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

MYLAN PHARMACEUTICALS, INC., et al. **Plaintiffs,** **v.** **WARNER CHILCOTT PUBLIC LIMITED COMPANY, et al.,** **Defendants.**	**Civ. No. 12-3824** **CONSOLIDATED**

ORDER

In this putative class action, indirect purchasers of Doryx, the branded version of doxycycline hyclate, allege that Defendant brand name pharmaceutical companies illegally thwarted generic competition. The Parties now ask me to certify a Rule 23(b)(3) Settlement Class, grant final approval of their proposed Settlement, and approve an award of attorneys' fees and incentive awards. (Doc. Nos. 666, 667.) Because I conclude that: (1) the proposed Settlement Class meets the requirements of Rule 23(a) and 23(b)(3); (2) the Notice to Class Members is sufficient; (3) the terms of the Settlement are fair, reasonable and adequate; and (4) the requested fees and awards are reasonable, I will grant their Motions.

BACKGROUND

Plaintiffs are generic drug manufacturers, pharmaceutical wholesalers, and retail pharmacies. Defendants are pharmaceutical companies that produce and sell Doryx, the branded version of an antibiotic prescription drug (doxycycline hyclate) used primarily to treat severe acne. Plaintiffs allege that Defendants conspired to protect their monopoly by implementing a series of product changes that, while providing no real benefit to patients, exempted Doryx from

state laws that would otherwise have allowed (or required) pharmacists to fill with generics prescriptions doctors had written for Doryx.

Plaintiff International Brotherhood of Electrical Workers 38, Health and Welfare Fund filed its Complaint on September 21, 2012. (Civ. No. 12-5410.) The case was consolidated with other antitrust claims brought against Defendants. (Civ. No. 12-3824.) Defendants moved to dismiss the Complaint. (Doc. Nos. 101, 102.) In denying Defendants' Motion, I deferred until summary judgment ruling on the dispositive question of whether "product hopping" is anticompetitive. (Doc. No. 280.) Plaintiff International Union of Operating Engineers Local 132, Health and Welfare Fund filed a Complaint on December 5, 2013, which was consolidated with this action. (Civ. No. 13-7096.) Defendants again moved to dismiss and I granted in part and denied in part Defendants' Motion, dismissing certain claims under West Virginia state law. (Doc. No. 541.) Plaintiff Laborers Health and Welfare Trust Fund for Northern California filed a Complaint on April 8, 2014, which was consolidated with this action. (Civ. No. 14-2061.) Defendants moved to dismiss and their Motion is pending. (Doc. Nos. 593, 597.)

IBEW 38 filed a Motion for Class Certification in April 2014. (Doc. Nos. 155, 229, 248.) I denied the Motion without prejudice because IBEW 38 failed to demonstrate it had met the numerosity requirement of Rule 23. (Doc. No. 434.) IBEW 38 and Local 132 filed an Amended Motion for Class Certification on January 7, 2014. (Doc. No. 449.) Laborers Trust filed a Motion for Class Certification on May 16, 2014. (Doc. No. 609.) While these Motions were pending, the Parties began settlement discussions and, after lengthy negotiations, reached a proposed settlement on May 30, 2014. (Doc. No. 657.)

I provisionally certified the Settlement Class on September 4, 2014, after a preliminary approval hearing. (Doc. No. 663.) Plaintiffs filed Motions on November 7, 2014, asking me to:

(1) grant final certification for settlement purposes; (2) approve the proposed Settlement; (3) approve the proposed distribution plan; (4) approve the proof of claim and release; (5) dismiss all Indirect Purchaser Plaintiff's claims against Defendants; (6) award attorneys' fees and expenses; and (7) approve service awards to the Plaintiffs. (Doc. Nos. 666, 667.) I held a final fairness hearing on January 7, 2015. (Doc. No. 668); see Gates v. Rohm and Haas Co., 248 F.R.D. 434, 439 (E.D. Pa. 2008) ("Judicial review of a proposed class settlement generally requires two hearings; one preliminary approval hearing and one final 'fairness' hearing.").

LEGAL STANDARDS

Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "While the law generally favors settlement in complex or class action cases for its conservation of judicial resources, the court has an obligation to ensure that any settlement reached protects the interests of the class members." In re Aetna Inc. Sec. Litig., MDL No. 1219, 2001 WL 20928, at *4 (E.D. Pa. Jan 4, 2001) (citing In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig., 55 F.3d 768, 784 (3d Cir. 1995)).

Consequently, before approving the Settlement, I must determine whether the Notice provided to Class Members was adequate. Id. I must also "scrutinize the terms of the settlement to ensure that it is 'fair, adequate and reasonable.'" Id. "[C]ases such as this, where the parties simultaneously seek certification and settlement approval, require 'courts to be even more scrupulous than usual' when they examine the fairness of the proposed settlement." In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 316 (3d Cir. 1998) (citations omitted).

Where, as here, the Class has not already been finally certified, I must also independently determine that the proposed Settlement Class satisfies the requirements of Rule 23. See Amchem v. Windsor, 521 U.S. 591, 620 (1997); In re Prudential Ins., 148 F.3d at 308 ("[A] district court must . . . find [that] a class satisfies the requirements of Rule 23, regardless of whether it certifies the class for trial or settlement.").

DISCUSSION

I. Rule 23(a) & (b)(3)

In my September 4, 2014 Order granting Indirect Purchaser Plaintiffs' Motion for Preliminary Approval (Doc. No. 663), I preliminarily certified and ordered that Notice of the Settlement be directed by The Garden City Group, Inc. to the following Class:

> All persons and entities in the United States who reimbursed for, or indirectly purchased, other than for resale, branded Doryx at any time during the period September 21, 2008 to May 30, 2014. ("Class Period") 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.

Rule 23(a)(1) requires that joinder of the parties be impracticable. Fed. R. Civ. P. 23(a)(1). The Class I preliminarily certified is sufficiently numerous and geographically dispersed across the United States to satisfy the impracticality of joinder requirement. "[W]hen the court finds that the class members are widely dispersed geographically, then their joinder may be deemed impracticable." 7A Charles A. Wright, et al., Federal Practice and Procedure § 1762. Courts have deemed joinder impracticable when class members' dispersion was similar to that presented

here. Am. Sales Co. v. SmithKline Beecham Corp., 274 F.R.D. 127, 132-33 (E.D. Pa. 2010) (class members spread across fourteen states rendered joinder impracticable); In re Wellbutrin, XL Antitrust Litig., No. 08-2431, 2011 WL 3563385, at *3 (E.D. Pa. Aug. 11, 2011) (class members across fifteen states rendered joinder impracticable).

Rule 23(a)(2) requires that Class Members share common questions of law or fact. To satisfy the commonality requirement, the putative class claims must depend upon a common contention susceptible to class-wide resolution. Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2550-51 (2011). Here, the following issues present common, class-wide questions under Rule 23(a)(2):

a. Whether the conduct challenged by the Class as anticompetitive constitutes a restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, or constitutes monopolization or attempted monopolization in violation Section 2 of the Sherman Act, 15 U.S.C. § 2;

b. Whether Defendants' challenged conduct substantially affected interstate commerce and caused antitrust injury-in-fact to the Class through overcharges paid as a result of the higher prices indirect purchasers paid for Doryx; and

c. The amount of overcharge damages, if any, owed to the Class in the aggregate under Section 4 of the Clayton Act, 15 U.S.C. § 4.

Rule 23(a)(3) requires me to evaluate whether the Named Plaintiffs' claims are typical of the Class. See Beck v. Maximus, Inc., 457 F.3d 291, 295-96 (3d Cir. 2006). The Named Plaintiffs—IBEW 38, Local 132, and Laborers Trust—allege on behalf of the Class and themselves the same manner of injury from the same course of conduct and assert on their own behalf the same legal theory that they assert for the Class. Any probable factual differences

relate to damages, not liability. Gates, 248 F.R.D. at 441. Accordingly, I conclude that the Named Plaintiffs' claims meet Rule 23(a)(3)'s typicality requirement.

Finally, Rule 23(a)(4) requires me to decide whether the Named Plaintiffs will fairly and adequately protect the interests of the Class. Fed. R. Civ. P. 23(a)(4). I find that they will. All Class Members sought to prove Defendants' alleged anticompetitive conduct, and to recover overcharge damages. Moreover, all Class Members were given an opportunity to opt out. Furthermore, Class Counsel are well-qualified to represent the Class, given their experience in prior cases, and the vigor with which they have acted thus far. (Doc. No. 663.)

Turning to the requirements of Rule 23(b)(3), I conclude, for settlement purposes, that common questions of law and fact predominate over questions affecting only individual Members. Fed. R. Civ. P. 23(b)(3). "[T]he task for plaintiffs at class certification is to demonstrate that [each] element . . . is capable of proof at trial through evidence that is common to the class rather than individual to its members." In re Hydrogen Peroxide Antitrust Litig., 552 F.3d 305, 310-12 (3d Cir. 2008). Here, the elements of Plaintiffs' claims are (1) violation of antitrust laws, (2) antitrust impact, and (3) measurable damages. Because these issues are subject to generalized proof, they apply class-wide and predominate over issues that require individualized proof. Id.

Finally, I must consider whether a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This requires me to determine whether a class action is fairer and more efficient than alternative methods of adjudication. In re Prudential Ins., 148 F.3d at 316. Plainly, it would be fairer and more efficient to resolve the claims of the Class in a single action. There are few manageability problems presented by a case such as this, particularly in light of the Settlement approved in this Order.

II. Notice

As required in my Preliminary Approval Order, timely Notice of the proposed Settlement was mailed by first-class mail, postage prepaid, to all Third Party Payor Class Members who could be identified by GCG with reasonable effort. The Summary Notice was published in the October 27, 2014 edition of People magazine, the October 29, 2014 or October 30, 2014 editions of Dermatology Times, Dermatology World, and JAMA: The Journal of the American Medical Association, and the November edition of The Dermatologist. On October 7, 2014, a press release containing the relevant content of the Summary Notice was disseminated via PR Newswire's US1 and National Hispanic newslines in both English and Spanish and the Pharmaceutical & Prescription Medicine and Dermatology newslines. Beginning October 7, 2014, Internet banner advertisements were placed on the MSN, Xaxis and Yahoo networks, and a custom text and graphic advertisement began is currently running on the popular social media site, Facebook. On October 6, 2014, the Claims Administrator caused a one-page letter and a copy of the Summary Notice to be mailed to the 7,865 dermatologists and nine dermatological associations. The Notice and Summary Notice were also posted, along with relevant litigation and Settlement documents, on GCG's website at www.doryxindirectsettlement.com to further advise Class Members of the Settlement. I find that this Notice complies with the requirements of Fed. R. Civ. P. 23(e) and due process. Moreover, it is the best notice practicable in the circumstances. Accordingly, all Class Members are bound by this Order and Final Judgment.

III. Reasonableness of the Proposed Settlement

In determining whether the Settlement is fair, adequate, and reasonable, I must consider the Girsh factors: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the Class to the Settlement; (3) the stage of the proceedings and the amount of

discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the Class action through the trial; (7) the ability of the Defendants to withstand a greater judgment; (8) the range of reasonableness of the Settlement Fund in light of the best possible recovery; and (9) the range of reasonableness of the Settlement Fund in light of all the attendant risks of litigation. In re Cendant Corp. Litig., 264 F.3d 201, 231–32 (3d Cir. 2001) (citing Girsh v. Jepson, 521 F.2d 153, 157 (3rd Cir. 1975)).

Additionally, "[i]n more recent decisions, the Third Circuit has suggested an expansion of the nine-prong test when appropriate to include what are now referred to as the Prudential considerations." In re Flonase Antitrust Litig., 951 F. Supp. 2d 739, 742 (E.D. Pa. 2013). These include: (1) the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other facts that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; (2) the existence and probable outcome of claims by other classes and subclasses; (3) the comparison between the results achieved by the Settlement for individual Class or subclass Members and the results achieved—or likely to be achieved—for other claimants; (4) whether Class or subclass Members are accorded the right to opt out of the Settlement; (5) whether any provisions for attorneys' fees are reasonable; and (6) whether the procedure for processing individual claims under the Settlement is fair and reasonable. Id. (quoting In re Prudential Ins., 148 F.3d at 323).

The Third Circuit has determined that I should accord a presumption of fairness to settlements if I find that: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the Settlement are experienced in similar litigation; and (4) only a small fraction of the class objected. In re Cendant Corp. Litig., 264 F.3d at 233 n.18. Here, the

Settlement is entitled to a presumption of fairness because: (1) it is the result of vigorous, *bona fide*, arm's length negotiations, (2) the Parties engaged in exhaustive discovery, (3) the attorneys are extremely experienced in similar litigation, and (4) there were no objections from the Class. Id.

The Girsh Factors

These weigh heavily in favor of approving the Settlement. This was a complex and expensive case with numerous experts and many fact witnesses. Lengthy dispositive motions and a protracted trial and appeal were nearly certain (first factor). The time and resources saved by the avoidance of these costs benefits all Parties. Fleisher v. Fiber Composites, LLC, Civ. No. 12-1326, 2014 WL 866441, at *11 (E.D. Pa. Mar. 5, 2014).

There have been no opt-outs or objections from the Class (second factor). At the time the Parties settled, they had concluded fact discovery and expert discovery, and were preparing for trial. A reasonable amount of discovery has thus been completed enough to give both sides an accurate view of the risks of continued litigation (third factor).

The risks of litigation and establishing damages (fourth and fifth factors) weigh heavily in favor of approving the Settlement. Plaintiffs faced the risk that the Court would rule that: (1) product hopping was not anticompetitive; (2) Defendants had legitimate business justifications for the product changes; or (3) Plaintiffs suffered no damages. Defendants faced a potential treble damages award.

The risk of maintaining this case as a class action through trial (sixth factor) favors approval of the proposed Settlement. There is no guarantee that the Class would have been certified the case had it not settled. Indeed, Plaintiff IBEW 38 had already lost class certification once on numerosity grounds. (Doc. No. 659.) Even if I had certified the Class, Fed. R. Civ. P.

23 provides that a class certification order may be altered or amended any time before a decision on the merits. Additionally, Defendants would have had the opportunity to try to appeal class certification under F.R.C.P. 23(f). Thus, in any class action suit, there is always a risk that a class will be modified or decertified prior to a decision on the merits.

The Settlement amount of $8 million is reasonable in light the risks of litigation that have been described, and was recommended by the mediator. (Id. at 6-7) (eighth and ninth factors). The remaining factor—the Defendants' abilities to withstand a greater verdict—are neutral.

The Prudential Factors

These also weigh in favor of approving the Settlement. First, as discussed, the case was well developed, and extensive discovery had already been taken. Second, Direct Purchaser and opt-out Retailers have both also settled. Only a single Plaintiff—Mylan—remains; the outcome of that case is unclear. Third, no Plaintiff has chosen to opt out. Fourth, the attorney fee provisions are reasonable, as discussed below. Fifth, the claim handling mechanism (to which no Party has objected) is fair and reasonable, allowing for the distribution of funds based on the nature and extent of the injuries. Similar mechanisms have been approved and implemented successfully and efficiently in other cases.

Accordingly, applying the Prudential and Girsh factors, I conclude that the Settlement is fair, adequate, and reasonable.

IV. Approval of Proposed Settlement Plan

I also approve the Plan of Allocation of the settlement proceeds, net of attorneys' fees, reimbursement of costs and expenses, and incentive awards proposed by Plaintiffs. "Approval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair,

reasonable and adequate." In re Ikon Office Solutions, Inc. Sec. Litig., 194 F.R.D. 166, 179 (E.D. Pa. 2000). Generally, a distribution plan is reasonable if it reimburses the class members based on the type and extent of their injuries. Id. Here, the Plan will authorize GCG to make fair and efficient distribution of the Net Settlement Fund proceeds *pro rata*, based on Class Members' aggregate share of the total Class' indirect purchases of Doryx during the Class Period. (The "Net Settlement Fund" is the amount remaining after attorneys' fees, reimbursement of litigation expenses, Class Representative incentive awards, and Settlement administration costs approved by the Court are deducted.)

V. Release of Claims

All Indirect Purchaser Plaintiffs' claims in the above-captioned action against Defendants will be dismissed with prejudice and without costs. In accordance with Paragraph 11 of the Settlement Agreement, upon the Settlement becoming final, I find that:

> (a) Indirect Purchaser Plaintiffs and all Class Members who have not timely opted out, on behalf of themselves and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents' subsidiaries' and affiliates' past and present officers, directors, employees, agents, attorneys, servants and representatives), and their predecessors, successors, heirs, executors, administrators, and representatives (the "Releasors"), hereby release and forever discharge, and covenant not to sue Defendants and their past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents' subsidiaries' and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors administrators, and representatives of each of the foregoing (the "Releasees"), with respect to, in connections with, or relating to any and all past, present, or future liabilities, claims, demands, obligations, suits, injuries, damages, levies, executions, judgments, debts, charges, actions, or causes of action, at law or in equity, whether class, individual, or otherwise in nature, and whether known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non-contingent, arising out of or relating to purchases of Doryx by Indirect Purchasers at any time prior to the Effective Date arising under Sherman Act, 15 U.S.C. Sections 1 & 2, *et seq.*, or any other federal or state statute or common law relating to antitrust, consumer protection, deceptive trade practices, unjust enrichment, or unfair

> competition (the "Released Claims".) The Released Claims include, but are not limited to, any and all claims relating to or arising out of the facts, occurrences, transactions, or other matters alleged or asserted in this Action, or that could have been alleged or asserted in this Action, and relate to purchases of Doryx by Indirect Purchasers during the Class Period. However, this Settlement Agreement is not intended to release anyone other than the Releasees, is not on behalf of anyone other than the Releasors, and does not affect the claims of the proposed direct purchaser class, the claims of the Retailer Plaintiffs who filed their own complaints in this matter, or the claims of Mylan Pharmaceuticals, Inc. or its affiliates, nor is it intended to release any actual or potential claims described in Paragraph 13.

In addition, in accordance with Paragraph 12 of the Settlement Agreement, upon the Settlement becoming final, the Court finds that each Class Member has expressly waived and released any and all provisions, rights, and/or benefits conferred by §1542 of the California Civil Code, which reads:

> Section 1542. General Release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor; or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of Paragraph 10. Nonetheless, upon the Settlement becoming final each Releasor hereby expressly waives and fully, finally and forever settles and releases any known or unknown, foreseen or unforeseen, suspected or unsuspected, contingent or non- contingent claim that is the subject matter of Paragraph 10 of the Settlement Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

VI. Attorney's Fees & Incentive Awards

Finally, Class Counsel have moved for an award of attorneys' fees of $1,700,328, reimbursement of expenses totaling $2,369,014, and incentive awards of $10,000 to each Class Representative. 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 Claims Administration Costs	$500,000
Net Settlement Fund	$5,100986
Requested Attorneys' Fees	$1,700,328

Under Fed. R. Civ. P. 23(h)(3) and 54(d), and the factors for assessing the reasonableness of a class action fee request set forth in Gunter and In re Prudential, I find that Counsel is entitled to the requested fees and costs. Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000); In re Prudential, 148 F.3d at 340.

Here, the proposed fees represent approximately 21.3% of the $8,000,000 Settlement Fund. This Settlement confers a monetary benefit on the Class that is substantial both in absolute terms and when assessed in light of the risks of establishing liability and damages. The Fund will benefit all Class Members. Class Counsel have efficiently prosecuted this difficult and complex action on behalf of the Members of the Class for over two years, with no guarantee they would be compensated, undertaking numerous and significant risks of nonpayment. Further, Class Counsel have reasonably expended thousands of hours, and incurred over two million dollars in out-of-pocket expenses, in prosecuting this action, with no guarantee of recovery. Fee awards consistent with the fee requested by Class Counsel here have been awarded in similar cases, including numerous Hatch-Waxman antitrust class actions similarly alleging impaired generic competition. Gunter, 223 F.3d 195 n.1; (Doc. No. 572-12, at 20 (collecting cases)).

The Third Circuit has advised that I should also consider the Prudential factors in approving the fee award. Prudential, 148 F.3d at 340. Here, the Settlement achieved for the benefit of the Class was obtained as a direct and exclusive result of Class Counsel's skillful advocacy. Moreover, the Settlement was reached following negotiations conducted by an experienced mediator and after good-faith discussions. The "percentage-of-the-fund" method is an appropriate method for calculating attorneys' fees in complex, common-fund class actions. See, e.g., In re Rite Aid Corp. Sec. Litig., 396 F.3d 294, 305 (3d Cir. 2005). The Notice of Proposed Settlement informed Class Members that Class Counsel intended to move for up to 33.33% of the Net Settlement Fund in attorney's fees, in addition to reimbursement of reasonable costs and expenses. There were no objections to this request. Class Counsel then moved for an award in that amount, plus reimbursement. This Motion has been publicly available since November 7, 2014 on this docket and on the website for this case. (Doc. No. 666.)

A lodestar cross-check, which confirms the reasonableness of the fee request, ensures that application of the percentage method results in a recovery that is "sensible." Rite Aid, 396 F.3d at 305-06. Class Counsel's lodestar is $5,587,968. The requested fee is thus approximately 70 percent less than the lodestar (a 0.3 multiplier), which is below the range normally approved in comparable cases. See, e.g., Meijer, Inc. v. 3M, Civ. No. 04-5871, 2006 WL 2382718, at *24 (E.D. Pa. Aug. 14, 2006) (approving a percentage fee award that constituted a 4.77 multiplier in case that settled after one year); In re Remeron Direct Purchaser Antitrust Litig., Civ. No. 03-85, 2005 WL 3008808, at *47-48 (D.N.J. Nov. 9, 2005) (multiplier of 1.8 is on the "low end of the spectrum").

Class Counsel substantially developed this case through their investigation and efforts. 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. 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.

Class Counsel participated in nearly all of the roughly 110 depositions. Additionally, Class Counsel devoted significant resources preparing for trial which was scheduled to begin on June 24, 2014. A one-third contingency is standard in individual litigation. In these circumstances, I find that the requested 33.33% fee award from the Net Settlement Fund (as opposed to the total Settlement Fund) is fair and reasonable. Accordingly, Class Counsel will be awarded attorneys' fees in the amount of $1,700,328 from the Settlement Fund plus interest, if any.

Class Counsel also will be awarded $2,369,014 for reimbursement of out-of-pocket expenses that were fairly and reasonably incurred. The awarded fees and expenses shall be paid to Class Counsel from the Settlement Fund in accordance with the terms of the Settlement Agreement.

Without affecting the finality of this judgment, I will retain exclusive jurisdiction over the Settlement Agreement to oversee its administration, distribution to the Class, and issues relating to attorneys' fees. In addition, Defendants and each Class Member irrevocably submit to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of or relating to the Settlement Agreement.

IBEW 38, Local 132, and Laborers Trust each will be awarded $10,000 from the Settlement Fund. These payments are in recognition of the work these Plaintiffs undertook in representing the Class. This amount is in addition to whatever monies these Plaintiffs will receive from the Settlement Fund pursuant to the Plan. I find that these awards are fair and reasonable.

* * * * * *

AND NOW, this 26th day of January, 2015, it is hereby **ORDERED** as follows:

1. Indirect Purchaser Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (Doc. No. 666) is **GRANTED.**
2. The Settlement and Plan of Allocation are **APPROVED**.
3. The Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Incentive Awards to Named Plaintiffs are **APPROVED**.
4. The Clerk is directed to enter final judgment. I find that under Rule 54(b), there is no just reason to delay the entry of dismissal with prejudice by (i) Plaintiffs International Brotherhood of Electrical Workers 38, Health and Welfare Fund, (ii) International Union of Operating Engineers Local 132, Health and Welfare Fund, and (iii) Laborers Health and Welfare Trust Fund for Northern California. The entry of final judgment is appropriate because this Order fully and finally adjudicates the Class's claims against all Defendants, allows execution of the Settlement, and will expedite the distribution of the Settlement proceeds.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.