the nature and extent of their legal services, and the fact that they pursued the case, even though this considerable all-cash Settlement was far from guaranteed at its outset. Class Counsel have expended considerable time and effort prosecuting the Action on a fully contingent basis and have advanced substantial litigation, expert, and investigative expenses in the expectation that, as is customary, they will be paid a percentage of the common fund created by their efforts as their attorneys' fees and receive reimbursement of their expenses. As with the Settlement, no Class Member has objected to Class Counsel's request for fees and expenses.

9. Because this Declaration is submitted in support of a Settlement, it is inadmissible in any subsequent proceedings, other than in connection with the Settlement. In the event the

Settlement is not approved by the Court, this Declaration and the statements contained herein are without prejudice to Plaintiffs' position on the merits of this Action.

10. The following is a summary of the nature of the Class's claims, the principal events that occurred during the course of the litigation, and the legal services that Class Counsel provided.

II. FACTUAL BACKGROUND/SUMMARY OF PLAINTIFFS' CLAIMS

11. Plaintiffs IBEW 38, Local 132, and Laborers Trust filed class action complaints on behalf of indirect purchasers of Doryx from May 6, 2005 to the present. Defendant Warner Chilcott is a branded drug company which held an exclusive license for the marketing and distribution of Doryx, a delayed-release doxycycline hyclate drug, in the United States. Defendant Mayne is the company that manufactures and produces Doryx. Plaintiffs, as health and welfare funds for the benefit of their employees and/or members, paid monies for Doryx prescriptions for their employees and/or insured participants.

12. Defendants, as drug manufacturers and distributors, operate within the regulatory framework established by the Hatch-Waxman Act. That framework was created to reward innovator drug companies by granting them exclusivity for a certain period of time after bringing an innovative drug to market. However, in order to combat rising healthcare costs, the Act also provides that generic drugs would be able to come to market after the initial period of exclusivity by proving that the generic drug is bioequivalent to the branded drug. In conjunction with the Hatch-Waxman provisions, states enacted laws that permitted and/or required that approved generic drugs be substituted for branded drugs at the pharmacy counter. Plaintiffs allege that Defendants gamed this regulatory system to unlawfully extend their period of exclusivity for the Doryx product for a number of years at the expense of indirect purchasers of the drug, among others. In particular, Plaintiffs allege that, but for the actions of the Defendants, a generic delayed-release doxycycline hyclate drug would have entered the market as early as 2006 and would have driven the cost of the Doryx down by 80%, according to some estimates.

13. Plaintiffs allege that Defendants engaged in multiple anti-generic strategies that were intended to, and did, foreclose the entry of generic delayed-release doxycycline hyclate products. Plaintiffs allege that Defendants made superficial and unnecessary minor changes to its Doryx product in order to stave off generic competition. For example, it is alleged that the change in formulation of Doryx from capsules to tablets in 2005 was initiated because Defendants anticipated that a generic capsule form was close to coming to market. By switching the formulation to a tablet form, it is alleged that generic manufacturers would also have to market their delayed-release doxycycline hyclate drug in a tablet formulation. In another instance, when another generic was allegedly close to coming to market with a generic tablet formulation, Plaintiffs allege that Defendants added a score line to the Doryx tablet with the intended effect of frustrating the generic tablet manufacturer's ability to bring the drug to market as a bioequivalent version of the Doryx drug. By making these allegedly nuanced and insignificant changes to the Doryx product, Plaintiffs claim that Defendants were able to maintain market exclusivity for their delayed-release doxycycline hyclate products, and therefore, charge supracompetitive prices for Doryx for many years beyond the period provided by the Hatch-Waxman Act.

III. PROCEDURAL HISTORY

A. The Complaints and Motions to Dismiss

14. On September 21, 2012, Plaintiff IBEW 38 filed a class action complaint on behalf of indirect purchaser of Doryx against Defendants alleging violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §1 and §2) during the class period of May 6, 2005 to the present, as well as violations under the laws of the states of Florida (Fla. Stat. §542.22 and §501.204) and Nevada (Nev. Rev. Stat. §598A.060, §598A.210, §598.0903, *et. seq*., and §41.600). In addition to the claims for monetary damages due to the alleged antitrust violations under state law, the Complaint (as did each of those discussed *infra*) sought injunctive relief under federal law, specifically, Sections 4 and 16 of the Clayton Act. 15 U.S.C. §15a and 26.

15. On October 26, 2012, the Court consolidated the IBEW 38 case with earlier-filed related actions that were currently pending before the Court. The related actions included an action by Mylan Pharmaceauticals, Inc., a maker of generic drugs, who claims Defendants' actions prevented it from bringing a generic to market and actions by a class of direct purchasers.

16. On October 31, 2012, Defendant Warner Chilcott filed a motion to dismiss Plaintiff IBEW 38's claims, which Mayne joined. Plaintiff IBEW 38 opposed the motions. On June 12, 2013, the Court denied Defendants' motions to dismiss without prejudice. Thereafter, Defendants answered Plaintiff IBEW 38's Complaint.

17. On December 5, 2013, Local 132 filed an indirect purchaser complaint on behalf of purchasers of Doryx in the state of West Virginia. On December 9, the Court consolidated Plaintiff Local 132's case with Plaintiff IBEW 38's case. On December 23, 2013, Defendants filed a motion for summary judgment or to dismiss Local 132's complaint, which Local 132 opposed. The Court granted, in part, and denied Defendants' motion.

18. On April 8, 2014, Plaintiff Laborers Trust filed an indirect purchaser complaint on behalf of purchasers of Doryx in the state of California. On May 5, 2014, Defendants filed a motion to dismiss or, in the alternative, for summary judgment as to all claims of Plaintiff Laborers Trust. On May 6, the Court consolidated Laborers Trust's case with IBEW 38's indirect purchaser case. On May 14, Plaintiff Laborers Trust amended its Complaint. Thereafter, Defendants renewed their motion to dismiss or, in the alternative, motion for summary judgment. Those motions were still pending at the time the parties reached settlement.

B. Class Certification Motions

19. On April 1, 2013, Plaintiff IBEW 38 filed a motion for class certification of the Indirect Purchaser action, along with supporting expert reports. On May 16, 2013, Defendants filed oppositions to IBEW 38's motion, as well as motions to exclude the testimony and declaration contained in all class Plaintiffs' expert reports. IBEW 38 filed an opposition to the motion to exclude and a reply in support of its motion for class certification on June 27, 2013. As part of preparing their oppositions and reply, the parties deposed each other's experts. On

July 1, 2013, Defendants filed a letter brief to strike IBEW 38's rebuttal expert report, which IBEW 38 opposed.

20. On November 20, 2013, the Court denied, without prejudice, Plaintiff IBEW 38's motion for class certification on numerosity grounds. ECF No. 434. The Court allowed Plaintiff IBEW 38 to refile its class certification motion.

21. On January 7, 2014, Plaintiff IBEW 38 and Plaintiff Local 132 (who filed its original complaint on December 5, 2013) filed an amended motion for class certification, which sought to certify classes in Florida, Nevada, and West Virginia. Defendants opposed the amended motion. The amended motion was fully briefed and was still before the Court when the parties reached a settlement agreement.

22. Additionally, on May 16, 2014, Plaintiff Laborers Trust moved the Court to certify a class of indirect purchasers of Doryx in the state of California. That motion also remained pending at the time the parties reached a settlement agreement.

23. Although Plaintiffs strongly believe that, had the litigation continued, they would have prevailed on their motions for class certification, as demonstrated by the Court's prior decision denying class certification and in light of recent caselaw, success was not guaranteed. Given the relatively small amounts of purchases versus the cost of litigating this action, preceding on a non-class basis was not a realistic option for Named Plaintiffs.

C. Fact Discovery

24. The litigation was factually complex and resource-intensive. The Class's claims required Class Counsel to, among other things, analyze: (a) the medical, pharmaceutical, economic, regulatory, and statistical bases of Defendants' claims that each Doryx reformulation was procompetitive and an improvement over the prior version; (b) the law, regulation, and practice concerning Food and Drug Administration ("FDA") review of New Drug Applications ("NDAs"), Abbreviated New Drug Applications ("ANDAs"), and citizen petitions, as they applied to Doryx and generic Doryx; (c) technical pharmaceutical manufacturing and supply issues related to the impact of Defendants' Doryx reformulations on the readiness, willingness,

and ability of Mylan Pharmaceuticals, Inc. ("Mylan") and other potential manufacturers of generic Doryx to manufacture and sell a generic version of Doryx; and (d) pharmaceutical pricing and distribution of Doryx and generic Doryx. As a result, the successful prosecution of this case necessitated extensive discovery.

25. Discovery occurred in a relatively short amount of time. Document discovery began in the fall of 2012. Fact depositions began in March 2013. On June 19, 2013, fact discovery closed with respect to IBEW 38, although the Court permitted certain depositions of third parties to occur after this deadline. Because they filed their actions after the close of fact discovery in the main action, discovery related to Local 132 and Laborers Trust continued until settlement.

26. Class Counsel's discovery efforts included the analysis of millions of pages of documents, including documents produced by Plaintiffs, Defendants, and nearly 100 third parties that were subpoenaed. Class Counsel reviewed, analyzed, and selected documents for use in connection with briefing the motions to dismiss, class certification, and summary judgment, as well as for fact and expert depositions. The documents also served as the basis for expert reports supporting Plaintiffs' claims and rebutting Defendants' proposed procompetitive justifications relating to the medical, bio-statistic, economic, and pharmaceutical bases for the reformulations.

27. Deposition discovery was equally extensive. By April 2014, over 110 depositions had been conducted. Class Counsel participated in a great majority of these depositions, including depositions of Defendants, Class Representatives, absent class members/assignors, Mylan personnel, other generic manufacturers, prescription benefit managers, third-party payors, expert witnesses proffered in connection with class certification, merits expert witnesses, and responsive and rebuttal expert witnesses.

D. Expert Discovery

28. Given the highly technical nature of the case, there was extensive expert discovery in this case. Class Counsel engaged experts in the fields of economics, pharmacoeconomics, pharmaceutics, FDA regulations, drug manufacturing, dermatology,

biostatistics, and gastroenterology. These experts addressed such subjects as the purported medical benefit conferred by Defendants' reformulations, the alleged scientific and regulatory merit of Defendants' reformulations, the readiness of Mylan and other prospective manufacturers of generic Doryx to market a generic version of Doryx, the harm to competition caused by Defendants' conduct, Defendants' market power, and the provable amount of overcharges incurred by the Class.

29. On August 9, 2013, Plaintiffs, collectively, served reports of 11 experts and Defendants served reports of three experts. On October 18, 2013, Defendants served 16 responsive expert reports, and Plaintiffs, collectively, served two responsive expert reports. On December 23, 2013, Plaintiffs served 11 rebuttal expert reports and Defendants served five. In total, the parties took over 20 expert depositions, the last of which concluded on April 9, 2014.

E. Summary Judgment Motions

30. On March 10, 2014, Defendants submitted motions for summary judgment as to all Indirect Purchaser Plaintiffs' claims, while Indirect Purchaser Plaintiffs submitted a motion for partial summary judgment on Defendants' pass-on affirmative defense and joined in Plaintiff Mylan's motion for summary judgment as to Defendants' antitrust liability. On April 28, 2014, Indirect Purchaser Plaintiffs and Defendants submitted oppositions to the respective motions, and filed their replies to the responses on May 23. Additionally, as noted previously, in their initial filings in response to Plaintiff Laborer Trust's Amended Complaint, Defendants moved to dismiss Laborer Trust's claims or, in the alternative, moved the Court for summary judgment on May 28. All summary judgment motions remained pending at the time the parties reached a settlement agreement.

F. Preparation for Trial

31. The Court adopted a scheduling order that set a pre-trial conference on June 17, 2014, and established the date for trial to begin on June 24, 2014. In mid-May 2014, the parties agreed upon a pre-trial schedule for the exchange of exhibits, deposition designations, motions *in limine*, etc., and submitted the same to the Court. Given the June 24, 2014 trial date, substantial

pre-trial preparation was required in a very short amount of time. Class Counsel devoted significant resources to preparing for trial.

IV. MEDIATION, SETTLEMENT, AND NOTICE TO THE CLASS

32. While preparing for trial and conducting discovery of Plaintiffs Laborers Trust and Local 132), the Indirect Purchaser Plaintiffs and Defendants sought assistance of a mediator to resolve the indirect purchaser claims. The parties retained nationally recognized mediator, Jonathan B. Marks, Esq., of Marks ADR, LLC. The mediation took place throughout May 2014, as the mediator spoke to each party via teleconference. The settlement negotiations between Plaintiffs and Defendants were professional and arm's-length, and proceeded in phases. After several rounds of telephonic mediation, the parties ultimately agreed to meet with the mediator in person in New York City on May 30 to make a final effort at settling the indirect purchaser claims before trial. After extensive negotiations through the mediator, the Indirect Purchaser Plaintiffs and Defendants reached a settlement agreement that day.

33. On July 11, 2014, after substantial negotiation over the wording of the settlement agreement and supporting documents, the parties executed the Settlement Agreement. *See* ECF No. 657-3. The Settlement Agreement provides, among other things, that Plaintiffs and the Class will release their claims in exchange for the payment of $8,000,000 in cash. On that same day, Plaintiffs filed a motion seeking preliminary approval of the settlement and Plan of Allocation, preliminary certification of the settlement class, and approval of the proposed form and method of notice to the Class. *Id*.

34. On September 3, 2014, the Court heard oral argument on the preliminary approval motion. The next day, on September 4, 2014, the Court issued the Preliminary Approval Order. ECF No. 663. Among other things, the Court approved Plaintiffs' proposed form and manner of notice to the Class, and appointed The Garden City Group, Inc. ("GCG") as Claims Administrator. As described in the concurrently filed Declaration of Jennifer M. Keough Regarding Notice Mailing and Publication ("Keough Decl."), GCG has implemented the Court-approved notice plan.

V. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

35. The proposed Plan of Allocation was previously submitted to the Court as Exhibit 3 to Declaration of Walter W. Noss in Support of Preliminary Approval of Class Action Settlement. ECF No. 657-2, Ex. 3. Under the proposed Plan of Allocation, the proceeds of the Settlement in this case, net of Court-approved attorneys' fees, Plaintiffs' service awards, and costs of litigation ("Net Settlement Fund"), will be distributed to members of the Class who submit claims pro rata based on each Class member's aggregate share of the total Class' indirect purchases of Doryx during the Class Period. This Plan of Allocation is similar to plans that have previously been approved by courts in analogous cases and implemented with a high degree of success and efficiency.[4] Since the plan reimburses Class members based on the type and extent of their injuries and does not favor some Class members over others, Class Counsel believe that it is fair, adequate, and reasonable and merits final approval.

VI. REACTION OF THE CLASS TO THE SETTLEMENT AND PLAN OF ALLOCATION

36. The deadline for Class Members to object to the Settlement and Plan of Allocation was November 5, 2014, and the deadline to request exclusion is December 8, 2014. While the deadline for opting out has not yet passed, to date, not a single Class Member has objected to the Settlement or Plan of Allocation, or requested exclusion. *See* Keough Decl., ¶¶20-21.

VII. THE STRENGTHS AND WEAKNESSES OF THE CASE

37. Based on the substantial discovery conducted, and Class Counsel's consultation with numerous experts, Plaintiffs believe that they had uncovered, and would continue to uncover, substantial evidence to support their claims. Plaintiffs also realized, however, that discovery and expert opinions also supported Defendants' defenses, such that they faced

[4] *See, e.g., Meijer, Inc. v. Biovail Corp.,* No. 2:08-cv-02431 (E.D. Pa. Nov. 7, 2012) (ECF No. 485) (granting final approval to plan of distribution); *In re Flonase Antitrust Litig.*, No. 08-cv-3149 (E.D. Pa. June 14, 2013) (ECF No. 496) (same).

considerable risks as the case proceeded. These risks were carefully considered in evaluating whether the Settlement was in the Class's best interests.

38. Plaintiffs faced formidable obstacles to proving their case and it was never certain that they would ultimately prevail. This case challenged an alleged anticompetitive scheme, known as "product hopping," which, while effective in blocking generic competition, has undergone relatively little prior judicial review. Defendants asserted substantial factual and legal defenses[5] which in its ruling on the motions to dismiss, this Court characterized as "compelling," and expressed skepticism that the '"product hopping' scheme alleged here constitutes anticompetitive conduct," and invited Defendants to renew their arguments at summary judgment. June 12, 2013 Order, at 3-4 (ECF No. 280).

39. Defendants accepted the Court's invitation, and their summary judgment motions were pending at the time the Settlement was reached. Absent settlement, there was a very real risk that the Plaintiffs would lose summary judgment based on Defendants' "compelling" arguments.

40. Additionally, even if Plaintiffs were to prevail at summary judgment, the risk remained that the Court or jury would disagree with Plaintiffs on one or more of the issues raised by Defendants. This is especially true given the complicated nature of the issues in this litigation, and what would have been an extremely expert intensive trial. Indeed, it is certainly possible that, in the unavoidable "battle of experts," a jury might disagree with Plaintiffs' experts, or merely find Defendants' experts more persuasive.

41. Obtaining and maintaining class certification was also a risk. At the time the Settlement was reached, Plaintiffs' motions for class certification were fully briefed, but not yet decided. Although Plaintiffs believe their motions were well-founded, there is no guarantee that

[5] Defendants' factual and legal defenses included, among other things: (1) that the Doryx reformulations did not cause any anticompetitive harm, and even if they did, harm was outweighed by procompetitive benefits; and (2) that Mylan and other generic manufacturers' own conduct, not Defendants' conduct, impaired generic competition for Doryx.

the Court would have certified the case had it not settled. After all, Plaintiff IBEW 38 had already lost class certification once on numerosity grounds. *See* ECF No. 434.

42. While Plaintiffs had what they believed were meritorious responses to all of the foregoing arguments, the risks that they would not prevail at the class certification stage, or on the merits at summary judgment or trial, were substantial and informed Plaintiffs' decision to enter into the Settlement.

43. Further, even if Plaintiffs prevailed on liability on any or all of their claims and were awarded some or all of their damages, there was the high likelihood that Defendants would appeal the verdict and award. The appeals process would likely span several years, during which time the Class would receive no distribution on any damages award. In addition, an appeal of any verdict would carry with it the risk of reversal, in which case the Class would receive no distribution despite having prevailed on the claims at trial.

44. In summary, there were multiple procedural hurdles, as well as significant merit-based risks involved in proceeding with the litigation, each of which was carefully considered by Class Counsel and the Plaintiffs in making the determination to settle with Defendants on the agreed terms.

VIII. THE SETTLEMENT IS IN THE BEST INTERESTS OF THE CLASS AND WARRANTS APPROVAL

45. Having considered the foregoing strengths and weaknesses of the claims, and evaluating Defendants' defenses, it is the informed judgment of Class Counsel, based upon all proceedings to date and their extensive experience in litigating class actions under federal and state antitrust laws, that the Settlement of this matter before this Court and the Plan of Allocation are fair, reasonable, adequate, and in the best interests of the Class.

IX. THE FEE APPLICATION

46. The Notice of Proposed Class Action Settlement ("Notice") informed Class Members that Plaintiffs' counsel would move the Court for an award of attorneys' fees in an amount not to exceed 33.33% of the Net Settlement Fund. The Net Settlement Fund is the

$8,000,000 Settlement Fund, net of attorneys' fees, litigation expenses, costs of notice and administration, and services awards. Class Counsel's request for attorneys' fees is based on the following:

ITEM	AMOUNT
Settlement Fund	$8,000,000
Minus Litigation Expenses	$2,369,014
Minus Incentive Awards	$30,000
Minus Notice and Administration Costs	$500,000
Net Settlement Fund	$5,100,986
Requested Attorneys' Fees	$1,700,328

47. The details of Plaintiffs' counsel's time and lodestars are set forth in the concurrently filed Declarations of Daryl F. Scott, Peter Saferstein, Ira Richards, and Joe P. Lesinski, Jr. in Support of the Application for Award of Attorneys' Fees and Reimbursement of Expenses (collectively, "Plaintiffs' Counsel's Declarations"). Litigation expenses are described below in paragraph 56. Services awards are described below in paragraph 57. The costs of notice and administration will not exceed $500,000 of the Settlement Fund.

48. Plaintiffs' counsel achieved a strong result for the Class at great risk and expense to each firm. Throughout this litigation, Plaintiffs' counsel was committed to the interests of the Class, and invested substantial time and resources necessary to resolve the Class's claims. Plaintiffs' counsel took the case on a contingency basis, advancing substantial monies to cover expenses with no assurance of success and vigorously litigated this case against Defendants for approximately two years without any compensation at all.

A. Plaintiffs' Counsel's Work and Experience

49. Plaintiffs' counsel, Scott+Scott, Branstetter, Stranch & Jennings, PLLC, Schnader Harrison Segal & Lewis LLP, and Morgan & Morgan, P.C, litigate antitrust and other class and complex actions throughout the country. *See* firm résumés, attached to Plaintiffs' Counsel's Declarations. The record in this case, along with the matters described in this Declaration,

demonstrate the enormous effort and expense that went into prosecuting this litigation and reaching a settlement for the class. Plaintiffs' Counsel's Declarations outline the amount of time spent by each attorney and paralegal employed by Plaintiffs' counsel and the lodestar calculations based on current billing rates, demonstrating that a 33.33% fee is reasonable for the extraordinary results achieved in this extremely risky case.

B. Standing and Caliber of Opposing Counsel

50. The quality of work performed by Plaintiffs' counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Defendants were represented by White & Case LLP and McCarter & English LLP. In the face of this knowledgeable, formidable, and well-financed opposition, Plaintiffs' counsel were able to develop a case that was sufficiently strong to persuade Defendants to settle the case.

C. The Risks of Litigation and Need to Ensure the Availability of Competent Counsel in High-Risk, Contingent Antitrust Cases

51. The prosecution of this litigation was undertaken by Plaintiffs' counsel entirely on a contingent-fee basis. The risks assumed by Plaintiffs' counsel in bringing these claims to a successful conclusion are described above and in the Final Approval Memorandum. Those risks are also relevant to an award of attorneys' fees. Here, the risks assumed by Plaintiffs' counsel and the time and expenses incurred without any payment were extensive and are described herein and in the Plaintiffs' Counsel's Declarations.

52. From the outset, Plaintiffs' counsel understood that they were embarking on a complex and expensive litigation with no guarantee of ever being compensated for the investment of time and money the case would require. In undertaking the responsibility, Plaintiffs' counsel were obliged to ensure that sufficient resources were dedicated to the prosecution of this Action, and that funds were available to compensate staff and to cover the considerable out-of-pocket costs that a case such as this requires. With an average lag time of several years for these types of cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis.

53. Plaintiffs' counsel also bore the risk that no recovery would be achieved. As discussed herein and in the Final Approval Memorandum, from the outset, this case presented a number of significant risks and uncertainties that could have prevented any recovery whatsoever. Moreover, as discussed in the Attorneys' Fees and Expense Memorandum, despite the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured.

54. Plaintiffs' counsel firmly believes that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

55. Furthermore, courts – including the U.S. Supreme Court – have repeatedly recognized that it is in the public interest to have vigorous private enforcement of the antitrust laws. However, because of their complexity, there is a very high cost to litigating most antitrust cases, and the vast majority of private plaintiffs cannot afford to fund such litigation. To ensure that experienced, competent counsel are available to take these high-cost, high-risk cases on a contingency-fee basis, it is important that counsel be rewarded when they are successful. Otherwise, it is simply not worth the risk and numerous, otherwise meritorious, claims will never be prosecuted.

X. REIMBURSEMENT OF THE REQUESTED EXPENSES IS FAIR AND REASONABLE

56. Plaintiffs' counsel are also moving for reimbursement of $2,369,014 in litigation expenses reasonably and actually incurred in connection with commencing and prosecuting the claims against Defendants. In light of the complex nature of this action, the expenses, particularly expert-related expenses, were necessary for the full prosecution of this action on behalf of the Class. Plaintiffs' counsel advanced all of the litigation expenses, and they are categorized and detailed in the concurrently filed declarations prepared by each Plaintiff firm.

See the Declarations of Daryl F. Scott, Peter Saferstein, Ira Richards, and Joe P. Lesinski, Jr. From the beginning of the case, Plaintiffs' counsel was aware that they might never recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Plaintiffs' counsel also understood that, even assuming the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of funds advanced by them to prosecute this Action. Thus, Plaintiffs' counsel were motivated to, and did, take steps to assure that only necessary expenses were incurred for the vigorous and efficient prosecution of the case. Accordingly, Plaintiffs' counsel respectfully submit that the request for expenses be granted.

XI. THE CLASS REPRESENTATIVES' DIRECT PARTICIPATION AND EFFORTS PROVIDED A SUBSTANTIAL BENEFIT TO THE CLASS

57. The Class Representatives, IBEW 38, Local 132, and Laborers Trust, expended significant time and effort in prosecuting this Action for the benefit of the Class. Without their participation, the Class would have recovered nothing. The Class Representatives actively assisted in the preparation and prosecution of the case by searching for, collecting, and producing voluminous documents and data and assisting Plaintiffs' counsel in understanding and interpreting those documents, responding to interrogatories, consulting with Plaintiffs' counsel concerning the progress of the litigation, preparing for and giving depositions, and agreeing to participate in what could have been a multi-week trial.

58. In recognition of the Class Representatives' service to the class, I believe that the requested service awards of $10,000 for each Class Representative are fair, reasonable, and justified.

I declare under penalty of perjury of the United States of America, that the foregoing is true and correct.

DATED: November 7, 2014

Respectfully submitted,
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

/s/ Walter W. Noss
WALTER W. NOSS

707 Broadway, Suite 1000
San Diego, CA 92101
Telephone: (619) 233-4565
Facsimile: (619) 233-0508

Counsel for Indirect Purchaser Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on November 7, 2014, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court for the Eastern District of Pennsylvania using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Walter W. Noss

WALTER W. NOSS
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
707 Broadway, Suite 1000
San Diego, CA 92101
Telephone: (619) 233-4565
Facsimile: (619) 233-0508