UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE: LOESTRIN 24 FE ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: Direct Purchaser Actions	MDL No. 2472 Master File No. 1:13-md-2472-S-PAS

MEMORANDUM OF LAW IN SUPPORT OF DIRECT PURCHASER CLASS PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT, APPROVAL OF PROPOSED PLAN OF ALLOCATION, ADOPTION OF REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE, AND ORDER OF DISMISSAL WITH PREJUDICE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. INTRODUCTION

Class counsel representing direct purchaser class plaintiff Ahold USA, Inc. ("Ahold") and the certified direct purchaser class (the "class") respectfully submit this memorandum in support of their Unopposed Motion for Final Approval of Settlement, Approval of Proposed Plan of Allocation, Adoption of Report and Recommendation of Magistrate Judge, and Order of Dismissal with Prejudice. The settlement, achieved after six years of difficult litigation and on the eve of trial, provides a cash benefit to the class in the amount of $120,000,000.00 (less fees, expenses, and a service award for class representative Ahold). In exchange, the direct purchasers agreed, if the settlement is approved, to dismiss with prejudice their claims against defendants Warner Chilcott[1] and Watson Laboratories, Inc., related Warner Chilcott and Watson entities,[2] and parent entity Allergan, plc as fully set forth in the Settlement Agreement.[3]

Class counsel respectfully submit that the settlement easily satisfies the requirements of Rule 23(e) of the Federal Rules of Civil Procedure. The settlement was negotiated in good faith, at arm's length, by counsel experienced in pharmaceutical antitrust matters and under the auspices of an independent mediator, David Murphy of Phillips ADR. Members of the direct purchaser class were sent individual direct notice—by both U.S. First Class mail[4] and electronic mail—informing them of the settlement, the right to object, and class counsel's requests for attorneys' fees and a service award for class representative Ahold. No objections to the

[1] Warner Chilcott Co., LLC f/k/a Warner Chilcott Co., Inc.; Warner Chilcott (US), LLC; and Warner Chilcott Sales (US), LLC (together and individually, "Warner Chilcott").

[2] Warner Chilcott plc n/k/a Allergan WC Ireland Holdings Ltd.; Warner Chilcott Holdings Co. III, Ltd.; Warner Chilcott Corp.; Warner Chilcott Laboratories Ireland Limited; and Watson Pharmaceuticals, Inc.

[3] Settlement Agreement, Ex. 1 to the Decl. of Thomas M. Sobol in Supp. of Direct Purchaser Class Pls.' Am. Mot. for Prelim. Approval of Settlement, Approval of Form & Manner of Notice to Class, Appointment of Claims Administrator & Escrow Agent & Setting Final Settlement Schedule & Date for Fairness Hr'g ("Sobol Decl."), ECF No. 1411-1.

[4] As described more fully in Section II, *infra*, one class member was unable to receive notice by U.S. First Class mail because the entity declared bankruptcy. The class member received notice via email to its bankruptcy receiver.

settlement from any class members, which were to be postmarked by May 11, 2020, have been received by either class counsel or counsel for the defendants. And no party or class member filed an objection to the Report and Recommendation Regarding Direct Purchaser Class Motion for Approval of Attorneys' Fees, Expenses, and a Service Award.[5] The favorable reaction of the class confirms the fairness and reasonableness of the settlement.

Class counsel, on behalf of the class, request that the Court do three things: (1) issue an order granting final approval of the settlement, entering final judgment, and ordering dismissal of this case with prejudice; (2) issue an order approving the direct purchasers' proposed plan of allocation for the direct purchaser class; and (3) adopt Magistrate Judge Sullivan's Fee and Expense R&R[6] and issue an order (a) approving direct purchaser class counsel's request for reimbursement of their reasonable litigation expenses, totaling $3,965,558, (b) awarding class counsel a fee award of 33⅓% of the net settlement amount (one-third of the $120 million settlement minus the requested litigation expenses), totaling $38,678,147, and (c) awarding class representative Ahold a $100,000 service award in recognition of the time and effort it expended on behalf of the class.

II. SUMMARY OF THE CASE

The facts and procedural history of this case are well known to this Court and were recently recounted in class counsel's Memorandum of Law in Support of Direct Purchaser Class Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award for the Class Representative,[7] the declaration of co-lead counsel Peter R.

[5] ECF No. 1443 ("Fee and Expense R&R").

[6] *Id.*

[7] ECF No. 1429.

Kohn in support thereof,[8] and the Fee and Expense R&R of Magistrate Sullivan.[9] As a result, the direct purchasers only provide a brief recap here.

This is an antitrust class action brought under Sections 1 and 2 of the Sherman Act by direct purchasers of the prescription birth control pill Loestrin 24 Fe and/or its AB-rated generic equivalents or Minastrin 24 Fe. The direct purchasers' core allegations were that: (1) brand manufacturer Warner Chilcott committed fraud on the Patent and Trademark Office ("PTO") in securing the patent for Loestrin 24 Fe, wrongfully listed that patent in the Orange Book, and proceeded to file sham litigation to enforce its patent against potential generic competitors; (2) Warner Chilcott settled its sham patent lawsuit against generic manufacturer Watson by making a large and unjustified payment in exchange for Watson's agreement to stay out of the Loestrin 24 Fe market; and (3) Warner Chilcott executed a hard switch right before generic entry for Loestrin 24 Fe was set to occur by discontinuing Loestrin 24 Fe and forcing patients to switch to Minastrin 24 Fe—a chewable version of Loestrin 24 Fe with added mint-flavor for "reminder" pills. As a result of the conduct above, the direct purchasers alleged that they were forced to pay artificially inflated prices for brand and generic Loestrin 24 Fe and brand Minastrin 24 Fe.[10] These allegations were denied by the defendants.

Class counsel for the direct purchasers performed an independent investigation for this case starting in March 2012.[11] On May 14, 2013, the first Loestrin 24 Fe direct purchaser

[8] ECF No. 1430 ("Kohn Decl.").

[9] ECF No. 1443.

[10] Kohn Decl. ¶¶ 7-13. A full account of direct purchasers' allegations can be found in their Third Consolidated Amended Class Action Complaint, ECF No. 378.

[11] Fee and Expense R&R at 3; Kohn Decl. ¶ 6.

antitrust class action was filed.[12] This was over a month before the Supreme Court issued its landmark decision in *FTC v. Actavis, Inc*.[13] On October 3, 2013, the Judicial Panel on Multidistrict Litigation centralized all actions in this Court for coordinated pretrial proceedings.[14]

Over the course of the case, the direct purchasers filed three consolidated amended class action complaints. The direct purchasers' first consolidated amended complaint was initially dismissed, with the Court having ruled that "*Actavis* requires cash consideration in order to trigger rule of reason scrutiny."[15] After a timely appeal, the First Circuit held that reverse payments can take forms other than cash and vacated the dismissal and remanded.[16] After a second amended complaint and a renewed round of motion to dismiss briefing, this Court upheld all of the direct purchasers' causes of action, but dismissed claims against parent company Allergan, plc and previous parent company Actavis, Inc. on August 8, 2017.[17]

After the Court's second motion to dismiss opinion, the parties engaged in extensive, hard-fought fact discovery. Motions to compel were filed by both sides. The defendants and various nonparty subpoena recipients ultimately produced over 410,000 documents to the direct purchasers totaling over 3.5 million pages, and over 1.5 million lines of sales data.[18] Between April 2018 and April 2019, the parties took over 100 depositions of the parties' current and

[12] Class Action Compl. & Jury Demand, *Am. Sales Co., LLC v. Warner Chilcott Pub. Ltd. Co.*, No. 13-cv-347 (D.R.I. May 14, 2013), ECF No. 1.

[13] 570 U.S. 136 (2013).

[14] JPML Transfer Order, ECF No. 1.

[15] *In re Loestrin 24 Fe Antitrust Litig.*, 45 F. Supp. 3d 180, 195 (D.R.I. 2014), *vacated*, 814 F.3d 538 (1st Cir. 2016).

[16] *In re Loestrin 24 Fe Antitrust Litig.*, 814 F.3d 538, 549-53 (1st Cir. 2016).

[17] *In re Loestrin 24 Fe Antitrust Litig.*, 261 F. Supp. 3d 307, 361-62 (D.R.I. 2017).

[18] Kohn Decl. ¶ 34.

former employees, as well as non-parties and experts.[19]

The direct purchasers successfully moved for class certification in this case and opposed the defendants' 23(f) petition for interlocutory appellate review. On July 2, 2019, the Court certified the direct purchaser class, defined as:

> All persons or entities in the United States and its territories who purchased brand or generic Loestrin 24 directly from Warner [Chilcott] or Amneal at any time during the period from September 1, 2009, through and until June 3, 2015, and all persons or entities in the United States and its territories who purchased brand Minastrin 24 directly from Warner at any time during the period from September 1, 2009, through and until March 14, 2017 (the "Class Period").
>
> Excluded from the Class are defendants, and their officers, directors, management, employees, subsidiaries, or affiliates, and, all federal governmental entities. Also excluded from the class are educational institutions such as universities and colleges.[20]

Class members received individual notice, mailed on August 28, 2019, and no entities opted out except for the retailer plaintiffs that throughout this case have litigated their claims individually.[21]

The direct purchasers' claims survived two separate rounds of summary judgment—first on the issue of market power,[22] and then on all other claims.[23] At the time of settlement, trial preparations were well underway. The parties exchanged thousands of documents designated as

---

[19] *See* Mem. in Supp. of Direct Purchaser Class Pls.' Am. Mot. for Prelim. Approval of Settlement, Approval of Form & Manner of Notice to the Class, Appointment of Claims Administrator & Escrow Agent & Setting Final Settlement Schedule & Date for Fairness Hr'g at 3, ECF No. 1419.

[20] *In re Loestrin 24 Fe Antitrust Litig.*, No. 13-md-2472, 2019 WL 3214257, at *7 (D.R.I. July 2, 2019).

[21] *See* Text Order Allowing Retailers' Requests to Opt Out from Direct Purchaser Class, Nov. 14, 2019; *see also* Settlement Notice, Ex. A to Declaration of Tina Chiango Regarding Notice of Settlement to Direct Purchaser Class ("Chiango Decl.") (filed herewith) ("At their request, in response to a previous notice of pendency of this lawsuit sent to all Class Members, the following entities were also excluded from the Class: Walgreen Co., The Kroger Co., Safeway Inc., HEB Grocery Company L.P., Albertson's LLC, CVS Pharmacy, Inc., Rite Aid Corporation, and Rite Aid Hdqtrs. Corp.").

[22] Defs.' Mot. for Summ. J. Due to Lack of Market Power, ECF No. 496.

[23] Defs.' Mot. for Summ. J., ECF No. 842.

potential trial exhibits and filed a combined total of 51 motions *in limine*.[24] Competing sets of proposed jury instructions and verdict forms were filed.[25] The parties and the Court had begun the process of vetting potential jurors for trial to begin on January 6, 2020.

Settlement negotiations between class counsel and attorneys for the defendants were hard fought, conducted in good faith at arm's length, and spanned multiple years. The parties' first formal attempt to mediate their dispute occurred at a mediation session on December 3, 2018 with mediators Layn R. Phillips and David Murphy of Phillips ADR.[26] Detailed briefs with exhibits were submitted to the mediators. On December 11, 2019, a second mediation session was held at White & Case LLP's New York office, overseen by mediator David Murphy.[27] As a result of that process, on December 13, 2019 the parties entered into a binding settlement term sheet between direct purchaser counsel and counsel for the defendants.[28] Subsequently, the parties negotiated the terms of the full Settlement Agreement, consistent with and incorporating the terms of the December 13, 2019 term sheet, agreeing to settle all direct purchaser claims for a total cash payment of $120 million. The parties executed the Settlement Agreement on January 14, 2020.[29]

This Court preliminary approved the settlement on March 23, 2020.[30] In accordance with the preliminary approval order, the claims administrator disseminated settlement notices via First Class mail to the last known address of each class member, as well as to other known addresses

[24] Kohn Decl. ¶¶ 77-81, 84-88.

[25] Defs.' Proposed Jury Charges, ECF No. 1348; Defs.' Proposed Verdict Form, ECF No. 1349; Pls.' Proposed Jury Verdict, ECF No. 1350; Pls.' Proposed Jury Instructions, ECF No. 1351.

[26] Kohn Decl. ¶ 93.

[27] *Id.* ¶ 94.

[28] Sobol Decl. Ex. 2, ECF No. 1411-2.

[29] Sobol Decl. Ex. 1, ECF No. 1411-1.

[30] ECF No. 1426.

for class members and their representatives, on April 6, 2020.[31] There was only one class member whose mailed notice was returned as undeliverable for which an alternate address could not be found: Miami-Luken, Inc., which is now out of business.[32] However, the claims administrator was able to send notice via email to John Pidcock, Miami-Luken's receiver-in-bankruptcy.[33] Out of an abundance of caution, although not required to do so, the claims administrator disseminated settlement notices via email to every class member as well.[34] The settlement notice was also posted on a specifically designated website for this litigation.[35]

On April 20, 2020, class counsel submitted their Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award for the Class Representative.[36] The Court referred the motion to Magistrate Judge Patricia A. Sullivan on June 16, 2020.[37] On July 17, 2020, Judge Sullivan issued a Report and Recommendation advising that class counsel's motion be granted and that "the Court should also approve the requested payments from the Settlement Fund."[38] Judge Sullivan found that "the percentage method of calculating the fee award should be the primary guide for the Court" and that "one-third of the DPP Settlement Fund, less costs and expenses, is fair, reasonable and appropriate compensation for the work

[31] Chiango Decl. ¶ 8.

[32] *Id.* ¶¶ 9-11.

[33] *Id.* ¶ 9(c).

[34] *Id.* ¶¶ 12-17. The claims administrator was able to locate email addresses for every class member, and received a bounce-back message for only one class member for which an alternate email address could not be found: Wholesalers Group, Inc. *Id.* ¶ 17. However, notice was physically sent via First Class mail to Wholesalers Group, Inc. at two separate addresses for the company on April 6, 2020, and neither mailing was returned as undeliverable. *Id.* ¶ 11.

[35] *Id.* ¶ 8; *see also* http://www.loestrin24antitrustlitigation.com/pdf/Notice-for-Mailing.pdf.

[36] ECF No. 1428.

[37] Elec. Order, June 16, 2020.

[38] ECF No. 1443.

done by DPP Counsel to create the Fund."[39] Judge Sullivan also recommended reimbursing class counsel's costs and expenses, which she had reviewed throughout the pendency of the litigation, and found that the service award for plaintiff, Ahold, was justified by the length of the case, the uncertainty of the outcome, and the need to proceed alone after the withdrawal of the other class representative.[40]

To date, neither class counsel nor counsel for the defendants have received any objections to the settlement from class members, which had to be sent via First Class U.S. mail postmarked no later than May 11, 2020.[41] No party filed objections to the Fee and Expense R&R, which were due by July 31, 2020.[42]

III. ARGUMENT

A. Legal Standard

Courts encourage settlement of lawsuits.[43] Rule 23(e)(2) of the Federal Rules of Civil Procedure provides that a court may approve a class action settlement if it is "fair, reasonable, and adequate." Courts in this district[44] and other circuits typically consider a list of factors

---

[39] *Id.* at 12.

[40] *Id.* at 13-14.

[41] Declaration of Kristen A. Johnson ("Johnson Decl.") ¶¶ 4-6 (filed herewith).

[42] Fee and Expense R&R at 14 ("Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days of its receipt. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision.").

[43] *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910) ("Compromises of disputed claims are favored by the courts . . ."); *Fid. & Guar. Ins. Co. v. Star Equip. Corp.*, 541 F.3d 1, 5 (1st Cir. 2008) ("Settlement agreements enjoy great favor with the courts 'as a preferred alternative to costly, time-consuming litigation.'" (quoting *Mathewson Corp. v. Allied Marine Indus., Inc.*, 827 F.2d 850, 852 (1st Cir. 1987))); *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) ("[I]t is the policy of the law to encourage settlements.").

[44] *See Sesto v. Prospect Chartercare, LLC*, No. 18-cv-328, 2019 WL 5067200, at *5 (D.R.I Oct. 9, 2019) (citing the *Grinnell* factors as "[s]ome of the factors in [the] consideration" of whether a settlement is fair, reasonable, and adequate); *Medoff v. CVS Caremark Corp.*, No. 09-cv-554, 2016 WL 632238, at *5-7, 8 (D.R.I. Feb. 17, 2016) (granting final approval of settlement based on analysis of *Grinnell* factors); *Trombley v. Bank of Am. Corp.*, No. 08-cv-456, 2013 WL 5153503, at *5 (D.R.I. Sept. 12, 2013) (same); *Baptista v. Mut. of Omaha Ins. Co.*, 859 F. Supp. 2d 236, 240-41 (D.R.I. 2012) (same).

known as the "*Grinnell* factors,"[45] which include:

> (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 to a possible recovery in light of all the attendant risks of litigation.[46]

Courts reviewing settlements recognize that "although '[t]he case law offers "laundry lists of factors" pertaining to reasonableness . . . the ultimate decision by the judge involves balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement.'"[47] And the Court should neither substitute its judgment for that of the parties who negotiated the settlement, nor conduct a mini-trial on the merits of the action.[48] "If the parties

[45] *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462-68 (2d Cir. 1974).

[46] *Id.* at 463 (citations omitted) (citing *Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1388-89 (S.D.N.Y. 1972)).

[47] *Sesto*, 2019 WL 5067200, at *3 (quoting *Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 82 (1st Cir. 2015)); *see also Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 61 (S.D.N.Y. 2003) ("All nine [*Grinnell*] factors need not be satisfied, rather, the court should consider the totality of these factors in light of the particular circumstances. (citing *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001))); *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 72 (D. Mass. 1999) ("Th[e] fairness determination is not based on a single inflexible litmus test but, instead, reflects [the court's] studied review of a wide variety of factors bearing on the central question of whether the settlement is reasonable in light of the uncertainty of litigation.").

[48] *See Greenspun v. Bogan*, 492 F.2d 375, 381 (1st Cir. 1974) ("[A]ny settlement is the result of a compromise—each party surrendering something in order to prevent unprofitable litigation, and the risks and costs

negotiated at arm's length and conducted sufficient discovery, the district court must presume the settlement is reasonable."[49] The settlement here satisfies all of the *Grinnell* factors.

B. The settlement should be approved as fair, reasonable, and adequate.

The settlement satisfies all the factors articulated in Rule 23 and *Grinnell*. The settlement was negotiated at arm's length by counsel experienced in similar pharmaceutical antitrust actions.[50] Each side vigorously advocated and considered the strengths and weaknesses of its positions. Through two mediations, counsel for the direct purchasers advocated the best possible case and pressed for a maximum recovery, while acknowledging the risk of losing at trial, which would provide zero relief to the class. The time and effort spent over more than six years of litigation, and the circumstances of the negotiations, are persuasive indicators that "the parties negotiated at arm's length and conducted sufficient discovery." The settlement is entitled to a presumption of reasonableness.

1. This case was factually and legally complex and was litigated for over six years, at an out-of-pocket cost to class counsel of nearly $4 million.

The complexity, expense, and duration of this litigation weigh in favor of approving the settlement. Antitrust class actions are "'arguably the most complex action[s] to prosecute' as '[t]he legal and factual issues involved are always numerous and uncertain in outcome.'"[51] And even among antitrust class actions, this case was unusually large and complex and was filed over

---

inherent in taking litigation to completion. A district court, in reviewing a settlement proposal, need not engage in a trial of the merits, for the purpose of settlement is precisely to avoid such a trial.").

[49] *Sesto*, 2019 WL 4758161, at *3 (quoting *Bezdek*, 809 F.3d at 82).

[50] *See* ECF Nos. 550-10–550-13 (co-lead counsel firm resumes).

[51] *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. 03-cv-4578, 2005 WL 1213926, at *11 (E.D. Pa. May 19, 2005) (quoting *In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577 (E.D. Pa. 2003)); *see also In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 743 (E.D. Pa. 2013) ("Antitrust class actions are particularly complex to litigation and therefore quite expensive."); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 533 (E.D. Mich. 2003) ("Antitrust class actions are inherently complex . . . .").

a month before the Supreme Court's landmark ruling in *Actavis*.[52] This case involved an alleged multi-decade anticompetitive scheme that included three overarching claims: (1) fraud on the PTO, wrongful Orange Book listing, and sham litigation (i.e., patent-related claims); (2) a reverse-payment settlement that included a large and unjustified payment spread out over four contracts (the no-AG agreement, the Femring agreement, and the Generess patent license and supply agreements); and (3) a hard switch from Loestrin 24 Fe to Minastrin 24 Fe. Each one of these claims, standing alone, would constitute a complex antitrust case. The defendants presented robust defenses to all these claims and, as the Court undoubtedly knows, strenuously contested market power, causation, damages, and class certification.

This case required significant expenditure of time and resources *before* trial, and those costs would only have increased during the trial and post-trial proceedings, including an inevitable appeal. This case was scheduled to be tried in two stages, with a jury determining liability in the first phase and a separate jury determining damages in the second phase.[53] The Court allotted 70 hours to each side for the presentation of evidence, not including opening and closing statements and "jury charges and the like."[54] The direct purchasers designated 49 deposition transcripts for trial (and planned for in-person examinations of several experts as well as high-level former employees of the defendants), and the defendants designated 95 deposition transcripts. The plaintiffs designated 1,609 exhibits for trial while the defendants designated 7,192 exhibits. Needless to say, trial would have been long, complex, and expensive, and continued litigation would have required further time and resources with no certainty of a favorable outcome.

[52] Fee and Expense R&R at 3.

[53] Text Order, Oct. 4, 2019.

[54] Text Order, Oct. 10, 2019.

By contrast, the settlement provides the class with immediate, substantial, and definite relief without the delay, risk, and uncertainty of trial and continued litigation. Analysis of the first *Grinnell* factor strongly supports approval of the settlement.

2. All class members received direct mail and/or email notice, and no class member has objected.

As set forth above, after receiving Court-approved notice, no class member has objected to final approval of the settlement or class counsel's request for attorneys' fees, reimbursement of expenses, and a service award for the class representative.[55] "Such acceptance of the [s]ettlement on the part of the [c]lass is convincing evidence of the [s]ettlement's fairness and adequacy," especially "where, as here, [the] class is comprised of sophisticated business entities that can be expected to oppose any settlement they find unreasonable . . . ."[56] Accordingly, the second *Grinnell* factor strongly supports approval of the settlement.

3. Discovery was completed, summary judgment had been decided, and the trial was only weeks away at the time of settlement.

This case was settled at a very mature stage. At the time the parties entered into a binding term sheet on December 13, 2019, summary judgment, *Daubert*, and *in limine* motions were fully briefed and heard, and trial was less than a month away after more than six years of litigation. Discovery in this case was hard-fought and fulsome. The plaintiffs filed three motions to compel while the defendants filed one, all of which were heard and decided by Magistrate Judge Patricia A. Sullivan. Magistrate Judge Sullivan also helped resolve several additional discovery disputes through a series of discovery conferences. The defendants and various non-

[55] Johnson Decl. ¶¶ 4-6.

[56] *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-cv-85, 2005 WL 3008808, at *6 (D.N.J. Nov. 9, 2005); *accord Sesto*, 2019 WL 5067200, at *6 ("Weighing further in favor of approval, no class member has objected to this settlement."); *id.* at *3 ("[T]he lack of any serious objection to the settlement agreement from members of the class weighs in favor of approving the settlement." (quoting *Medoff*, 2016 WL 632238, at *6)).

party subpoena recipients collectively produced millions of pages of documents, and the parties took over 100 depositions. At the time of settlement, both sides had a full understanding of the factual record, the legal issues, and the risks associated with trying the case to a jury verdict. The third *Grinnell* factor strongly supports final approval.

4. Class counsel believed strongly that they would have prevailed at trial, but acknowledged they faced a fierce battle and uncertain outcome.

At the time the parties agreed in principle to the settlement, class counsel believed in the merits of the case (and still do), but recognized that ultimate success at trial was no certainty. Indeed, in its summary judgment opinion, this Court characterized several issues as "fairly close calls,"[57] and the defendants disputed, and still deny, essentially every aspect of the direct purchasers' case. The direct purchasers faced a serious risk of proving liability at trial.

For starters, the "threshold issue of market power" was "hotly contested" by the parties, and the defendants might have convinced the jury that "the oral contraceptive market is an unusually crowded one with over one hundred available hormonal contraceptives" and "the consequent competition could not possibly allow a single brand to gain market power of any concern . . . ."[58] If so, the direct purchasers' case would have ended there; even if successful on the market power issue, a tough road would still lie ahead.

With respect to the patent claims, the parties particularly contested whether the applicant for the '394 patent—that allegedly covered Loestrin 24 Fe—intended to deceive the PTO. This Court acknowledged that whether failure to reference the "30-Woman Study" constituted a material omission was a "close call."[59] With respect to the "omission of Loestrin 1/20 as prior

[57] *In re Loestrin 24 Fe Antitrust Litig.*, 433 F. Supp. 3d 274, 297 (D.R.I. 2019).

[58] *Id.* at 299, 301.

[59] *Id.* at 310.

art," the defendants could have convinced a jury that Loestrin 1/20 was "specifically disclosed in the patent application in Example 1."[60] Furthermore, the defendants disputed that Warner Chilcott executives had any involvement in the '394 patent prosecution.[61] On sham litigation, the direct purchasers had to meet the "high burden" of demonstrating that a "reasonable manufacturer in Warner Chilcott's position" did not have "a realistic likelihood of succeeding on the merits" in the patent litigation against Watson.[62] Former United States District Court Judge T. John Ward, one of the defendants' experts, was prepared to testify to the contrary. If the jury had sufficient doubts about any of the direct purchasers' above patent claims, the direct purchasers' sham Orange Book listing claim would have been jeopardized as well.

Next at trial would come the "highly disputed nature and value of the claimed reverse payment[]."[63] As the Court is aware, the reverse payment alleged here was not a simple transfer of cash from Warner Chilcott to Watson; it was a complex arrangement that involved four separate contracts executed on the same day: (1) the no-AG agreement found in the Settlement and License Agreement between Warner Chilcott and Watson; (2) the Femring Co-Promotion Agreement; and (3) the patent License Agreement and Finished Product Supply Agreement concerning Generess Fe. With respect to the no-AG agreement, a jury may have been persuaded that "it was nearly valueless" because Warner Chilcott would not have launched an AG.[64] For the Generess agreements, the defendants may have been able to convince the jury that they did not constitute payments from Warner Chilcott because "Warner Chilcott was guaranteed to make a

[60] *Id*. at 312-13.

[61] *Id*. at 311 ("Defendants contend that Mr. Boissonneault and Dr. Hodgen discussed a different hormonal contraceptive and that Mr. Boissonneault was not involved in the '394 patent's conception.").

[62] *Id*. at 314.

[63] *Id*. at 302.

[64] *Id*. at 320.

profit" from the deals.[65] And with respect to the Femring agreement, the jury could have credited the defendants' argument that it constituted fair value and "made good business sense" for various reasons such as "building brand awareness."[66]

Even if the jury found that there was a large and unjustified payment, it would "not end [the] battle" because the direct purchasers would also have had to prove that "these violations caused Watson to delay Loestrin generic entry."[67] The direct purchasers advanced three causation theories: "(1) Warner Chilcott and Watson would have entered into an earlier negotiated alternative no-payment entry date; (2) Watson would have launched 'at risk' before the conclusion of the patent litigation; and (3) Watson would have won the patent litigation, obtaining a final, unappealable judgment."[68] Each would have been met with defenses at trial. For example, defense witnesses were prepared to testify "that Warner Chilcott never offered Watson an entry date earlier than January 22, 2014" and that "Watson would have agreed to the settlement even without [the reverse payment]."[69] The defendants retained two experts, Dr. Christine Meyer and Dr. Mark Robbins, who contested Watson's likelihood of launching at risk. And, as already explained, defense expert Judge T. John Ward was prepared to testify that Watson was not likely to win the patent litigation with Warner Chilcott.

Finally, with respect to the hard switch claim, this Court ruled that the direct purchasers would need to put on "additional evidence that Warner Chilcott's anticompetitive conduct coerced consumers to switch from Loestrin to Minastrin."[70] A jury may have been persuaded by

[65] *Id*. at 321.

[66] *Id*. at 322.

[67] *Id*. at 322-23.

[68] *Id*. at 323.

[69] *Id*. at 323, 325.

[70] *Id*. at 330.

the defendants' argument that chewability was therapeutically significant and "health care professionals chose to prescribe Minastrin and patients chose to take it."[71]

All the above demonstrates that the direct purchasers faced a real risk of establishing liability at trial. The fourth *Grinnell* factor strongly supports approval of the settlement.

5. Damages analysis in this case was hotly contested, and class counsel risked an adverse jury finding.

Even assuming that the direct purchasers prevailed on liability, the existence and amount of damages would have been vigorously contested in the second phase of trial. The direct purchasers retained Dr. Jeffrey Leitzinger to evaluate class-wide damages. To dispute the direct purchasers' damages, the defendants retained Dr. Pierre-Yves Cremieux, who issued two expert reports in this case.

Dr. Cremieux was prepared to testify that the direct purchasers suffered no damages.[72] For example, with respect to the hard switch, Dr. Cremieux was prepared to testify that "Warner Chilcott [would have] continued to innovate in the face of generic competition for Loestrin 24 and introduced Minastrin 24" and "quickly captured a sizeable share of sales even with Loestrin 24 still on the market," and that "[t]his but-for world is essentially the same as the actual world and yields no damages to Plaintiffs."[73] If a jury credited Dr. Cremieux's testimony, it could have resulted in a finding of no damages or a substantially reduced damages figure. Accordingly, the fifth *Grinnell* factor strongly supports approval of the settlement.

---

[71] *Id.* at 331.

[72] *See* Expert Merits Report of Pierre-Yves Cremieux ¶ 12, ECF No. 945 ("There is no evidence of overcharges from either the alleged generic delay or the alleged 'product hop'—resulting in zero damages.").

[73] *Id.*

6. At the time of settlement, the defendants had petitioned for a review of this Court's class certification decision and would likely have continued to challenge that order after trial.

On July 2, 2019, this Court certified a class of direct purchasers.[74] However, "[t]he risk of maintaining a class through trial is present in any class action."[75] Shortly after the Court's decision, the defendants petitioned for interlocutory review under Rule 23(f) of the Federal Rules of Civil Procedure.[76] At the time the parties executed a binding term sheet on December 13, 2019, the First Circuit had not yet ruled on the defendants' petition. While the direct purchasers firmly believe the Court's class certification decision was correct, at the time of settlement there was a small but extant risk of First Circuit review and possible reversal. The First Circuit did not deny review until January 7, 2020, a day after trial was scheduled to begin.[77] And had the direct purchasers prevailed at trial, the defendants may have decided to appeal the Court's class certification decision at that time. Accordingly, the sixth *Grinnell* factor supports approval of the settlement.

7. The ability of the defendants to withstand a greater judgment does not weigh against approval of the settlement.

The direct purchasers do not maintain that the defendants could not withstand a larger judgment than the settlement, but that does not weigh against approval.[78] This consideration is

[74] *Loestrin 24 Fe*, 2019 WL 3214257, at *17.

[75] *Guippone v. BH S&B Holdings LLC*, No. 09-cv-1029, 2016 WL 5811888, at *7 (S.D.N.Y. Sept. 23, 2016) (citing *Asare v. Change Grp. of N.Y., Inc.*, No. 12-cv-3371, 2013 WL 6144764, at *12 (S.D.N.Y. Nov. 18, 2013)).

[76] Pet. for Permission to Appeal from Order Granting Class Certification Pursuant to Fed. R. Civ. P. 23(f), *Ahold U.S.A., Inc. v. Warner Chilcott Pub. Ltd. Co.*, No. 19-8014 (1st Cir. Jul 16, 2019), Doc. No. 00117465587.

[77] Judgment, *Ahold U.S.A., Inc. v. Warner Chilcott Pub. Ltd. Co.*, Docket No. 19-8014 (1st Cir. Jan. 7, 2020), Doc. No. 00117535173.

[78] *See Remeron*, 2005 WL 3008808, at *9 ("[M]any settlements have been approved where a settling defendant has had the ability to pay greater amounts." (citing *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004))).

"largely neutral," as these are defendants "with classic deep pockets."[79] Accordingly, the seventh *Grinnell* factor is neutral.

8. The settlement provides the direct purchaser class with a definite and substantial recovery while avoiding the many risks involved during and following a trial.

Courts typically evaluate the last two *Grinnell* factors together.[80] These factors consider the range of reasonableness in light of: (i) the best possible recovery and (ii) litigation risks. In analyzing these factors, the issue for the Court is not whether the settlement represents the best conceivable recovery, but how the settlement relates to the strengths and weaknesses of the case. "[T]he court is only called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable,"[81] while "guard[ing] against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution."[82] "A settlement need not reimburse 100% of the estimated damages to class members in order to be fair."[83]

Here, the settlement amount for the direct purchaser class, $120 million, represents between 18.75% and 82.75% of the direct purchasers' sought damages, depending on scenario,

---

[79] *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 73 (D. Mass. 2005) (quoting *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 97 (D. Mass. 2005)).

[80] *Guevoura Fund Ltd. v. Sillerman*, No. 15-cv-7192, 2019 WL 6889901, at *9 n.1 (S.D.N.Y. Dec. 18, 2019) ("Courts typically collapse into this inquiry the final two *Grinnell* factors: 'the range of reasonableness of the settlement fund in light of the best possible recovery' and 'the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.'" (quoting *Grinnell*, 495 F.2d at 463)).

[81] *Grinnell*, 495 F.2d at 462 (quoting *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971)).

[82] *In re Gen. Motors Corp. Pick-Up Truck Fuel Tanks Prods. Liab. Litig.*, 55 F.3d 768, 806 (3rd Cir. 1995) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

[83] *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, No. 09-md-2067, 2014 WL 4446464, at *7 (D. Mass. Sept. 8, 2014); *accord Grinnell*, 495 F.2d at 455 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.").

before trebling. The direct purchasers sought damages before trebling ranging from $145 million to $640 million.[84] This is a substantial recovery by any metric and supports final approval.[85]

As explained in Sections III.B.4–5 above, the direct purchasers faced challenges in establishing liability and damages at trial. The settlement provides a recovery well within the range of reasonableness in light of the best possible recovery and the risks of litigation. Accordingly, the eighth and ninth *Grinnell* factors strongly support approval of the settlement.

C. The proposed plan of allocation should be approved as fair, adequate, and reasonable.

If this Court approves the settlement, the settlement amount will be distributed as follows. First, if the Court adopts Magistrate Sullivan's recommendations, class counsel's expenses and requested attorneys' fees and a service award for class representative Ahold will be distributed. Second, the remaining net amount will be distributed to class members *pro rata* according to their purchases of branded and generic Loestrin 24 Fe and branded Minastrin 24 Fe.

As set forth in the direct purchasers' proposed Plan of Allocation[86] and in the Declaration of Jeffrey J. Leitzinger, Ph.D. Related to Proposed Allocation Plan and Net Settlement Fund Allocation,[87] filed February 24, 2020, each class member's allocation will be set *pro rata* to a weighted combined total of its direct purchases of brand Loestrin 24 Fe, brand Minastrin 24 Fe,

---

[84] Kohn Decl. ¶ 95.

[85] *See Gulbankian v. MW Mfrs., Inc.*, No. 10-cv-10392, 2014 WL 7384075, at *5 (D. Mass. Dec. 29, 2014) (in class action seeking damages to consumers from defective windows, settlement compensation was fair even though it did not cover "actual real world cost of replacing a defective window"); *In re OmniVision Techs., Inc. Sec. Litig.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving $13.75 million settlement yielding 6% of potential damages after deducting fees and costs); *see also* Decl. of Brian T. Fitzpatrick ¶ 27, ECF No. 1431 (citing John M. Connor & Robert H. Lande, *Not Treble Damages: Cartel Recoveries Are Mostly Less Than Single Damages,* 100 Iowa L. Rev. 1997, 2010 (2015), which found the weighted average of recoveries—the authors' preferred measure—to be 19% of single damages for cartel cases between 1990 and 2014).

[86] Direct Purchaser Class Plaintiffs' Proposed Plan of Allocation for the Direct Purchaser Class, ECF No. 1411-8 ("Plan of Allocation"). A summary of the Plan of Allocation was also included in the notice received by direct purchaser class members.

[87] ECF No. 1411-9 ("Leitzinger Allocation Decl.").

and generic Loestrin 24 Fe. The proposed Plan of Allocation gives fair weight to brand Loestrin 24 Fe and Minastrin 24 Fe purchases as compared with generic Loestrin 24 Fe purchases. To ensure fairness, Dr. Leitzinger has calculated the ratio of the average class-wide overcharge per unit of brand Loestrin 24 Fe and Minastrin 24 Fe as compared to the average class-wide overcharge per unit of generic Loestrin 24 Fe, enabling him to translate generic purchase volumes into overcharge-equivalent brand purchase volumes.[88] According to Dr. Leitzinger's calculations, the average unit overcharge on generic Loestrin 24 Fe purchases is 7% of the average unit overcharge for brand Loestrin 24 Fe and Minastrin 24 Fe purchases; a generic purchase unit is thus equivalent to .07 of a brand unit from the standpoint of overcharges and for purposes of calculating each class member's weighted combined total of brand and generic Loestrin 24 Fe and Minastrin 24 Fe unit purchases under the allocation plan.[89]

Court approval of the plan for the allocation of a class settlement fund is governed by the same legal standards as the settlement: it must be "fair, reasonable, and adequate."[90] Courts routinely approve plans of allocation in antitrust settlements that allocate funds on a *pro rata* basis.[91]

Here, the proposed Plan of Allocation should be approved. The proceeds of the proposed settlement in this case, net of Court-approved attorneys' fees, an incentive award for Ahold, and costs and expenses ("Net Settlement Fund"), will be paid to class members who submit timely

---

[88] *Id.* ¶ 5 & n.9.

[89] *Id.*

[90] *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 262 (D.N.H. 2007).

[91] *See, e.g.*, *In re Namenda Direct Purchaser Antitrust Litig.*, -- F. Supp. 3d --, 2020 WL 2749223, at *7-8 (S.D.N.Y. May 27, 2020); *In re Automotive Parts Antitrust Litig.*, No. 12-md-2311, 2019 WL 7877812, at *9 (E.D. Mich. Dec. 20, 2019); Order Granting Final Approval of Pls.' Proposed Plan of Allocation, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503 (D. Mass. July 18, 2018), ECF No. 1179; *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 14-cv-2058, 2017 WL 2481782, at *4 (N.D. Cal. June 8, 2017); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 110 (E.D. Pa. 2013).

and valid claims based on each class member's *pro rata* share of the class's total purchases of brand Loestrin 24 Fe and Minastrin 24 Fe and/or generic Loestrin 24 Fe and, as explained above, brand purchases will be weighted more than generic purchases. This plan is similar to plans that have previously been approved by courts in analogous cases and implemented with a high degree of success and efficiency, and it should be approved here as well.[92]

The allocation will reflect the amount of relative damage sustained by each class member. The Plan of Allocation will allocate the Net Settlement Fund to class members efficiently and fairly by relying upon the electronic data that has been produced in this litigation.[93] Class members will be provided claim forms that set forth each class member's qualifying purchases based on transaction data produced during discovery. Under the proposed plan, the claims administrator, working with Dr. Leitzinger and his staff at Econ ONE Research, Inc., will prepare and send these individualized claim forms to each member of the class.[94]

The Plan of Allocation provides a fair and reasonable method of determining each class member's proportionate share of the Net Settlement Fund in proportion to the share of overcharges each suffered. The settlement notice referenced the Plan of Allocation, and class members have had access to it via the settlement website. To date, no class member has objected to the Plan of Allocation.[95] Accordingly, the proposed Plan of Allocation is fair and reasonable

[92] *See, e.g.*, *Namenda*, 2020 WL 2749223, at *7-8 (*pro rata* shares of settlement fund computed on basis of claimants' brand and generic purchases); Order Granting Final Approval of Settlement ¶ 9, *In re Lidoderm Antitrust Litig.*, No. 14-md-2521 (N.D. Cal. Sept. 20, 2018), ECF No. 1054 (same); Order Granting Final Approval of Pls.' Proposed Plan of Allocation, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 14-md-2503 (D. Mass. July 18, 2018), ECF No. 1179 (same); Minute Entry, *In re Aggrenox Antitrust Litig.*, No. 14-md-2516 (D. Conn. Dec. 18, 2017), ECF No. 739 (same); *see also* Leitzinger Allocation Decl. ¶¶ 4, 8.

[93] Leitzinger Allocation Decl. ¶¶ 5-6.

[94] Plan of Allocation ¶ 1.1; Leitzinger Allocation Decl. ¶ 7. Claimants will have the option of submitting their own purchase data. Plan of Allocation at 2-3.

[95] Johnson Decl. ¶¶ 4-6.

and should be approved by the Court.

D. Magistrate Judge Sullivan's Report and Recommendation approving class counsel's request for fees, expenses, and a class representative service award should be adopted.

On April 20, 2020, class counsel filed an Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award for the Class Representative.[96] This Court referred the motion to Magistrate Judge Sullivan, who had reviewed class counsel's time and expense submissions since the beginning of the litigation.[97] On July 17, 2020, Magistrate Judge Sullivan issued a Report and Recommendation finding that "one-third of the DPP Settlement Fund, less costs and expenses, is fair, reasonable, and appropriate compensation for the work done by DPP Counsel to create the Fund."[98] Magistrate Judge Sullivan also recommended the reimbursement of costs and expenses and for the payment of a service award to class representative Ahold.[99] No objection to the Fee and Expense R&R was filed by the deadline of July 31, 2020, and none has been filed since. A portion of the proposed order granting final approval to the settlement includes approval for the following payments from the Settlement Fund, in accordance with Magistrate Judge Sullivan's recommendations:

1. Reimbursement for costs and expenses of $3,965,558.00;[100]
2. Attorneys' fees in the amount of $38,678,147.00 (one-third of the settlement fund after payments of costs and expenses, plus interest on that amount); and

[96] ECF No. 1428.

[97] Fee and Expense R&R at 2-3.

[98] *Id.* at 12; *see also* Advisory with Respect to R&R Regarding Direct Purchaser Class Mot. for Approval of Attorneys' Fees, Expenses & Service Award, ECF No. 1446.

[99] *Id.* at 13-14.

[100] As explained in the Kohn Declaration, class counsel are still incurring expenses related to the administration of the settlement, estimates for which were included in the total expense reimbursement request. Kohn Decl. ¶ 106. Should the final totals differ from those estimates, class counsel will provide updated amounts in the forthcoming distribution request.

3. A service award for the class representative Ahold USA, Inc. of $100,000.00.

IV. CONCLUSION

For the reasons detailed above, and as set forth in the proposed order submitted herewith, class counsel respectfully request that the Court (1) enter an order granting final approval of the direct purchaser class settlement, entering final judgment, and dismissing all claims against the defendants with prejudice; (2) issue an order approving the proposed plan of allocation for the direct purchaser class; and (3) adopt the Report and Recommendation of Judge Sullivan and issue an order (a) approving direct purchaser class counsel's request for reimbursement of their reasonable litigation expenses ($3,965,558), (b) awarding class counsel a fee award of 33⅓% of the net settlement amount ($38,678,147), and (c) award class representative Ahold a $100,000 service award.

Dated: August 13, 2020

Respectfully submitted,

/s/ Kristen A. Johnson

Thomas M. Sobol (R.I. Bar No. 5005)
Kristen A. Johnson (*pro hac vice*)
Laura Hayes (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003
tom@hbsslaw.com
kristenj@hbsslaw.com
lhayes@hbsslaw.com

David F. Sorensen (*pro hac vice*)
Ellen T. Noteware (*pro hac vice*)
Aurelia Chaudhury (*pro hac vice*)
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: (215) 875-3000
Facsimile: (215) 875-4604
dsorensen@bm.net

enoteware@bm.net
achaudhury@bm.net

Daniel J. Walker (*pro hac vice*)
BERGER MONTAGUE PC
2001 Pennsylvania Ave, NW, Suite 300
Washington, DC 20006
Telephone: (202) 559-9745
dwalker@bm.net

Joseph H. Meltzer (*pro hac vice*)
Terence S. Ziegler (*pro hac vice*)
KESSLER TOPAZ MELTZER & CHECK LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
jmeltzer@ktmc.com
tziegler@ktmc.com

Peter R. Kohn (*pro hac vice*)
Neill W. Clark (*pro hac vice*)
FARUQI & FARUQI LLP
1617 JFK Boulevard, Suite 1550
Philadelphia, PA 19103
Telephone: (215) 277-5770
Facsimile: (215) 277-5771
pkohn@faruqilaw.com
nclark@faruqilaw.com

David C. Calvello (*pro hac vice*)
FARUQI & FARUQI LLP
685 Third Avenue, 26th Floor
New York, NY 10017
Telephone: (212) 983-9330
Facsimile: (212) 983-9331
dcalvello@faruqilaw.com

Co-Lead Counsel for the Direct Purchaser Class Plaintiffs

CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's CM/ECF system. Those attorneys who are registered CM/ECF users may access these filings, and notice of these filings will be sent to those parties by operation of the CM/ECF system.

Dated: August 13, 2020

/s/ Kristen A. Johnson
Kristen A. Johnson