

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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES, AND PAYMENT OF SERVICE  
AWARDS TO THE CLASS REPRESENTATIVES**

PLEASE TAKE NOTICE that at the Fairness Hearing set by the Court on September 30, 2020, the undersigned, counsel for Plaintiffs and the proposed Settlement Class, will move before the Hon. Madeline Cox Arleo, U.S.D.J., at the Martin Luther King Federal Building & Courthouse, 50 Walnut Street, Newark, NJ 07102, for an Order granting the following relief:

1. Plaintiffs' Counsel shall receive attorneys' fees to be paid from the Settlement Fund in the amount of \$11,333,333.33 plus one-third of the interest earned in the Settlement escrow account.

2. Plaintiffs' Counsel shall be reimbursed \$3,613,490.78 out of the Settlement Fund for the expenses they incurred in the prosecution of this complex lawsuit.
3. Plaintiffs' Co-Lead Counsel shall allocate the fees and expenses among all of Plaintiffs' Counsel in a manner that Co-Lead Counsel in good faith believe reflects the contributions of each firm working for Plaintiffs and the Class in the prosecution and settlement of the claims against the Defendant in this action.
4. The Class Representatives shall be awarded service awards in the following amounts as requested by Co-Lead Counsel:
  - a. \$10,000 for International Union of Bricklayers and Allied Craft Workers Local 1 Health Fund;
  - b. \$10,000 for City of Providence;
  - c. \$10,000 for International Union of Operating Engineers Local 39 Health and Welfare Trust Fund;
  - d. \$10,000 for The Detectives' Endowment Association, Inc.;
  - e. \$10,000 for David Mitchell; and
  - f. \$10,000 for New England Carpenters Health Benefits Fund.

The undersigned intends to rely on the Memorandum of Law filed contemporaneously herewith, as well as the Declaration of Co-Lead Counsel Melinda R. Coolidge and the exhibits thereto. A form of proposed Order is also included herewith.

The undersigned hereby request oral argument.

Dated: August 7, 2020

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SERVICE AWARDS TO THE CLASS REPRESENTATIVES**

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After nearly six years of hard-fought litigation against Defendant Celgene Corporation (“Celgene”), Co-Lead Counsel<sup>1</sup> achieved a settlement of \$34 million (the “Settlement”) on behalf of the Plaintiffs and the Settlement Class (the “Class”).<sup>2</sup> Counsel prosecuted this matter on a purely contingent basis and have received no payment for their services or reimbursement of the millions of dollars that they expended on behalf of the Plaintiffs and the Class without any guarantee of recovery. Accordingly, Plaintiffs’ Counsel<sup>3</sup> respectfully submit this memorandum in support of their request for an order: (1) awarding attorneys’ fees in the amount of one-third of the \$34 million Settlement Fund (\$11,333,333 plus interest accrued in escrow); (2) reimbursing Plaintiffs’ Counsel for reasonably incurred litigation expenses in the amount of \$3,613,490.78; and (3) approving service awards of \$10,000 for each of the six Class Representatives.

Plaintiffs’ Counsel devoted substantial resources to pursuing these claims, working more than 32,000 hours and incurring over 3.5 million dollars in out-of-

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<sup>1</sup> On April 4, 2016, the Court appointed Hausfeld LLP, Block & Leviton LLP, and Hach Rose Schirripa & Cheverie LLP as Interim Co-Lead Counsel (“Co-Lead Counsel”). ECF No. 92.

<sup>2</sup> Certain capitalized terms used herein are defined in Section A of the Settlement Agreement. *See* ECF No. 312-3.

<sup>3</sup> In addition to Co-Lead Counsel, “Plaintiffs’ Counsel” includes other firms that performed work at the direction and under the supervision of Co-Lead Counsel, specifically Barrack, Rodos & Bacine, Berman Tabacco, and Gardy & Notis, LLP. These firms represented named Plaintiffs and proposed Class Representatives and performed work that assisted in the prosecution of this litigation.

pocket costs, with no guarantee of recovery.<sup>4</sup> In fact, the fee award requested represents a discount on their billable time, as one-third of the settlement amount is less than the \$19,594,579.25 that Plaintiffs' Counsel billed through June 2020.<sup>5</sup>

Plaintiffs' Counsel's request for an attorneys' fee award of one-third of the Settlement Fund is well within the guidelines established by controlling precedent. After considering the relevant factors, courts in the Third Circuit regularly award fees to class counsel of one-third of comparable antitrust settlements.<sup>6</sup> As discussed more fully below, the Settlement is an outstanding result for the Class.

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<sup>4</sup> See August 2020 Declaration of Co-Lead Counsel Melinda R. Coolidge, dated August 7, 2020 ("Aug. 2020 Coolidge Decl.") at §§ B–C.

<sup>5</sup> "This is sometimes referred to as a 'negative multiplier,' meaning that counsel is receiving less than they would have received if they had instead been paid on an hourly basis." *Castro v. Sanofi Pasteur Inc.*, No. 11-cv-7178, 2017 WL 4776626, at \*9 (D.N.J. Oct. 23, 2017). A negative multiplier "provides strong evidence that the requested fee is reasonable." *Id.* Further discussion of the negative multiplier is included *infra* at pp. 31–32.

<sup>6</sup> See, e.g., *In re Doryx Antitrust Litig.*, No. 12-cv-3824, ECF No. 665 (E.D. Pa. Sept. 15, 2014) (awarding one-third fee on settlement of \$15 million); *In re Neurontin Antitrust Litig.*, No. 02-cv-1830, ECF No. 114 (D.N.J. Aug. 6, 2014) (awarding one-third fee on direct purchaser settlement of \$190 million); *Marchbanks Truck Serv., Inc. v. Comdata Network, Inc.*, No. 07-1078, ECF No. 713 (E.D. Pa. July 14, 2014) (awarding one-third fee on settlement of \$130 million); *In re Fasteners Antitrust Litig.*, No. 08-md-1912, 2014 WL 296954, at \*7 (E.D. Pa. Jan. 27, 2014) (awarding one-third fee on settlement of \$17.55 million); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748 (E.D. Pa. 2013) (awarding one-third fee on global settlement of \$150 million); *In re Hypodermic Prods. Antitrust Litig.*, No. 05-1602, ECF No. 461 (D.N.J. Apr. 10, 2013) (awarding one-third fee on settlement of \$45 million); *In re Wellbutrin XL Antitrust Litig.*, No. 08-2431, ECF No. 485 (E.D. Pa. Nov. 7, 2012) (awarding one-third fee on direct purchaser settlement of \$37.5 million).

Co-Lead Counsel took enormous risks in pursuing this complex and important case, particularly in light of Plaintiffs' groundbreaking and innovative legal theories. Indeed, this was the first class action to allege that a brand company's refusal to supply samples to potential generic competitors based on sham safety concerns violated antitrust law, and to allege that a restricted distribution system ("REMS") was used to block generic entry.

Recognizing the substantial recovery obtained, the complexity and duration of the litigation, the time and effort devoted by counsel, the skill and expertise required, and the risk of nonpayment, the requested fee award is fair and reasonable.

Counsel's request for reimbursement of expenses is similarly reasonable and appropriate. All expenses for which reimbursement is sought were necessarily and reasonably incurred in the prosecution of this litigation, which required retention of highly respected experts to analyze evidence, research and write reports, and respond to the reports of eleven defense experts (between the class and merits phases of the case); involved over thirty depositions; required Plaintiffs' Counsel to store, organize, and search millions of pages of documents and huge amounts of data; and involved the briefing of numerous discovery and dispositive motions, including motions to dismiss, Celgene's motion for judgment on the pleadings, and two rounds of class certification.

Finally, the requested \$10,000 service award for each of the six Class Representatives is appropriate and consistent with applicable precedent. Each Class Representative significantly contributed to the prosecution of this litigation by producing documents, responding to discovery requests, preparing and sitting for depositions, and regularly communicating with Plaintiffs' Counsel regarding developments in the case, among other things. The requested service award amounts are reasonable and appropriate under applicable law given the length of this litigation, the effort expended by each of the Class Representatives, and the corresponding benefit to the Class.

## **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### **A. Claims and Allegations**

In 2014, the first of Plaintiffs' lawsuits was filed, alleging that Celgene engaged in a multi-faceted scheme to maintain a monopoly and unlawfully interfere with potential competitors' efforts to enter the market with generic versions of Celgene's brand drugs Thalomid and Revlimid, in violation of section 16 of the Clayton Act, section 2 of the Sherman Act, and various antitrust, unfair and deceptive trade practices, and unjust enrichment state laws. ECF No. 1.

Plaintiffs brought this action on behalf of themselves and a proposed class of end payors (individuals and third-party payors ("TPPs")) who paid for some or all of the purchase price of Thalomid or Revlimid. Specifically, Plaintiffs alleged that

Celgene monopolized the market for Thalomid and Revlimid, two life-saving cancer medications, for years. Plaintiffs alleged that Celgene's anticompetitive scheme included: (1) suing to enforce invalid patents that were improperly listed in the Orange Book; (2) refusing to sell samples of Thalomid and Revlimid necessary to develop generics; (3) encouraging the FDA to reject generics' applications based on sham safety concerns; and (4) entering into anticompetitive settlement agreements with generic manufacturers, effectively allowing Celgene to charge supracompetitive prices. *See* ECF No. 143.

With at least eleven different generic drug manufacturers attempting to enter the market during the class period, Plaintiffs contended that, absent Celgene's anticompetitive conduct, generic versions of Thalomid and Revlimid would have been available during the class period. Plaintiffs alleged that these delays caused class members to pay more for Thalomid and Revlimid than they would have in a competitive market.

### **B. Motions to Dismiss and Celgene's Answers**

On February 3, 2015 and April 20, 2015, Celgene moved to dismiss this case pursuant to Fed. R. Civ. P. 12(b)(6). ECF Nos. 20, 35. On October 29, 2015, Judge Hayden denied Celgene's motions to dismiss. ECF Nos. 67, 68. In overcoming the motions to dismiss, Co-Lead Counsel prevailed over Celgene's standing arguments; the Court ruled that this argument was better suited for resolution at



class certification. *Id.* This ruling allowed International Union of Operating Engineers Local 39 Health and Welfare Trust Fund (“Local 39”), The Detectives’ Endowment Association, Inc. (“DEA”), David Mitchell, and New England Carpenters Health Benefits Fund (“NEC”) to join the case in 2017.

Co-Lead Counsel also secured rulings that: (a) Plaintiffs’ state law claims were not preempted by federal patent law; (b) *Noerr Pennington* immunity did not bar Plaintiffs’ claims; (c) Plaintiffs’ sham litigation allegations were well pleaded; (d) Plaintiffs sufficiently pleaded antitrust injury and causation; and (e) Plaintiffs sufficiently pleaded that Celgene lacked a legitimate business justification for refusing to deal with generic manufacturers. ECF Nos. 67, 68. Celgene answered Plaintiffs’ complaints on January 11, 2016. ECF Nos. 81, 82.

### **C. Related Litigation**

Celgene has either sued or been sued by many of the generic drug manufacturers that sought to bring generic versions of Thalomid and/or Revlimid to market.<sup>7</sup> In light of the substantial overlap of relevant facts and issues with this

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<sup>7</sup> See, e.g., *Celgene Corp. v. Dr. Reddy’s Labs., Inc.*, No. 16-cv-07704 (D.N.J. Oct. 20, 2016); *Celgene Corp. v. Lannett Holdings, Inc.*, No. 15-cv-00697 (D.N.J. Jan. 30, 2015); *Celgene Corp. v. Natco Pharm., Ltd.*, No. 10-cv-05197 (D.N.J. Oct. 8, 2010); *Celgene Corp. v. Barr Labs., Inc.*, No. 07-cv-00286 (D.N.J. Jan. 18, 2007); *Celgene Corp. v. Lannett Holdings, Inc.*, No. 15-cv-00697 (D.N.J. Jan. 30, 2015); *Mylan Pharm., Inc. v. Celgene Corp.*, No. 14-cv-02094 (D.N.J. Apr. 3, 2014); *Celgene Corp. v. Barr Labs., Inc.*, No. 08-cv-03357 (D.N.J. July 3, 2008); *Celgene Corp. v. Barr Labs., Inc.*, No. 07-cv-04050 (D.N.J. Aug. 23, 2007).

case, the parties stipulated that Celgene and the other parties in the related lawsuits would make the extensive discovery records in several of those cases available to Plaintiffs, including document productions, deposition transcripts, expert reports, and confidential court filings. Plaintiffs' Counsel reviewed and analyzed tens of thousands of documents, dozens of deposition transcripts, and numerous expert reports from those other lawsuits.

#### **D. Fact and Expert Discovery**

Discovery in this litigation was time-intensive and contentious. It spanned several years, involved more than 30 fact and expert depositions (including depositions of 19 different experts, some of whom were deposed multiple times), review of millions of pages of party and non-party documents, and detailed back-and-forth communications concerning Celgene's privilege logs, among other issues. *See* ECF No. 293-2 ("Nov. 2019 Coolidge Decl.") at ¶ 11.

Plaintiffs first served written discovery requests on Celgene on February 2, 2016. Nov. 2019 Coolidge Decl. at ¶ 12. Plaintiffs would ultimately serve four sets of interrogatories and two sets of requests for production on Celgene. *Id.* On May 11, 2016, Celgene served its first set of written discovery requests on Plaintiffs. *Id.* Celgene ultimately served three sets of interrogatories on Plaintiffs, as well as requests for production. *Id.* Beginning in the fall of 2016 and continuing through spring 2018, Plaintiffs served dozens of third-party subpoenas in this litigation,

including on specialty pharmacies and some of the generic drug manufacturers attempting to bring generic versions of Thalomid and/or Revlimid to market. *Id.* Plaintiffs took fact depositions and sent multiple Freedom of Information Act requests, including to the FDA. *Id.* Discovery resulted in the production of millions of pages of documents and records of over one million transactions. *Id.* Celgene also deposed each Plaintiff, necessitating preparation for and defense of those Plaintiffs' depositions. *Id.*

In June 2018, Plaintiffs served seven expert reports. *Id.* at ¶ 13. Plaintiffs' merits expert reports covered a wide range of topics, including but not limited to: (a) many areas of patent law (*e.g.*, the invalidity of certain of Celgene's patents on Thalomid and Revlimid and the non-infringement of proposed, would-be generic equivalents); (b) relevant market; (c) monopoly power; (d) classwide damages (amount and methodology); (e) Celgene's efforts to preclude generic competition; (f) "but for" entry dates for generic versions of Thalomid and Revlimid; (g) the structure and function of the pharmaceutical market; (h) the process by which generic drug products enter the market and compete with brand equivalents; (i) the role of third party insurance in the coverage and reimbursement of prescription drugs; (j) the role of FDA Citizen's Petitions in the FDA regulatory process; (k) pharmacy benefit managers; and (l) the FDA's regulatory process. *Id.* In August 2018, Celgene served ten responsive expert reports. *Id.* at ¶ 14. In October and

November 2018, Plaintiffs served seven rebuttal expert reports. *Id.* at ¶ 15. All told, the parties exchanged reports by 19 experts on class and/or merits issues, all of whom were deposed at least once, while certain experts sat for up to four depositions. *Id.* at ¶ 16.

Given the time and intensity of discovery in this matter, beginning in June 2017, the parties appeared before Judge Hammer numerous times regarding discovery scheduling issues, disputes, and status updates. *See Id.* at ¶ 17 (listing specific examples).

#### **E. Class Certification Motions**

On October 2, 2017, Plaintiffs filed a motion for class certification, supported by two expert reports (by economist Dr. Jeffrey J. Leitzinger and pharmaceutical industry consultant Luis A. Molina). ECF No. 149. On February 26, 2018, Celgene filed its opposition and a supporting expert report (by economist Dr. James W. Hughes). ECF No. 182. On May 18, 2018, Plaintiffs filed their reply brief in support of their motion for class certification, along with two more expert reports (a rebuttal report from Dr. Leitzinger and a report by W. Paul DeBree regarding the pharmacy benefit manager industry).<sup>8</sup> ECF No. 210.

On October 30, 2018, this Court denied Plaintiffs' motion without prejudice,

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<sup>8</sup> Celgene requested leave to file a sur-reply in opposition to Plaintiffs' motion for class certification, which necessitated additional letter briefing. The Court ultimately denied Celgene's request. ECF Nos. 212, 215, 219.

writing a comprehensive 53-page opinion that found in Plaintiffs' favor on the vast majority of disputed issues and invited further briefing on four discrete issues. ECF Nos. 250, 251. On December 14, 2018, Plaintiffs filed a renewed motion for class certification, supported by an additional expert report from Dr. Leitzinger. ECF No. 264. Plaintiffs narrowly tailored their revised motion to address the few issues left unresolved after the Court's class certification opinion. *Id.* These issues specifically included: (1) consumers with flat co-pays; (2) brand loyalists; (3) Plaintiffs' state law consumer protection claims; and (4) the Rule 23(b)(2) requirements concerning certification of Plaintiffs' proposed Injunction Class. *Id.*

On January 25, 2019, Celgene opposed Plaintiffs' renewed motion and submitted another expert report from Dr. Hughes in support of its opposition. ECF Nos. 269, 270. On February 15, 2019, Plaintiffs filed their reply brief in further support of their renewed class certification motion, along with a rebuttal report from Dr. Leitzinger. ECF Nos. 274, 275. The experts proffered by Plaintiffs and Celgene concerning Plaintiffs' renewed motion were again deposed.

This renewed motion was fully briefed at the time the parties reached the Settlement.<sup>9</sup>

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<sup>9</sup> After both rounds of class certification briefing, the parties engaged in an extensive meet and confer process regarding motions to seal, eventually filing a Joint Motion to Seal in compliance with the Local Rules. ECF Nos. 220 and 278.

### **F. Motion for Judgment on the Pleadings**

During the pendency of Plaintiffs' initial class certification motion, Celgene filed a motion for judgment on the pleadings, arguing that Plaintiffs lacked standing to maintain claims in states without a class representative. ECF No. 183-1. Citing back to the Court's motion to dismiss opinion, Plaintiffs argued that standing was more appropriately decided after the Court reached a decision on class certification. ECF No. 197. Agreeing with Plaintiffs, the Court found that granting Celgene's motion "prior to the decision on class certification would unduly prejudice Plaintiffs' ability to alter or amend their class definition, as may be appropriate as the case progresses," and accordingly denied Celgene's motion on October 31, 2018. ECF No. 252.

### **G. Mediation and Prior Proposed Settlement**

During the pendency of Plaintiffs' Renewed Class Certification Motion, Plaintiffs and Celgene agreed to engage in mediation, to be held before a nationally-recognized mediator of complex class actions and complex matters, Jed D. Melnick, a member of JAMS ADR. After an in-person mediation attended by Celgene's in-house counsel and several weeks of follow-up negotiations and discussions involving Mr. Melnick, the parties reached a settlement-in-principle on May 24, 2019. Following additional negotiations, the parties executed the first settlement agreement on July 16, 2019.

On August 1, 2019, the Court entered the Order Granting Preliminary Approval of Class Settlement. ECF No. 290. On August 22, 2019, the Court entered the Order Granting Plaintiffs' Unopposed Motion to Distribute Notice to the Settlement Class, Appoint Notice and Claims Administrator, and for Approval of the Plan of Allocation. ECF No. 292. In these Orders, the Court, *inter alia*, preliminarily approved the first settlement as fair, reasonable, and adequate, approved the form and manner of notice to be provided to the Class, approved the Plan of Allocation, and appointed KCC, LLC ("KCC") as Notice and Claims Administrator. The Court specifically determined that the thorough notice distribution program comported with due process and Rule 23 of the Federal Rules of Civil Procedure.

Pursuant to these Orders, Co-Lead Counsel and KCC directed timely distribution of notice in the form and manner approved by the Court. Class members had until December 2, 2019 to opt out of the first proposed settlement or to object to Co-Lead Counsel's application for attorneys' fees, expenses, and service awards. ECF No. 292.

No class members objected to the first proposed settlement. However, a number of class members chose to opt out of the first settlement, which resulted in Celgene exercising its right to terminate the settlement on December 23, 2019 pursuant to a provision in the settlement. ECF No. 300.

## **H. The New Proposed Settlement**

The proposed Settlement resolves all claims against Celgene for its conduct alleged to have delayed the entry of generic versions of Thalomid and Revlimid from coming to market. The terms of the Settlement are outlined below.

### **i. The Settlement Class**

The proposed Settlement Class is defined as:

All persons or entities who purchased and/or paid for some or all of the purchase price of Thalomid or Revlimid in any form, before the preliminary approval date (May 20, 2020), in California, the District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Nebraska, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, or Tennessee, for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries, but excluding the following:

- a. Celgene and its officers, directors, management, employees, subsidiaries, or affiliates;
- b. All federal or state governmental entities, except cities, towns, or municipalities with self-funded prescription drugs plans;
- c. All persons or entities who only purchased Revlimid or Thalomid for purposes of resale directly from Celgene or its affiliates;
- d. The entities on Attachment A to the Settlement Agreement;
- e. Fully insured health plans;
- f. Stop-loss insurers; and
- g. The judges in this case and any members of their



immediate families.

## **ii. Terms of the Settlement**

Celgene has paid \$34,000,000 into an escrow account held at Huntington National Bank. *See* ECF No. 312-3 at ¶¶ 7, 13. In exchange, Plaintiffs and members of the Settlement Class agreed to release Celgene from all claims they have or may have arising out of the alleged conduct concerning generic competition for Thalomid and Revlimid. *Id.* at ¶ 23. In contrast to the first settlement, Celgene does not have the right to rescind the agreement even if members of the Settlement Class choose to exclude themselves from the Settlement. The parties may only rescind the agreement if it is not approved by the Court. *Id.* at ¶ 34.

## **iii. Preliminary Approval and Notice**

On May 20, 2020, the Court entered an Order granting Preliminary Approval of Class Settlement, ECF No. 316, and an Order granting Plaintiffs' Unopposed Motion to Distribute Notice to the Settlement Class, Appoint Notice and Claims Administrator, and for Approval of the Plan of Allocation. ECF No. 314. In these Orders, the Court preliminarily approved the Settlement as fair, reasonable, and adequate, approved the form and manner of notice to be provided to the Class, approved the Plan of Allocation, and appointed KCC, LLC ("KCC") as Notice and Claims Administrator. *Id.* The Court specifically found no obvious reasons to

doubt the fairness of the Settlement and determined that the thorough notice distribution program comported with due process and Rule 23 of the Federal Rules of Civil Procedure. *Id.*

Co-Lead Counsel and KCC directed timely distribution of notice in the form and manner approved by the Court. Pursuant to these notices and the Court's Order, Class members have until September 15, 2020 to opt out of or object to the Settlement or Co-Lead Counsel's application for attorneys' fees, expenses, and incentive awards (the "Fee Application"). As of the date of this filing, no Class members have objected to the Settlement or the Fee Application, or opted out.

## **II. THE COURT SHOULD APPROVE PLAINTIFFS' COUNSEL'S REQUEST FOR ATTORNEYS' FEES**

The U.S. Supreme Court has "recognized consistently that . . . a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Glaberson v. Comcast Corp.*, No. CV 03-6604, 2015 WL 5582251, at \*11 (E.D. Pa. Sept. 22, 2015) ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.") (citing *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000)).

Attorneys' fees based on the percentage of a common fund are routinely awarded in the Third Circuit. *In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006);

*In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998)); *In re Flonase*, 951 F. Supp. 2d at 746.<sup>10</sup> Counsel’s fee request satisfies all applicable legal and factual requirements and is amply justified in this case.

#### **A. The Fee Requested by Plaintiffs’ Counsel Is Fair and Reasonable**

In seminal cases *Gunter* and *In re Prudential*, the Third Circuit instructed district courts to consider the following ten factors when evaluating the reasonableness of a fee request under the percentage-of-recovery method:

(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs’ counsel; [] (7) the awards in similar cases . . . (8) the value of benefits accruing to class members attributable to the

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<sup>10</sup> See also *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 153 (D.N.J. 2013) (“The percentage-of-recovery method is used in common fund cases, as courts have determined that ‘class members would be unjustly enriched if they did not adequately compensate counsel responsible for generating the fund.’”) (internal citation omitted); *In re Johnson & Johnson Derivative Litig.*, 900 F. Supp. 2d 467, 497 (D.N.J. 2012) (“The percentage-of-recovery method, unlike the lodestar method, is used in cases that involve a monetary settlement or common fund.”); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-cv-0085, 2005 WL 3008808, at \*12 (D.N.J. Nov. 9, 2005) (finding that “the percentage of fund method is the proper method for compensating Plaintiffs’ Counsel in this common fund case”). Courts in this Circuit award attorneys’ fees based on the gross recovery. See *McDonough v. Toys “R” Us, Inc.*, 80 F. Supp. 3d 626, 654 (E.D. Pa. 2015) (explaining that the Third Circuit has confirmed that attorneys’ fees should be calculated based on gross settlement fund) (citing *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 177-79 (3d Cir. 2013) and *Boeing*, 444 U.S. at 472).

efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations []; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained []; and (10) any “innovative” terms of settlement.

*Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000); *AT&T*, 455 F.3d at 165 (citing *In re Prudential*, 148 F.3d at 338–40).

The *Gunter/Prudential* factors are neither exhaustive, nor intended to be rigidly applied. *AT&T*, 455 F.3d at 165–66. Rather, the Third Circuit has instructed courts to take a holistic view of each case by considering the *Gunter* factors, the *Prudential* factors, and “any other factors that are useful and relevant with respect to the particular facts.” *Id.* Indeed, the “reasonableness factors need not be applied in a formulaic way because each case is different, and in certain cases, one factor may outweigh the rest.” *Id.* at 166 (internal citations omitted). The Court should ultimately focus on “what class counsel actually did and how it benefitted the class.” *Id.* at 165–66. Here, the *Gunter* and *Prudential* factors overwhelmingly support the requested fee.

#### **i. Complexity and Duration of Litigation**

The Third Circuit has advised that the complexity and duration of the litigation is the first factor a district court should consider in awarding fees. *Gunter*, 223 F.3d at 197. Akin to *Gunter*, this case was actively litigated for nearly six years, and it involves complex federal and state laws. *Id.* In addition, this action

required numerous depositions, extensive expert work, and multiple rounds of complicated legal briefing. *Id.*

It is commonly understood that an “antitrust class action is arguably the most complex action to prosecute.” *In re Remeron End-Payor Antitrust Litig.*, No. CIV. 02-2007 FSH, 2005 WL 2230314, at \*29 (D.N.J. Sept. 13, 2005) (internal citation omitted). This litigation is not only an antitrust class action, but one involving both federal and state law claims, in an industry with numerous regulatory and intellectual property defenses. Thus, Co-Lead Counsel needed to analyze complex patent law and FDA regulations, in addition to the relevant provisions of the Hatch-Waxman Act.

As detailed above, Plaintiffs’ Counsel diligently and skillfully prosecuted this litigation for nearly six years in the face of intense opposition from Celgene and its highly capable counsel. These efforts required briefing complex legal and factual issues, exhaustive discovery efforts, and extensive work with experts across a number of industries. Specifically, Plaintiffs’ Counsel’s efforts included:

- Investigating the underlying facts and developing the legal theories of the case, with no governmental complaints or findings on which to piggyback;
- Drafting the initial complaints and the consolidated amended class action complaint;
- Opposing and defeating Celgene’s motions to dismiss;
- Researching antitrust lawsuits brought by generic manufacturers related to the same or similar conduct alleged in this litigation;

- Devising a discovery strategy that allowed Plaintiffs to take advantage of the document productions made in the lawsuits brought by generic manufacturers against Celgene;
- Issuing more than thirty subpoenas to third parties (including specialty pharmacies and potential generic competitors) and engaging in meet and confer discussions concerning the scope of those document productions;
- Preparing and serving four sets of interrogatories, two sets of document requests, and various Freedom of Information Act requests;
- Responding to three sets of interrogatories with a number of subparts, and document requests from Celgene;
- Frequently meeting and conferring with Celgene regarding the scope of its discovery requests and Plaintiffs' discovery requests;
- Briefing and arguing a number of discovery issues before Magistrate Judge Hammer, as well as providing regular status updates to the Court;
- Reviewing, analyzing, summarizing, and organizing millions of pages of documents produced by Celgene and third parties during the course of this litigation;
- Taking and defending dozens of depositions around the country covering both class certification and merits issues, including six class representative depositions, multiple fact depositions, and nearly thirty expert depositions;<sup>11</sup>
- Retaining three experts to prepare reports at class certification, and to respond to Celgene's class expert report;
- Retaining seven experts to prepare reports on merits issues, with expertise ranging from economics, to the pharmaceutical industry, to medical oncology, to patent law and regulations;
- Working with experts to analyze and respond to ten merits expert reports proffered by Celgene, and to depose Celgene's experts;

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<sup>11</sup> This number includes multiple depositions for some experts. Plaintiffs' economist, for example, was deposed four separate times on class and merits issues. Nov. 2019 Coolidge Decl. at ¶ 32 n.7.

- Preparing two rounds of hotly-contested class certification briefing;
- Opposing and defeating Celgene's motion for judgment on the pleadings;
- Conducting arm's-length settlement negotiations over many months, including a formal mediation with a nationally-recognized private mediator, and then negotiating over another several months after Celgene rescinded the first settlement, to ensure that the class members who had not opted out would receive some compensation;
- Developing and drafting the Settlement Agreement, Notice, and Claim documents, and overseeing the notice process (for both settlements);
- Communicating with Class Representatives regarding litigation strategy, updates on the litigation, settlement negotiations, and the notice process; and
- Responding to inquiries from absent and potential Class members throughout the litigation, including during the settlement and notice period (twice).

*See* Nov. 2019 Coolidge Decl. at ¶ 32; Aug. 2020 Coolidge Decl. at ¶¶ 5–7.

Even now, the work on this litigation has not ended and will not end until the Settlement funds are finally distributed to Class members. Co-Lead Counsel will continue to expend many additional hours—for which they will not seek additional reimbursement—in connection with the Settlement administration process, responding to class member inquiries, working to secure final approval of the Settlement, preparing for the final approval hearing, and responding to issues that arise during Settlement administration, including allocation and distribution of the Settlement Fund. Nov. 2019 Coolidge Decl. at ¶ 33.

The complex, time-consuming, and innovative efforts summarized above in

conjunction with the advanced procedural posture of this action weigh in favor of granting Plaintiffs' Counsel's fee request. *See, e.g., Castro*, 2017 WL 4776626, at \*9 (noting that complexity of antitrust class action "was compounded by the fact that Plaintiffs were advocating positions that had not yet been formally adopted by the courts"); *Glaberson*, 2015 WL 5582251, at \*3, \*12 (finding "paradigm example of a complex antitrust action" weighed in favor of granting counsel's fee request).

## **ii. Size of Fund and Number of Persons Benefitted**

In analyzing this factor, "courts 'consider the fee request in comparison to the size of the fund created and the number of class members to be benefitted.'" *Castro*, 2017 WL 4776626, at \*8 (citing *Yedlowski v. Roka Biosci., Inc.*, No. 14-CV-8020-FLW-TJB, 2016 WL 6661336, at \*20 (D.N.J. Nov. 10, 2016)). Here, the \$34 million Settlement is an excellent recovery for the Class, which consists of hundreds of persons and entities.<sup>12</sup> In fact, it is possible that the claimants who participate in the Settlement will receive more than they would have under the prior settlement, due to the exclusion of a number of the largest third-party payors (that would have received among the largest payments from the prior settlement) from the new Settlement Class definition.

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<sup>12</sup> *See Class Plaintiffs' Memorandum in Support of Class Certification and Appointment of Class Counsel*, ECF No. 150, at 26 (Oct. 2, 2017).



Therefore, the significant value delivered to hundreds of class members weighs in favor of granting Plaintiffs' Counsel's fee request.

### **iii. Presence or Absence of Substantial Objections**

On May 20, 2020, the Court approved Plaintiffs' Plan for Distribution of Notice, Plan of Allocation, appointed KCC, LLC ("KCC") as Notice and Claims Administrator and set a Notice commencement deadline of May 30, 2020. ECF No. 314. Pursuant to the Court's order, Class members were notified of (1) the terms of the Settlement; (2) where additional information could be obtained;<sup>13</sup> (3) counsel's intention to seek attorneys' fees of up to one-third of the Settlement, litigation costs, and service awards; and (4) the means by which Class members may object to any aspect of the Settlement, including the attorneys' fees motion and supporting papers. *See* ECF Nos. 313, 314.

As the Third Circuit noted in *Gunter*, the lack of a substantial number of objections is an important consideration in evaluating a fee request. *Gunter*, 223 F.3d at 199. At the time of this filing, no Class member has objected to the Settlement or opted out.<sup>14</sup>

Courts have found that a low number of objectors is particularly telling in cases—such as this one—in which many of the Class members are sophisticated.

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<sup>13</sup> *See* <http://www.thalomidrevlimidlitigation.com/>.

<sup>14</sup> To the extent any objections are filed in the future, they will be addressed in Plaintiffs' reply memorandum due September 23, 2020.

*See, e.g., In re Remeron*, 2005 WL 3008808, at \*13 n.1 (“When a class is comprised of sophisticated business entities that can be expected to oppose any request for attorney fees they find unreasonable, the lack of objections indicates the appropriateness of the [fee] request.”) (internal citation omitted); *Bradburn Parent Teacher Store, Inc. v. 3M (Minn. Mining & Mfg. Co.)*, 513 F. Supp. 2d 322, 338 (E.D. Pa. 2007) (“The absence of objections to the requested attorneys’ fees in this case is particularly notable given the sophisticated nature of the absent Class Members.”). Here, Settlement Class members include sophisticated entities like health and welfare plans and insurance companies. This factor too weighs in favor of granting the fee request.

#### **iv. Skill and Efficiency of Attorneys**

Counsel’s skill and efficiency is “measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” *Castro*, 2017 WL 4776626, at \*8 (internal citations omitted); *see also In re Ikon*, 194 F.R.D. at 194.

Here, Plaintiffs’ Counsel are among the most highly experienced firms in the country in litigating complex antitrust class actions, having led multiple complex

cases to successful conclusions.<sup>15</sup> In addition, given the complex demands of pharmaceutical antitrust litigation, Plaintiffs' Counsel include lawyers with patent litigation experience. *Id.* As detailed above, over the course of this action, Co-Lead Counsel defeated motions to dismiss, fully briefed class certification, engaged in extensive fact and expert discovery, and ultimately obtained a \$34 million Settlement for the Class. Co-Lead Counsel faced formidable opposition at every stage of the case from nationally recognized defense counsel with decades of antitrust and class action experience. The results here speak for themselves, particularly in light of the high caliber of opposing counsel. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 261 (D. Del. 2002), *aff'd*, 391 F.3d 516 (3d Cir. 2004) ("The class counsel are well-qualified to litigate this type of complex class action, and they showed their effectiveness in the case at bar through the favorable cash settlement they were able to obtain."). Accordingly, the skill and efficiency exhibited by counsel weighs in favor of granting the fee request.

#### **v. Risk of Nonpayment**

Plaintiffs' Counsel's compensation for their services in this case was wholly contingent on the success of the litigation. To prosecute this complex action,

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<sup>15</sup> The background, experience, and qualifications of Plaintiffs' Counsel are included in the Nov. 2019 Coolidge Decl. at Exhibits A to F.

Plaintiffs' Counsel expended millions of dollars and more than 32,000 hours, with no guarantee of recovery. The complex nature of Plaintiffs' claims further increased the risks. For example, this was the first class action to allege that a refusal to supply samples of a branded drug to a generic manufacturer could be an antitrust violation, and to explore the antitrust implications of a REMS program. Moreover, typically a class lawsuit is filed on behalf of direct purchaser plaintiffs and litigated simultaneously with the end-payor case. This allows the two classes to share the workload and expenses. Here, Co-Lead Counsel litigated this action without the benefit of a contemporaneous direct purchaser lawsuit. Finally, although Co-Lead Counsel were confident in Plaintiffs' renewed motion for class certification, this Court's initial denial of class certification further increased the risks of this litigation.

“A determination of a fair fee must include consideration of the sometimes undesirable characteristics of contingent antitrust actions, including the uncertain nature of the fee, the wholly contingent outlay of large out-of-pocket sums by plaintiffs, and the fact that the risk of failure and nonpayment in an antitrust case are extremely high.” *Remeron*, 2005 WL 3008808, at \*14; *In re Flonase*, 951 F. Supp. 2d at 747-48 (noting that “the risk of nonpayment here was not negligible . . . success in this litigation was by no means guaranteed.”). Thus, the substantial risk of nonpayment that Plaintiffs' Counsel faced throughout this

litigation strongly supports their fee request. *Castro*, 2017 WL 4776626, at \*9 (noting “Plaintiff’s counsel certainly accepted the real risk of little or no payment,” which weighed in favor of approving the fee request).

**vi. Amount of Time Counsel Devoted to the Case**

As explained above, this litigation required a substantial investment of time. Plaintiffs’ Counsel necessarily expended more than 32,000 hours over nearly six years litigating this action, and Plaintiffs’ Counsel’s commitment to this litigation is not over. Co-Lead Counsel will spend substantial additional time on the case, including preparing for and participating in the final approval hearing, and handling claims administration. Therefore, the amount of time Plaintiffs’ Counsel was required to devote to this action also supports approval of the fee request. *See, e.g., In re Flonase*, 951 F. Supp. 2d at 748 (approving class counsel’s fee application seeking one-third of settlement fund where class counsel spent four years and thousands of hours of attorneys’ labor in litigating the case, finding the request consistent with “class actions involving allegations of overcharges arising from suppressed generic drug competition,” and citing several examples).

**vii. Awards in Similar Cases**

Courts in the Third Circuit have repeatedly approved attorneys’ fees awards

of one-third of the settlement in antitrust class actions.<sup>16</sup> *See Castro*, 2017 WL 4776626, at \*9 (“The one-third fee is within the range of fees typically awarded within the Third Circuit through the percentage-of-recovery method; the Circuit has observed that fee awards generally range from 19% to 45% of the settlement fund.”). The fee request is also consistent with the fees awarded in the most closely analogous pharmaceutical antitrust cases.<sup>17</sup> Because this percentage is consistent with the long line of Third Circuit precedent, the requested fee is reasonable and should be approved.

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<sup>16</sup> *See supra* note 5. *See also Rochester Drug Co-Operative, Inc. v. Braintree Labs., Inc.*, No. 07-cv-142, ECF No. 243 (D. Del. May 31, 2012) (awarding one-third fee on settlement of \$17.25 million); *In re Metoprolol Succinate Antitrust Litig.*, No. 06-cv-52, ECF 194 (D. Del. Feb. 21, 2012) (awarding one-third fee on settlement of \$20 million); *In re Wellbutrin SR Antitrust Litig.*, No. 04-cv-5525, 2011 U.S. Dist. LEXIS 158833, at \*20 (E.D. Pa. Nov. 21, 2011) (awarding one-third fee on settlement of \$49 million) (no Westlaw cite available); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-cv-340, 2009 U.S. Dist. LEXIS 133251, at \*15 (D. Del. Apr. 23, 2009) (awarding one-third fee on settlement of \$250 million) (no Westlaw cite available); *In re Remeron*, 2005 WL 3008808 (awarding one-third fee on settlement of \$75 million).

<sup>17</sup> *See, e.g., In re Lidoderm Antitrust Litig.*, 3:14-md-02521, 2018 WL 4620695 (N.D. Cal. Sept. 20, 2018) (awarding one-third fee on settlement of \$104.7 million); *In re Aggrenox Antitrust Litig.*, 3:14-md-02516, 2018 WL 10705542 (D. Conn. July 19, 2018) (awarding one-third fee on settlement of \$50.2 million); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93 (E.D. Pa. 2013) (awarding one-third fee on settlement of \$150 million); *In re Solodyn Antitrust Litig.*, 1:14-md-02503, 2018 WL 7075881 (D. Mass. July 18, 2018) (awarding one-third fee on settlement of \$40 million); *In re Skelaxin Antitrust Litig.*, 1:12-md-02343, 2014 WL 2946459 (E.D. Tenn. June 30, 2014) (awarding one-third fee on settlement of \$9 million).

### **viii. Value of Class Benefits Attributable to Class Counsel**

The development of this case was the result of the investigation and efforts of Co-Lead Counsel and, unlike many antitrust cases, did not follow on the heels of government findings. In fact, the reverse occurred: years after this case was filed, the FDA Commissioner echoed Plaintiffs' complaint in speaking out against abuse of REMS to prevent generic manufacturers from obtaining necessary drug samples for bioequivalence testing—the very conduct challenged in this action.<sup>18</sup>

Co-Lead Counsel developed factual and economic evidence of the alleged anticompetitive scheme that resulted in the \$34 million Settlement for the Class. Thus, the Settlement's substantial benefits to the Class are attributable to the efforts of Plaintiffs' Counsel, and this factor too weighs heavily in favor of Plaintiffs' Counsel's fee request. *See Castro*, 2017 WL 4776626, at \*9 (finding lack of corresponding government action “weighs strongly in favor approving the requested fee award”); *Yedlowski*, 2016 WL 6661336, at \*22 (same); *AT&T*, 455 F.3d at 173 (noting that where class counsel was not aided by the efforts of any

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<sup>18</sup> Remarks by Dr. Gottlieb at the FTC, Speech by Scott Gottlieb, M.D., Commissioner of the Food and Drug Administration (Nov. 8, 2017), <https://www.fda.gov/newsevents/speeches/ucm584195.htm> (“Branded companies’ use of REMS – which FDA adopts as a way to ensure the safe use of certain drugs – is also sometimes being used as a way to frustrate the ability of generic firms to purchase the doses of a branded drug that they need to run their studies. This needs to stop.”).

government group, this strengthened the district court’s conclusion that the fee award was fair and reasonable); *Glaberson*, 2015 WL 5582251, at \*14 (same).

**ix. Percentage Fee Had the Case Been Subject to a Private Contingent Fee Agreement**

A one-third contingency fee is standard in individual litigation, and often higher in antitrust actions, given their complexities and risks. *See Remeron*, 2005 WL 3008808, at \*16 (“Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation.”); *In re Ins. Brokerage*, 297 F.R.D. at 156 (determining that in antitrust class action, “Class Counsel’s requested 33% fee amount is within the range of privately negotiated contingent fees”). This factor weighs in favor of granting Plaintiffs’ motion.

**x. Any “Innovative” Terms of Settlement**

“In the absence of any innovative terms, this factor neither weighs in favor nor against the proposed fee request.” *In re Flonase*, 951 F. Supp. 2d at 749.<sup>19</sup> Here, although the terms of the Settlement are fairly standard in providing a cash recovery for Class members, as discussed *supra*, many of Plaintiffs’ claims were innovative and groundbreaking. Therefore, this factor is either neutral or weighs in

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<sup>19</sup> *See also Huffman v. Prudential Ins. Co. of Am.*, No. 2:10-CV-05135, 2019 WL 1499475, at \*8 (E.D. Pa. Apr. 5, 2019) (“The parties in this case present a straightforward settlement agreement; therefore, [the ‘innovative’ terms] factor is neutral”); *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. CIV.A. 08-2177 DMC, 2013 WL 5505744, at \*32 (D.N.J. Oct. 1, 2013) (finding a “plain vanilla” cash settlement neutralizes the “innovative” terms factor).



favor of Plaintiffs' fee request.

**B. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Request**

After applying the percentage-of-the-fund method, the Third Circuit urges district courts to perform a lodestar cross-check to ensure a "sensible" recovery. *In re Rite Aid*, 396 F.3d at 305; *In re Fasteners*, 2014 WL 296954, at \*3 ("In practice, courts in the Third Circuit assess requests for attorney's fees in antitrust cases using the percentage-of-recovery method, and then cross-check the result with the lodestar method").

The Third Circuit has noted that the "lodestar cross-check is 'not a full-blown lodestar inquiry' and a court 'should be satisfied with a summary of the hours expended by all counsel at various stages with less detailed breakdown than would be required in a lodestar jurisdiction.'" *In re Rite Aid*, 396 F.3d at 306 n.16 (citing *Report of the Third Circuit Task Force, Selection of Class Counsel*, 208 F.R.D. 340, 423 (2002)). The purpose of the cross-check is to "enable the court to make a judgment as to whether the percentage appears too high or low given the time required to handle the case." *Id.*

An attorney's lodestar is determined by multiplying the number of hours

worked by the hourly billing rate.<sup>20</sup> *Gunter*, 223 F.3d 190, 195 n.1. Once the lodestar is calculated, “[t]he total lodestar estimate is then divided into the proposed fee calculated under the percentage method” and “[t]he resulting figure represents the lodestar multiplier to compare to multipliers in other cases.” *In re Flonase*, 291 F.R.D. at 105 (internal citations omitted). Positive multipliers on time may be awarded, because they “reflect the risks of nonrecovery facing counsel, may serve as an incentive for counsel to undertake socially beneficial litigation, or may reward counsel for an extraordinary result.” *See In re Prudential*, 148 F.3d at 340.

Here, the fee award requested is less than Plaintiffs’ Counsel’s accrued lodestar; despite the extraordinary result and the risks undertaken, Plaintiffs’

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<sup>20</sup> As customary in the Third Circuit, Class Counsel’s lodestar calculation is based on current rates. *See In re Ins. Brokerage*, 297 F.R.D. at 157 (“The market rate to be used is the current prevailing market rate at the time the request for fees is made.”) (citing *Lanni v. New Jersey*, 259 F.3d 146, 149–50 (3d Cir. 2001) (“When attorney’s fees are awarded, the current market rate must be used. The current market rate is the rate at the time of the fee petition, not the rate at the time the services were performed.”)); *see also Glass v. Snellbaker*, Civil Action No. 05-1971 (JBS), 2008 WL 4416450, at \*5 (D.N.J. Sep. 23, 2008) (“the ‘reasonable rate’ in the lodestar calculation is the current rate, not the historical rates that may have prevailed when the case was filed and when much of the work was performed. The current rate . . . must be used in the Third Circuit to reflect the delay in payment for services rendered in past years, measured by current market rates.”).

Counsel are not seeking a positive multiplier on their time.<sup>21</sup> “This is sometimes referred to as a ‘negative multiplier,’ meaning that counsel is receiving less than they would have received if they had instead been paid on an hourly basis.”

*Castro*, 2017 WL 4776626, at \*9.

A negative multiplier “provides strong evidence that the requested fee is reasonable.” *Id.*; *see also, e.g., In re Baby Prods.*, 708 F.3d at 180 n.14 (noting that “negative lodestar multiplier . . . suggests that class counsel would not be overpaid for their services if compensated as requested”); *Milliron v. T-Mobile USA, Inc.*, No. CIV.A. 08-4149 (JLL), 2009 WL 3345762, at \*14 (D.N.J. Sept. 10, 2009), as amended (Sept. 14, 2009), *aff’d*, 423 F. App’x 131 (3d Cir. 2011) (“A multiplier of less than one is quite reasonable for a lodestar cross-check.”); *Rowe v. E.I. DuPont de Nemours & Co.*, No. CIV. 06-1810 RMB/AMD, 2011 WL 3837106, at \*22 (D.N.J. Aug. 26, 2011) (“Given that the multiplier is less than 1, the Court finds the cross-check further evidences the reasonableness of counsel’s requested fees”). In contrast, courts in the Third Circuit often approve multipliers well above 1, substantially in excess of what Plaintiffs’ Counsel seek.<sup>22</sup>

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<sup>21</sup> Plaintiffs’ Counsel worked over 32,000 hours from inception of this case through June 30, 2020, resulting in a total lodestar of \$19,594,579.25. *See* Aug. 2020 Coolidge Decl. ¶ 12. Thus, Class Counsel’s fee request of \$11,333,333.33 reflects a “negative multiplier” of 0.58.

<sup>22</sup> *See, e.g., In re Domestic Drywall Antitrust Litig.*, No. 13-md-2437, 2018 WL 3439454, at \*20 (E.D. Pa. July 17, 2018) (finding that a multiplier of 1.66 on

Co-Lead Counsel will continue to perform additional work relating to the settlement administration and claims process that will not be separately compensated, further reducing the effective multiplier in this case. *See supra* p. 26 and Nov. 2019 Coolidge Decl. ¶ 33.<sup>23</sup>

Accordingly, the lodestar cross-check provides strong evidence that Plaintiffs' Counsel's fee request is reasonable.

### **III. THE COURT SHOULD APPROVE PLAINTIFFS' COUNSEL'S REQUEST FOR REIMBURSEMENT OF EXPENSES**

Attorneys who create a common fund for the benefit of a class are entitled to reimbursement from that fund of the reasonable and appropriate litigation expenses they advanced on behalf of the class. *Castro*, 2017 WL 4776626, at \*10; *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 n.12 (3d Cir. 2001) (quoting the

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attorneys' fees of \$63.4 million was "reasonable and lower than in [analogous] cases"); *In re Neurontin Antitrust Litig.*, No. 02-cv-2731, ECF No. 105 (D.N.J. Aug. 6, 2014) (multiplier of 1.99 on attorneys' fees of \$63.5 million); *In re Flonase*, 951 F. Supp. 2d at 750–51 (2.99 multiplier on attorneys' fees of \$50 million); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481–82 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers") (collecting cases).

<sup>23</sup> Additional work will include: working with the Settlement Administrator on claims and distribution-related issues, preparing and filing the necessary papers in connection with the proposed distribution, and finalizing the claims process and distribution of the Settlement Fund. This time-consuming work will not be complete until the last check to a claimant has been cashed and taxes on the escrow accounts are paid. Nov. 2019 Coolidge Decl. ¶ 33.

1985 Task Force Report<sup>24</sup> for the conclusion that the “common-fund doctrine . . . allows a person who maintains a lawsuit that results in the creation, preservation, or increase of a fund in which others have a common interest, to be reimbursed from that fund for litigation expenses incurred”); *see also AT&T*, 455 F.3d at 172 n.8 (“Expenses are generally considered and reimbursed separately from attorneys’ fees.”); *Warfarin*, 212 F.R.D. at 263 (approving reimbursements for costs and expenses out of litigation fund as reasonable).

Plaintiffs’ Counsel incurred \$3,613,490.78 in expenses, without any assurance of repayment, in litigating this case on behalf of the Class. By far the largest component of such expenses consisted of substantial and necessary payments to experts, who were essential to the prosecution of a case involving complex claims regarding the pharmaceutical marketplace.

In particular, Plaintiffs’ economic expert, Dr. Leitzinger, is a Ph.D. economist who is the President of the nationally recognized economic consulting firm Econ One. Nov. 2019 Coolidge Decl. ¶ 41. During the course of his nearly 40-year career as an economic consultant, Dr. Leitzinger has provided expert testimony in almost 200 proceedings in numerous forums, including state and federal courts and a number of regulatory commissions. *Id.* He has provided expert

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<sup>24</sup> *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 241 (1985).

opinions regarding market power, market definition, anticompetitive effects, procompetitive justifications, and overcharges. *Id.* He also has substantial experience in the calculation of damages in class action litigation, including class member settlement allocation. *Id.* Moreover, Dr. Leitzinger has been involved in researching the pharmaceutical industry in particular for the past 20 years. *Id.* He has specific and extensive experience making economic assessments of the effects of generic drug competition, as well as the suppression of generic competition in various ways, including by reverse payment agreements. *Id.* Dr. Leitzinger prepared four reports in support of class certification, two merits reports, and testified at four depositions noticed by Celgene. *Id.*

Similarly, Plaintiffs worked with four world-renowned scientists and doctors to assert the invalidity or non-infringement of several of Celgene's patents on Thalomid and Revlimid. *Id.* at ¶ 42. These experts include, for example, one of the world's leading experts in x-ray crystallography and biomedical chemistry and an Attending Physician at the NYU Langone Medical Center. *Id.* Plaintiffs' well-credentialed patent experts submitted multiple expert reports, sat for depositions, and formed an invaluable piece of Plaintiffs' challenge to Celgene's patents.

Other significant expenses included costs associated with the storage of millions of pages of documents on a secure database and costs associated with

travel to depositions, court hearings, and mediation around the country.<sup>25</sup> These expenses, as well as others routinely charged to hourly-fee-paying clients, such as court reporting expenses, copying charges, and legal research costs, were reasonable and appropriate.

Given that the expenses were incurred without guarantee of reimbursement, Plaintiffs' Counsel had a strong incentive to keep them reasonable, and they did so, as detailed in the attached attorney declarations and supporting exhibits.<sup>26</sup>

Moreover, as of August 7, 2020, there have not been any objections filed by any Class member. Thus, Plaintiffs' Counsel should be reimbursed for their reasonably incurred and well documented expenses. *See Castro*, 2017 WL 4776626, at \*10 (finding expenses reasonable that were incurred primarily through "extensive expert testimony . . . including from [] Dr. Leitzinger," as well as hosting and managing millions of pages of documents); *In re OSB Antitrust Litig.*, No. 06-cv-826, ECF No. 947, at 9 (E.D. Pa. Dec. 9, 2008) (approving class counsel's fee request in light of the high number of depositions, "the creation and maintenance of a huge case database, and the preparation and review of expert economic analyses and reports"); *Yong Soon Oh v. AT&T Corp.*, 225 F.R.D. 142, 154 (D.N.J.

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<sup>25</sup> Breakdowns of the litigation expenses paid by Plaintiffs' Counsel are included in the August 2020 Coolidge Declaration and supporting exhibits. Aug. 2020 Coolidge Decl. at § C; *see also* Nov. 2019 Coolidge Decl. at ¶ 40.

<sup>26</sup> *See* Exhibits A-F to Aug. 2020 Coolidge Decl.

2004) (finding the following expenses to be reasonable: “(1) travel and lodging, (2) local meetings and transportation, (3) depositions, (4) photocopies, (5) messengers and express services, (6) telephone and fax, (7) Lexis/Westlaw legal research, (8) filing, court and witness fees, (9) overtime and temp work, (10) postage, (11) the cost of hiring a mediator, and (12) NJ Client Protection Fund—*pro hac vice*.”).

#### **IV. THE REQUESTED SERVICE AWARD TO EACH CLASS REPRESENTATIVE IS REASONABLE**

Plaintiffs request that the Court approve service awards of \$10,000 for each of the six Class Representatives, namely IUB, City of Providence, Local 39, DEA, David Mitchell, and NEC. Courts have long held that private class action suits are critical in enforcing the antitrust laws for the protection of the public. *See, e.g., Am. Soc’y of Mech. Eng’rs, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 572 n.10 (1982) (noting “private suits are an important element of the Nation’s antitrust enforcement effort”). Accordingly, “[a]t the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class.” 5 NEWBERG ON CLASS ACTIONS § 17:1 (5th ed.).

In the Third Circuit, “[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Bradburn*, 513 F. Supp. 2d at 342 (internal citation omitted). In evaluating the appropriateness of such awards, courts consider: (i) the financial, reputational and personal risks to the



plaintiff; (ii) the degree of plaintiffs' litigation responsibilities; (iii) the length of the litigation; and (iv) the degree to which the plaintiffs benefited as Class members. *Id.*; *Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 220 (E.D. Pa. 2011).

The awards requested here are well-deserved. Each of the Class Representatives has expended considerable time and effort to aid in the prosecution of this case and performed a "public service of contributing to the enforcement of mandatory laws." *Bredbenner v. Liberty Travel, Inc.*, No. 09-cv-1248, 2011 WL 1344745, at \*22 (D.N.J. Apr. 8, 2011). The requested service awards are appropriate in light of the hard work required by the Class Representatives during the five years this litigation was prosecuted, including but not limited to:

- assisting in Plaintiffs' Counsel's investigation and preparation of the complaints in this action;
- collecting and producing documents in response to Celgene's document requests;
- providing information to counsel in response to interrogatories;
- sitting for a full day of deposition questioning (and preparing for the same); and
- regularly consulting with counsel regarding the progress of this case, including with respect to the negotiations that eventually resulted in a \$34 million Settlement between Celgene and the Class.<sup>27</sup>

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<sup>27</sup> Aug. 2020 Coolidge Decl. at § D. *Bradburn*, 513 F. Supp. 2d at 342 ("It is particularly appropriate to compensate named representative plaintiffs with incentive awards when they have actively assisted plaintiffs' counsel in their prosecution of the litigation for the benefit of the class.").

Indeed, without the efforts of the Class Representatives, the Class would have recovered nothing.

The requested amount of \$10,000 for each Class Representative is reasonable and appropriate when compared to service awards approved in other complex antitrust class actions.<sup>28</sup> Thus, this Court should approve the request for service awards for each of the Class Representatives.

## V. CONCLUSION

Based on the foregoing, Plaintiffs and Plaintiffs' Counsel respectfully request that the Court grant Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives.

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<sup>28</sup> See, e.g., *Lidoderm Antitrust Litig.*, 3:14-md-02521 (N.D. Cal.) (approving \$10,000 service award to each class representative); *In re Aggrenox Antitrust Litig.*, 3:14-md-02516 (D. Conn.) (same); *In re Skelaxin Antitrust Litig.*, 1:12-md-02343 (E.D. Tenn.) (awarding \$60,000 in aggregate to the ten named plaintiffs); *Castro*, 2017 WL 4776626, at \*10 (granting service awards of \$100,000 to each of the three class representatives); *In re Domestic Drywall*, 2018 WL 3439454, at \*20 (granting service awards "of \$50,000 each as in line with other cases" to the four class representatives following \$190 million settlement); *In re Neurontin Antitrust Litig.*, No. 02-cv-2731, ECF No. 105 ¶ 31 (D.N.J. Aug. 6, 2014) (approving \$190 million settlement and granting service awards of \$100,000 to two class representatives).

Dated: August 7, 2020

Respectfully submitted,

By: /s/ Melinda R. Coolidge

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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**AUGUST 2020 DECLARATION OF CO-LEAD COUNSEL  
MELINDA R. COOLIDGE IN SUPPORT OF PLAINTIFFS' MOTION  
FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF  
EXPENSES, AND PAYMENT OF SERVICE AWARDS TO THE  
CLASS REPRESENTATIVES**

I, Melinda R. Coolidge, declare as follows:

1. I am a partner in the law firm of Hausfeld LLP, where I have worked as an attorney since 2009. My firm, along with Block & Leviton LLP and Hach Rose Schirripa & Cheverie LLP, serve as Co-Lead Counsel<sup>1</sup> for Plaintiffs and the Settlement Class. ECF No. 92. On May 20, 2020, the Court preliminarily approved the parties' Settlement.<sup>2</sup> ECF No. 316.

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<sup>1</sup> On April 4, 2016, the Court appointed Hausfeld LLP, Block & Leviton LLP, and Hach Rose Schirripa & Cheverie LLP as Interim Co-Lead Counsel ("Co-Lead Counsel"). ECF No. 92.

<sup>2</sup> Certain capitalized terms used in this declaration are defined in Plaintiff's Memorandum in Support of Plaintiffs' Fee Application or in Section A of the Settlement Agreement. *See* ECF No. 312-3.

2. I submit this declaration on behalf of Plaintiffs' Counsel<sup>3</sup> in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives. I make this declaration based on personal knowledge and also based on the declarations of Plaintiffs' Counsel (Exhibits A–F).

3. I have personally participated in all material aspects of this litigation from its pre-filing investigation through Settlement. I have been one of the principal attorneys responsible for the litigation strategy in this complex antitrust class action, including but not limited to: preparing complaints, directing extensive fact and expert discovery, overseeing the filing of all briefs and other documents in this case, and negotiating the Settlement with the sole defendant in this action, Celgene Corporation ("Celgene"). I am fully familiar with the facts set forth herein.

#### **A. Summary of the Case and the March 2020 Settlement**

4. I set forth a detailed summary of this case in my Co-Lead Counsel declaration in support of Plaintiffs' November 11, 2019 application for an award of

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<sup>3</sup> In addition to Co-Lead Counsel, "Plaintiffs' Counsel" includes other firms that performed work at the direction and under the supervision of Co-Lead Counsel, specifically Barrack, Rodos & Bacine, Berman Tabacco, and Gardy Notis, LLP. These firms represented named Plaintiffs and proposed Class Representatives and performed work that assisted in the prosecution of this litigation.

attorneys' fees and reimbursement of expenses. ECF No. 293-2 at § A–G.

5. Since that time, Plaintiffs have continued to diligently prosecute this action. After Celgene exercised its right to terminate the settlement agreement on December 23, 2019, *see* ECF No. 300, Co-Lead Counsel immediately worked to reassess the status of the litigation and strategize new potential settlement class definitions. Plaintiffs spent months negotiating with Celgene to ensure that the class members who had not opted out of the first settlement would receive some compensation.

6. On March 30, 2020, following several months of analysis and negotiation, the parties reached the \$34,000,000.00 Settlement.

7. After reaching the Settlement, Co-Lead Counsel prepared the Settlement Agreement, Notice, and Claim documents, and oversaw the notice process. Co-Lead Counsel continue to respond to inquiries from absent and potential Class members, as well as Class members who filed claims relating to the first settlement.

8. In my opinion, and in the opinion of the other Co-Lead Counsel, the Settlement is an exceptional result. I have been informed that all six Class Representatives support the Settlement.

#### **B. Plaintiffs' Counsel's Total Hours and Lodestar**

9. This litigation required a substantial investment of time. Plaintiffs'

Counsel necessarily expended more than 32,000 hours over nearly six years preparing, litigating, and negotiating the Settlement in this action. And Plaintiffs' Counsel's commitment to this litigation is not over. Co-Lead Counsel will spend substantial additional time preparing for and participating in the final approval hearing and working with the Settlement Administrator on claims and distribution-related issues.

10. From inception of this matter through June 30, 2020, Plaintiffs' Counsel expended over 32,000 hours prosecuting this complex, contingent litigation. The requested fee of \$11,333,333.33 (one-third of the settlement amount of \$34,000,000.00) is *significantly less than* Plaintiffs' Counsel's total lodestar of \$19,594,579.25. Thus, despite the risks that Plaintiffs' Counsel took in pursuing this case with no guarantee of recoupment, the request for attorneys' fees reflects a "negative multiplier" of 0.58. In other words, the requested fee award represents a discount on Plaintiffs' Counsel's billable time, as one-third of the settlement is less than the amount that Plaintiffs' Counsel billed through June 2020. Moreover, this does not account for the work performed by Co-Lead Counsel after June 2020, and Plaintiffs' Counsel have excluded any time associated with their fee and expense applications.

11. When additional Plaintiffs' firms joined the case, Co-Lead Counsel established a procedure for monthly reporting of time and expenses. This allowed



Co-Lead Counsel to monitor the reported work of all firms, allocate work among the firms, and to understand on an ongoing basis the time and costs being billed. These monthly submissions included the identity of timekeepers, the amount of time spent on the case during each reporting period, a cumulative running total of hours spent working on the case, the resulting lodestar, and expenses incurred.

12. Annexed hereto as Exhibits A to F are the sworn declarations of each Plaintiffs' Counsel firm specifying (by professional) the number of hours and total lodestar that each firm recorded in its prosecution of this case; the amounts (by category) each advanced for litigation expenses; and the professional qualifications and experience of counsel for each firm. Based on these sworn declarations, the table below summarizes the aggregate time and lodestar of all Plaintiffs' Counsel. Each law firm's detailed time records are available for review should the Court wish to examine them.

<b>Firm</b>	<b>Total Hours</b>	<b>Lodestar</b>
Hausfeld LLP	12,951.80	\$7,013,608.50
Block & Leviton LLP	7,991.30	\$5,314,814.25
Hach Rose Schirripa & Cheverie LLP	8,012.75	\$5,256,156.25
Barrack, Rodos & Bacine	2,153.00	\$1,070,841.75
Berman Tabacco	1,729.30	\$861,283.50
Gardy Notis	107.75	\$77,875.00
<b>TOTAL</b>	<b>32,945.90</b>	<b>\$19,594,579.25</b>

### **C. Plaintiffs' Counsel's Out-of-Pocket and Unpaid Expenses**

13. From inception of this matter through June 30, 2020, Plaintiffs' Counsel has reasonably incurred, and seeks reimbursement of, expenses in the amount of \$3,613,490.78. All of the funds advanced by Plaintiffs' Counsel were fully contingent on a successful outcome.

14. During the case, all Plaintiffs' Counsel, at the direction of Co-Lead Counsel, contributed to a Litigation Fund for common expenses. That Litigation Fund has been almost fully depleted through paying expenses necessary to prosecute this case.<sup>4</sup> Plaintiffs' Counsel also individually advanced and kept track of non-common expenses. Finally, there are remaining invoices of \$125,846.85 to be paid by the Litigation Fund.

15. The table below provides a summary of the total expenses, and the supporting declarations from counsel (Exhibits A-F) provide a detailed breakdown of each firm's expenses. Plaintiffs' Counsel's detailed expense records are available for review should the Court wish to examine them.

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<sup>4</sup> There is a remaining balance of \$3,486.38 in the Litigation Fund.

<b>Summary of Total Expenses</b>	
<b><i>Paid Expenses</i></b>	
Litigation Fund Paid Out	\$2,913,813.62
Additional Expenses Advanced by Plaintiffs' Counsel for Individual Firm Expenses	\$573,830.31
<b><i>Other Expenses Incurred</i></b>	
Outstanding Bills for Experts Owed from Litigation Fund	\$38,214.50
Outstanding Bills for Deposition Services Owed from Litigation Fund	\$77,518.12
Outstanding Bills for Document Management and Hosting Services Owed from Litigation Fund	\$10,114.23
<b>TOTAL EXPENSES</b>	<b>\$3,613,490.78</b>

16. A substantial portion of the expenses were necessary payments to experts, who were essential to the prosecution of this complex and expert-heavy case. Plaintiffs' economic expert, Dr. Leitzinger, is a Ph.D. economist who is the President of the nationally recognized economic consulting firm Econ One. During the course of his nearly 40-year career as an economic consultant, Dr. Leitzinger has provided expert testimony in almost 200 proceedings in numerous fora, including state and federal courts and a number of regulatory commissions. He has provided expert opinions regarding market power, market definition, anticompetitive effects, procompetitive justifications, and overcharges. He also has substantial experience in the calculation of damages in class action litigation,

including class member settlement allocation. Moreover, Dr. Leitzinger has been involved in researching the pharmaceutical industry in particular for the past 20 years. He has specific and extensive experience making economic assessments of the effects of generic drug competition, as well as the suppression of generic competition in various ways, including by reverse payment agreements. Dr. Leitzinger prepared four reports in support of class certification, two merits reports, and provided testimony at four depositions taken by Celgene.

17. Similarly, Plaintiffs worked with several world-renowned scientists and doctors to assert the invalidity or non-infringement of several of Celgene's patents on Thalomid and Revlimid. These include (but are not limited to) one of the world's leading experts in x-ray crystallography and biomedical chemistry and an Attending Physician at the NYU Langone Medical Center. Plaintiffs' well-credentialed patent experts each submitted multiple expert reports, sat for depositions, and formed an invaluable piece of Plaintiffs' challenge to Celgene's patents.

18. Other significant expenses included costs associated with the storage of millions of pages of documents on a secure database and costs associated with travel to depositions, court hearings, and mediation. These expenses, as well as other expenses routinely charged to hourly-fee-paying clients, such as court reporting expenses, photo and data copying charges, and electronic legal research

costs, were reasonable and appropriate.

19. As demonstrated in the sworn declarations of Plaintiffs' Counsel (Exhibits A–F and ECF Nos. 293-3–293-8), the largest expense for each firm is its contribution to the Litigation Fund. As explained in my prior declaration, the books and records of the Litigation Fund have been maintained by the accounting department of Hausfeld LLP from inception of this action. ECF No. 293-2 at § C.

20. From inception of this action, the books and records of the Litigation Fund were maintained by the accounting department of Hausfeld LLP.<sup>5</sup> The Litigation Fund has been almost completely depleted through paying expenses necessary to prosecute this litigation. The total expenses incurred by the Litigation Fund by category are as follows:

<b>Breakdown of Litigation Fund Expenses</b>	
<b>Category</b>	<b>Amount</b>
Expert Consultants and Witnesses	\$2,744,965.14
Document Management and Hosting	\$148,027.62
Mediation Services	\$14,574.61
Third Party Productions	\$6,246.25
<b>TOTAL</b>	<b>\$2,913,813.62</b>

21. In sum, a total of \$2,913,813.62 was incurred by the Litigation Fund.

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<sup>5</sup> The full detail of expenses paid out of the Litigation Fund is available for review should the Court wish to examine it.

Based on the records of the Litigation Fund, there is a remaining balance of \$3,486.38, which is not included in Plaintiffs' Counsel's request for reimbursement.<sup>6</sup> If the reimbursement request is granted, then each firm's respective contributions to the Litigation Fund will be returned, which will fully deplete the remaining balance of the Litigation Fund.

22. The Litigation Fund currently has an outstanding liability of \$125,846.85, which was incurred by Plaintiffs' Counsel in litigating this case. Specifically, the Litigation Fund has three outstanding bills: (1) a final invoice from Plaintiffs' economic expert in the amount of \$38,214.50; (2) a final statement from Veritext, Plaintiffs' Court Reporting Agency, for deposition services in the amount of \$77,518.12; and (3) a final statement for document management and hosting services from Epiq eDiscovery Solutions in the amount of \$10,114.23. In total.

23. In addition, Plaintiffs' Counsel have advanced \$573,830.31 in individual firm expenses, as detailed in Exhibits A–F.

24. Thus, Plaintiffs request reimbursement of expenses in the amount of \$3,613,490.78.

#### **D. The Efforts of the Class Representatives**

25. The six Class Representatives expended significant time and effort in

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<sup>6</sup> The total amount of contributions to the Litigation Fund is \$2,917,300.00.

prosecuting this action for the benefit of the Settlement Class. Each named Plaintiff significantly contributed to the prosecution of this litigation.

26. Specifically, during the nearly six years this litigation was prosecuted, each of the Class Representatives:

- assisted in Plaintiffs' Counsel's investigation and preparation of the complaints in this action;
- collected and produced documents in response to Celgene's numerous document requests;
- provided information to counsel in response to interrogatories;
- sat for a full day of deposition questioning (and prepared for the same), as follows:
  - Charles Besocke (Local 39) was deposed on December 5, 2017 in Pleasanton, California;
  - Richard M. Poulaino (IUB) was deposed on December 12, 2017 in Wallingford, Connecticut;
  - Jeffrey W. Werner (New England Carpenters Health Benefits Fund) was deposed on January 9, 2018 in Boston, Massachusetts;
  - David E. Mitchell was deposed on January 12, 2018 in Washington, DC;
  - Margaret Wingate (City of Providence) was deposed on January 17, 2018 in Providence, Rhode Island;
  - Carmine D. Russo (DEA) was deposed on January 23, 2018 in New York, NY; and
- regularly consulted with counsel regarding the progress of this case, including with respect to the negotiations that eventually resulted in a \$34 million Settlement between Celgene and the Class.

27. Each of the Class Representatives made these efforts even though their individual respective recoveries were likely going to be relatively small compared to some of the larger members of the Settlement Class. Without their participation and effort, the Settlement Class would have recovered nothing.

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

Dated: August 7, 2020

  
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# Exhibit A

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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**AUGUST 2020 DECLARATION OF MELINDA R. COOLIDGE**

I, Melinda R. Coolidge, declare as follows:

1. I am a Partner at the law firm Hausfeld LLP. I submit this declaration in support of Plaintiffs' application for an award of attorneys' fees and reimbursement of expenses in connection with services rendered and expenses incurred by my firm related to the prosecution and settlement of claims in the course of this litigation.

2. I actively participated in and oversaw all aspects of my firm's involvement in this case, which are detailed in my declaration in support of Plaintiffs' November 11, 2019 application for an award of attorneys' fees and reimbursement of expenses. ECF No. 293-3 at ¶ 4.

3. My prior declaration included a summary of the time spent by my firm's attorneys and professionals who were involved in this action and the lodestar calculation based on hours worked from the inception of this case through

August 31, 2019. ECF No. 293-3 at Ex. 1.

4. Attached as Exhibit 1 is a summary of the time spent and the lodestar calculation based on hours worked from September 1, 2019 through June 30, 2020. The summary was prepared at my request from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court.

5. The hourly rates for the attorneys and professional support staff included in Exhibit 1 are the usual and customary hourly rates charged for their services and that have been approved in other complex class action litigations.

6. Biographies of the principal attorneys from my firm who were involved in this action are attached to my prior declaration as Exhibit 2. ECF No. 293-3 at Ex. 2. This information is also available on our firm website at [www.hausfeld.com](http://www.hausfeld.com).

7. My prior declaration also included a summary of the reasonable expenses incurred by my firm from the inception of the case through October 31, 2019. ECF. 293-3 at Ex. 3. Attached as Exhibit 2 is a summary of the reasonable additional expenses incurred by my firm from November 1, 2019 through June 30, 2020. The expenses incurred in this action are reflected on my firm's books and records maintained in the ordinary course of business.

8. In my prior declaration, I reported that the total number of hours

expended on this litigation by our firm from inception through August 31, 2019 was 12,550.20 hours, and the corresponding lodestar was \$6,757,181.50. ECF No. 293-3 at ¶ 8.


9. The total number of hours expended on this litigation by our firm from September 1, 2019 through June 30, 2020 is 401.60 hours, and the corresponding lodestar is \$256,427.00. Thus, the total hours from inception of this case through June 30, 2020 is 12,951.80, resulting in a total lodestar of \$7,013,608.50.

10. In my prior declaration, I reported that the total unreimbursed expenses incurred by our firm on this litigation from inception through October 31, 2019 was \$1,083,094.55. ECF No. 293-3 at ¶ 8.

11. The total additional unreimbursed expenses incurred by our firm on this litigation from November 1, 2019 through June 30, 2020 is \$37,424.59. Thus, the total unreimbursed expenses from inception of this case through June 30, 2020 is \$1,120,519.14.

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

Dated: August 7, 2020

  
Melinda R. Coolidge  
**HAUSFELD LLP**  
1700 K Street, NW, Suite 650  
Washington, DC 20006

(202) 540-7200  
mcoolidge@hausfeld.com

# Exhibit 1

## Summary of Time Spent by Hausfeld LLP from September 1, 2019 through June 30, 2020

				Hours									
Name of Professional	Status	Year of Admission / Year Legal Career Began	Current Hourly Rate	(1) Investigations, Factual Research (Inc legal research memos)	(2) Discovery of Plaintiffs	(3) Discovery of Defendants/Third Parties	(4) Work with Experts	(5) Pleadings, Briefs, Pre-trial Motions	(6) Litigation Strategy, Analysis, Case Management	(7) Court Appearances	(8) Settlement	Total Hours	Lodestar
Beran, Katie	Partner	2012	\$ 640.00				1.70	7.40	33.30	8.20	141.70	192.30	\$ 123,803.00
Coolidge, Melinda R.	Partner	2008	\$ 700.00				1.80	22.00	32.30	1.70	67.50	125.30	\$ 87,710.00
Freilich, Tamara	Associate	2016	\$ 490.00	1.40					7.30		15.20	23.90	\$ 11,711.00
Garber, Laura	Staff Attorney	2012	\$ 430.00					1.70				1.70	\$ 731.00
Kelley, Walter	Partner	1981	\$ 1,150.00						3.90			3.90	\$ 4,485.00
Landau, Brent W.	Partner	2001	\$ 870.00						2.10	0.70	16.90	19.70	\$ 17,139.00
Ratner, Brian A.	Partner	1999	\$ 900.00					0.50				0.50	\$ 450.00
Robinson, Elliot	Paralegal	N/A	\$ 300.00	4.50				19.00	10.50			34.00	\$ 10,200.00
Smith, Gary	Partner	2011	\$ 660.00								0.30	0.30	\$ 198.00
<b>Grand Total:</b>				<b>5.90</b>			<b>3.50</b>	<b>50.60</b>	<b>89.40</b>	<b>10.60</b>	<b>241.60</b>	<b>401.60</b>	<b>\$ 256,427.00</b>

# Exhibit 2



**EXHIBIT 2****Summary of Hausfeld LLP Expenses from November 1, 2019 through June 30, 2020**

<b>Breakdown of Expenses</b>	
<b>Category</b>	<b>Amount</b>
Litigation Fund Contributions	\$35,000.00
Online Research	\$1,097.24
Document Management and Hosting	\$119.88
Court Fees and Dues	
Delivery and Courier	
Printing and Copying	\$112.44
Telephone Charges	\$88.58
Travel, Hotel, and Meals	\$1,006.45
Publications	
Other Miscellaneous Expenses	
<b>TOTAL</b>	<b>\$37,424.59</b>

# Exhibit B

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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**AUGUST 2020 DECLARATION OF WHITNEY E. STREET**

I, Whitney E. Street, declare as follows:

1. I am a Partner at the law firm Block & Leviton LLP. I submit this declaration in support of Plaintiffs' application for an award of attorneys' fees and reimbursement of expenses in connection with services rendered and expenses incurred by my firm related to the prosecution and settlement of claims in the course of this litigation.

2. I actively participated in and oversaw all aspects of my firm's involvement in this case, which are detailed in my declaration in support of Plaintiffs' November 11, 2019 application for an award of attorneys' fees and reimbursement of expenses. ECF No. 293-4 at ¶ 4.

3. My prior declaration included a summary of the time spent by my firm's attorneys and professionals who were involved in this action and the lodestar calculation based on hours worked from the inception of this case through

August 31, 2019. ECF No. 293-4 at Ex. 1.

4. Attached as Exhibit 1 hereto is a summary of the time spent and the lodestar calculation based on hours worked from September 1, 2019 through June 30, 2020. The summary was prepared at my request from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court.

5. The hourly rates for the attorneys and professional support staff included in Exhibit 1 are the usual and customary hourly rates charged for their services and that have been approved in other complex class action litigations.

6. Biographies of the principal attorneys from my firm who were involved in this action are attached to my prior declaration as Exhibit 2. ECF No. 293-4 at Ex. 2. This information is also available on our firm website at [www.blockleviton.com](http://www.blockleviton.com).

7. My prior declaration also included a summary of the reasonable expenses incurred by my firm from the inception of the case through October 31, 2019. ECF. 293-4 at Ex. 3. Attached as Exhibit 2 hereto is a summary of the reasonable expenses incurred by my firm from November 1, 2019 through June 30, 2020. The expenses incurred in this action are reflected on my firm's books and records maintained in the ordinary course of business.

8. In my prior declaration, I reported that the total number of hours

expended on this litigation by my firm from inception through August 31, 2019 was 7,783.15 hours, and the corresponding lodestar was \$5,163,909.25. ECF No 293-4 at ¶8.

9. The total number of hours expended on this litigation by our firm from September 1, 2019 through June 30, 2020 is 208.15 hours, and the corresponding lodestar is \$150,905.00. Thus, the total hours from inception through June 30, 2020 is 7,991.3, resulting in a total lodestar of \$5,314,814.25.<sup>1</sup>

10. In my prior declaration, I reported that the total unreimbursed expenses incurred by my firm on this litigation from inception through October 31, 2019 was \$986,686.79. ECF No. 293-4 at ¶8.

11. The total unreimbursed expenses incurred by our firm on this litigation from November 1, 2019 through June 30, 2020 is \$36,383.06. Thus, the total unreimbursed expenses from inception through June 30, 2020 is \$1,023,069.85.

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

---

<sup>1</sup> This time and lodestar does not account for the work my firm has performed after June 30, 2020, and excludes any time associated with our fee and expense application.

Dated: August 7, 2020

A handwritten signature in blue ink that reads "Whitney Street".

---

Whitney E. Street  
**BLOCK & LEVITON LLP**  
100 Pine Street, Suite 1250  
San Francisco, CA 94111  
(416) 968-1852  
whitney@blockleviton.com

# Exhibit 1

**EXHIBIT I**

			<b>Summary of Time Spent by Block &amp; Leviton LLP from September 1, 2019 through June 30, 2020</b>										
				<b>Hours</b>									
				(1)				(5)	(6) Litigation				
<b>Name of Professional</b>	<b>Status</b>	<b>Year of Admission/ Year Legal Career Began</b>	<b>Current Hourly Rate</b>	<b>Investigations, Factual Research (Inc legal research memos)</b>	<b>(2) Discovery of Plaintiffs</b>	<b>(3) Discovery of Defendants/Third Parties</b>	<b>(4) Work with Experts</b>	<b>Pleadings, Briefs, Pre-trial Motions</b>	<b>Strategy, Analysis, Case Management</b>	<b>(7) Court Appearances</b>	<b>(8) Settlement</b>	<b>Total Hours</b>	<b>Lodestar</b>
Whitney Street	Partner	2002	\$850.00	0	0	0	0	0	0.2	17.1	42.15	59.45	\$50,532.50
Stephen Teti	Associate	2010	\$675.00	0	0	0	0	0	0	13.6	135.1	148.7	\$100,372.50
<b>TOTAL</b>	N/A	N/A	N/A	0	0	0	0	0	0.2	30.7	177.25	208.15	\$150,905.00



# Exhibit 2

**EXHIBIT 2****Summary of Block & Leviton LLP's Expenses from November 1, 2019 through June 30, 2020**

<b>Breakdown of Expenses</b>	
<b>Category</b>	<b>Amount</b>
Litigation Fund Contributions	\$35,000.00
Online Research	\$725.34
Document Management and Hosting	
Court Fees and Dues	\$436.72
Delivery and Courier	
Printing and Copying	
Telephone Charges	
Travel, Hotel, and Meals	\$221.00
Publications	
Other Miscellaneous Expenses	
<b>TOTAL</b>	<b>\$36,383.06</b>

# Exhibit C

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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**AUGUST 2020 DECLARATION OF FRANK R. SCHIRRIPA**

I, Frank R. Schirripa, declare as follows:

1. I am a Partner at the law firm Hach Rose Schirripa & Cheverie LLP. I submit this declaration in support of Plaintiffs' application for an award of attorneys' fees and reimbursement of expenses in connection with services rendered and expenses incurred by my firm related to the prosecution and settlement of claims in the course of this litigation.

2. I actively participated in and oversaw all aspects of my firm's involvement in this case, which are detailed in my declaration in support of Plaintiffs' November 11, 2019 application for an award of attorneys' fees and reimbursement of expenses. ECF No. 293-5 at ¶¶ 2-3.

3. My prior declaration included a summary of the time spent by my firm's attorneys and professionals who were involved in this action and the lodestar

calculation based on hours worked from the inception of this case through August 31, 2019. ECF No. 293-5 at Ex. 1.

4. Attached as Exhibit 1 is a summary of the time spent and the lodestar calculation based on hours worked from September 1, 2019 through June 30, 2020. The summary was prepared at my request from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court.

5. The hourly rates for the attorneys and professional support staff included in Exhibit 1 are the usual and customary hourly rates charged for their services and that have been approved in other complex class action litigations.

6. Biographies of the principal attorneys from my firm who were involved in this action are attached to my prior declaration as Exhibit 2. ECF No. 293-5 at Ex. 2. This information is also available on our firm website at [www.hrsclaw.com](http://www.hrsclaw.com).

7. My prior declaration also included a summary of the reasonable expenses incurred by my firm from the inception of the case through October 31, 2019. ECF. 293-5 at Ex. 3. Attached as Exhibit 2 is a summary of the reasonable expenses incurred by my firm from November 1, 2019 through June 30, 2020. The expenses incurred in this action are reflected on my firm's books and records maintained in the ordinary course of business.

8. In my prior declaration, I reported that the total number of hours

expended on this litigation by our firm from inception through August 31, 2019 was 7,830 hours, and the corresponding lodestar was \$5,124,431.25. ECF No. 293-5 at ¶ 5.

9. The total number of hours expended on this litigation by our firm from September 1, 2019 through June 30, 2020 is 182.75 hours, and the corresponding lodestar is \$131,725.00. Thus, the total hours from inception through June 30, 2020 is 8,012.75, resulting in a total lodestar of \$5,256,156.25.

10. In my prior declaration, I reported that the total unreimbursed expenses incurred by our firm on this litigation from inception through October 31, 2019 was \$988,086.59. ECF No. 293-5 at ¶ 9.

11. The total unreimbursed expenses incurred by our firm on this litigation from November 1, 2019 through June 30, 2020 is \$35,000.00. Thus, the total unreimbursed expenses from inception through June 30, 2020 is \$1,023,086.59.

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

Dated: August 7, 2020

  
Frank R. Schirripa  
**HACH ROSE SCHIRIPA &  
CHEVERIE LLP**  
112 Madison Avenue, 10<sup>th</sup> Floor  
New York, New York 10016  
(212) 213-8311  
fschirripa@hrsclaw.com

# Exhibit 1

**EXHIBIT 1****Summary of Time Spent by Hach Rose Schirripa & Cheverie LLP from September 1, 2019 through June 30, 2020**

Name of Professional	Status	Year of Admission/ Year Legal Career Began	Current Hourly Rate	Hours								Total Hours	Lodestar
				(1) Investigations, Factual Research (Inc legal research memos)	(2) Discovery of Plaintiffs	(3) Discovery of Defendants/ Third Parties	(4) Work with Experts	(5) Pleadings, Briefs, Pre-trial Motions	(6) Litigation Strategy, Analysis, Case Management	(7) Court Appearances	(8) Settlement		
Frank R. Schirripa	Partner	2002	\$ 815.00								21	21.00	\$ 17,115.00
Daniel B. Rehns	Partner	2005	\$ 740.00								136.25	136.25	\$ 100,825.00
Seth Pavsner	Associate	2009	\$ 590.00								4.5	4.50	\$ 2,655.00
Kathryn Hettler	Associate	2012	\$ 530.00								21	21.00	\$ 11,130.00
				0	0	0	0	0	0	0	182.75	182.75	\$ 131,725.00



# Exhibit 2

## **EXHIBIT 2**

*In re Thalomid and Revlimid Antitrust Litigation*, No. 14-6997 (MCA)

### **HACH ROSE SCHIRIPA & CHEVERIE LLP EXPENSE REPORT**

*November 1, 2019 through June 30, 2020*

<b>CATEGORY</b>	<b>AMOUNT</b>
Litigation Fund Contribution	\$35,000.00
<b>TOTAL EXPENSES:</b>	<b>\$35,000.00</b>

# Exhibit D

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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**JULY 2020 DECLARATION OF JEFFREY A. BARRACK**

I, Jeffrey A. Barrack, declare as follows:

1. I am a Partner at the law firm Barrack, Rodos & Bacine. I submit this declaration in support of Plaintiffs' application for an award of attorneys' fees and reimbursement of expenses in connection with services rendered and expenses incurred by my firm related to the prosecution and settlement of claims in the course of this litigation.

2. I actively participated in and oversaw all aspects of my firm's involvement in this case, which are detailed in my declaration in support of Plaintiffs' November 11, 2019 application for an award of attorneys' fees and reimbursement of expenses. ECF No. 293-6 at ¶ 3.

3. My prior declaration included a summary of the time spent by my firm's attorneys and professionals who were involved in this action and the lodestar calculation based on hours worked from the inception of this case through

August 31, 2019. ECF No. 293-6 at Ex. 1.

4. Attached as Exhibit 1 is a summary of the time spent and the lodestar calculation based on hours worked from September 1, 2019 through June 30, 2020. The summary was prepared at my request from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court.

5. The hourly rates for the attorneys and professional support staff included in Exhibit 1 are the usual and customary hourly rates charged for their services and that have been approved in other complex class action litigations.

6. Biographies of the principal attorneys from my firm who were involved in this action are attached to my prior declaration as Exhibit 2. ECF No. 293-6 at Ex. 2. This information is also available on our firm website at [www.barrack.com](http://www.barrack.com).

7. My prior declaration also included a summary of the reasonable expenses incurred by my firm from the inception of the case through October 31, 2019. ECF. 293-6 at Ex. 3. Attached as Exhibit 2 is a summary of the reasonable expenses incurred by my firm from November 1, 2019 through June 30, 2020. The expenses incurred in this action are reflected on my firm's books and records maintained in the ordinary course of business.

8. In my prior declaration, I reported that the total number of hours

expended on this litigation by our firm from inception through August 31, 2019 was 2,127.75 hours, and the corresponding lodestar was \$1,051,896.75. ECF No. 293-6 at ¶ 8.

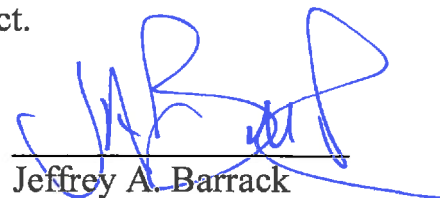
9. The total number of hours expended on this litigation by our firm from September 1, 2019 through June 30, 2020 is 25.25 hours, and the corresponding lodestar is \$18,945.00. Thus, the total hours from inception through June 30, 2020 is **2,153.00**, resulting in a total lodestar of **\$1,070,841.75**.

10. In my prior declaration, I reported that the total unreimbursed expenses incurred by our firm on this litigation from inception through October 31, 2019 was \$176,201.31. ECF No. 293-6 at ¶ 8.

11. The total unreimbursed expenses incurred by our firm on this litigation from November 1, 2019 through June 30, 2020 is \$83.45. Thus, the total unreimbursed expenses from inception through June 30, 2020 is **\$176,284.76**.

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

Dated: July 23, 2020

  
Jeffrey A. Barrack  
**BARRACK, RODOS & BACINE**  
3300 Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19103  
(215) 963-0600  
jbarrack@barrack.com

# Exhibit 1

<b>Thalomid and Revlimid Antitrust Litigation</b>													
<b>Summary of Time Spent by Barrack, Rodos &amp; Bacine from September 1, 2019 through June 30, 2020</b>													
<b>Name of Professional</b>	<b>Status</b>	<b>Year of Adm./ Year Legal Career Began</b>	<b>Current Hourly Rate</b>	<b>(1) Investigations, Factual Research (Inc legal research memos)</b>	<b>(2) Discovery of Plaintiffs</b>	<b>(3) Discovery of Defs/ Third Parties</b>	<b>(4) Work with Experts</b>	<b>(5) Pleadings, Briefs, Pre- trial Motions</b>	<b>(6) Litigation Strategy, Analysis, Case Mgmt</b>	<b>(7) Court Appear</b>	<b>(8) Settlement</b>	<b>Total Hours</b>	<b>Lodestar</b>
Barrack, Jeffrey A.	P	1996	\$780								7.50	7.50	\$5,850.00
Gittleman, Jeffrey B.	P	1996	\$780								5.00	5.00	\$3,900.00
Molder, Leslie	P	1983	\$780								7.75	7.75	\$6,045.00
Carder, Chad	P	2002	\$630								5.00	5.00	\$3,150.00
<b>Totals:</b>				<b><u>0.00</u></b>	<b><u>0.00</u></b>	<b><u>0.00</u></b>	<b><u>0.00</u></b>	<b><u>0.00</u></b>	<b><u>0.00</u></b>	<b><u>0.00</u></b>	<b><u>25.25</u></b>	<b><u>25.25</u></b>	<b><u>\$18,945.00</u></b>

Exhibit 1



# Exhibit 2

**Thalomid & Revlimid Antitrust Litigation**  
**Barrack, Rodos & Bacine**  
**Expense Summary**  
**Time Period: November 1, 2019 through June 30, 2020**

<b><u>Description</u></b>	<b><u>Amount</u></b>
Computer & Other Research Fee(s)	
Contributions to Pls' Escrow Fund	
Courier	
Court & Filing Fee(s)	
Postage	
Reproduction	\$4.00
Telephone	\$79.45
Travel/Meals/Meetings	
<b>Totals:</b>	<b><u>\$83.45</u></b>

# Exhibit E

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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**JULY 2020 DECLARATION OF TODD A. SEAVER**

I, Todd A. Seaver, declare as follows:

1. I am a member of the law firm Berman Tabacco. I submit this declaration in support of Plaintiffs' application for an award of attorneys' fees and reimbursement of expenses in connection with services rendered and expenses incurred by my firm related to the prosecution and settlement of claims in the course of this litigation.

2. I actively participated in and oversaw all aspects of my firm's involvement in this case, which are detailed in my declaration in support of Plaintiffs' November 11, 2019 application for an award of attorneys' fees and reimbursement of expenses. ECF No. 293-7 at ¶ 7.

3. My prior declaration included a summary of the time spent by my firm's attorneys and professionals who were involved in this action and the lodestar calculation based on hours worked from the inception of this case through

August 31, 2019. ECF No. 293-7 at ¶ 8 & Ex. 1.

4. Attached as Exhibit 1 is a summary of the time spent and the lodestar calculation based on hours worked from September 1, 2019 through June 30, 2020. The summary was prepared at my request from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court.

5. The hourly rates for the attorneys and professional support staff included in Exhibit 1 are the usual and customary hourly rates charged for their services and that have been approved in other complex class action litigations.

6. Biographies of the principal attorneys from my firm who were involved in this action are attached to my prior declaration as Exhibit 3. ECF No. 293-7 at Ex. 3. This information is also available on our firm website at [www.bermantabacco.com](http://www.bermantabacco.com).

7. My prior declaration also included a summary of the reasonable expenses incurred by my firm from the inception of the case through August 31, 2019. ECF. 293-7 at ¶¶ 12-13 & Ex. 2. Attached as Exhibit 2 is a summary of the reasonable expenses incurred by my firm from September 1, 2019 through June 30, 2020. The expenses incurred in this action are reflected on my firm's books and records maintained in the ordinary course of business.

8. In my prior declaration, I reported that the total number of hours

expended on this litigation by our firm from inception through August 31, 2019 was 1,709.20 hours, and the corresponding lodestar was \$845,476.00. ECF No. 293-7 at ¶ 10.

9. The total number of hours expended on this litigation by our firm from September 1, 2019 through June 30, 2020 is 20.10 hours, and the corresponding lodestar is \$15,807.50. Thus, the total hours from inception through June 30, 2020 is 1,729.30, resulting in a total lodestar of \$861,283.50.

10. In my prior declaration, I reported that the total unreimbursed expenses incurred by our firm on this litigation from inception through August 31, 2019 was \$147,392.04. ECF No. 293-7 at ¶ 12.

11. The total unreimbursed expenses incurred by our firm on this litigation from September 1, 2019 through June 30, 2020 is \$266.46. Thus, the total unreimbursed expenses from inception through June 30, 2020 is \$147,658.50.

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

Dated: July 16, 2020



Todd A. Seaver  
**BERMAN TABACCO**  
44 Montgomery Street, Suite 650  
San Francisco, CA 94104  
(415) 433-3200  
tseaver@bermantabacco.com

# **EXHIBIT 1**

Thalomid & Revlimid Antitrust Litigation  
Summary of Time Spent by Berman Tabacco from September 1, 2019 through June 30, 2020

Firm: Berman Tabacco  
Time Period: From September 1, 2019 through June 30, 2020

				Hours									
Name of Professional	Status	Year of Admission/ Year Legal Career Began	Current Hourly Rate	(1) Investigations, Factual Research (Inc legal research memos)	(2) Discovery of Plaintiffs	(3) Discovery of Defendants/ Third Parties	(4) Work with Experts	(5) Pleadings, Briefs, Pre-trial Motions	(6) Litigation Strategy, Analysis, Case Management	(7) Court Appearances	(8) Settlement	Total Hours	Lodestar
Attorneys:													
Egan, Patrick	P	1997	\$880.00								10.10	10.10	\$8,888.00
Heffelfinger, Christopher	P	1984	\$965.00						0.30		3.60	3.90	\$3,763.50
Seaver, Todd	P	1999	\$880.00								1.10	1.10	\$968.00
Tabacco, Joseph	P	1974	\$985.00								0.40	0.40	\$394.00
Attorney Totals:				0.00	0.00	0.00	0.00	0.00	0.30	0.00	15.20	15.50	\$14,013.50
Paralegals/Professionals:													
Becker, Kathy	PL	1986	\$390.00								4.60	4.60	\$1,794.00
Paralegals/Professionals Totals:				0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.60	4.60	\$1,794.00
Grand Totals:				0.00	0.00	0.00	0.00	0.00	0.30	0.00	19.80	20.10	\$15,807.50

(P) Partner  
(A) Associate  
(SA) Staff Attorney  
(OC) Of Counsel  
(PL) Paralegal  
(INV) Investigator



# **EXHIBIT 2**

**Thalomid & Revlimid Antitrust Litigation  
Summary of Expenses**

Firm: Berman Tabacco

Time Period: From September 1, 2019 through June 30, 2020

Category	Cumulative Expenses
Computer Research	\$22.50
Court Fees (filing, etc.)	\$218.36
Court Reporters/Transcripts	\$0.00
Expert	\$0.00
Litigation Assessment	\$0.00
Postage/Express Delivery/Messenger	\$0.00
Photocopying (in house)	\$14.44
Photocopying (outside)	\$0.00
Telephone/Fax	\$11.16
Travel/Meals/Lodging	\$0.00
TOTAL:	\$266.46

# Exhibit F

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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**AUGUST 2020 DECLARATION OF JENNIFER SARNELLI**

I, Jennifer Sarnelli, declare as follows:

1. I am a Partner at the law firm Gardy & Notis, LLP. I submit this declaration in support of Plaintiffs' application for an award of attorneys' fees and reimbursement of expenses in connection with services rendered and expenses incurred by my firm related to the prosecution and settlement of claims in the course of this litigation.

2. My firm has served as local counsel to Plaintiff City of Providence during this litigation. The background and experience of Gardy & Notis, LLP and its attorneys were summarized in the curriculum vitae attached as Exhibit A to my November 11, 2019 Declaration. ECF No. 293-8 at Ex. A.

3. My prior declaration included a summary of the time spent by my firm's attorneys and professionals who were involved in this action and the lodestar calculation based on hours worked from the inception of this case through

August 31, 2019. ECF No. 293-8 at Ex. B.

4. Attached as Exhibit 1 hereto is a summary of the time spent and the lodestar calculation based on hours worked from September 1, 2019 through June 30, 2020. The summary was prepared at my request from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court.

5. The hourly rates for the attorneys and professional support staff included in Exhibit 1 are the usual and customary hourly rates charged for their services and that have been approved in other complex class action litigations.

6. My prior declaration also included a summary of the reasonable expenses incurred by my firm from the inception of the case through October 31, 2019. ECF. 293-8 at Ex. C. My firm did not incur any additional expenses from November 1, 2019 through June 30, 2020. The expenses incurred in this action are reflected on my firm's books and records maintained in the ordinary course of business.

7. In my prior declaration, I reported that the total number of hours expended on this litigation by my firm from inception through August 31, 2019 was 94.5 hours, and the corresponding lodestar was \$68,268.75. ECF No. 293-8 at ¶6.

8. The total number of hours expended on this litigation by our firm

from September 1, 2019 through June 30, 2020 is 13.25 hours, and the corresponding lodestar is \$9,606.25. Thus, the total hours from inception through June 30, 2020 is 107.75, resulting in a total lodestar of \$77,875.00.

9. Since my firm has incurred no additional expenses since October 31, 2019, the total unreimbursed expenses incurred by our firm on this litigation from inception through June 30, 2020 remains \$511.57, consistent with my prior declaration. ECF No. 293-8 at ¶6.

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

Dated: August 7, 2020



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Jennifer Sarnelli  
**GARDY & NOTIS, LLP**  
Tower 56  
126 East 56th Street  
New York, NY 10022  
(212) 905-0509  
jsarnelli@gardylaw.com

# Exhibit 1

**Exhibit 1**

			<b>Summary of Time Spent by Gardy &amp; Notis LLP from September 1, 2019 through June 30, 2020</b>										
				<b>Hours</b>									
				(1)				(5)	(6) Litigation				
<b>Name of Professional</b>	<b>Status</b>	<b>Year of Admission/ Year Legal Career Began</b>	<b>Current Hourly Rate</b>	<b>Investigations, Factual Research (Inc legal research memos)</b>	<b>(2) Discovery of Plaintiffs</b>	<b>(3) Discovery of Defendants/Third Parties</b>	<b>(4) Work with Experts</b>	<b>Pleadings, Briefs, Pre-trial Motions</b>	<b>Strategy, Analysis, Case Management</b>	<b>(7) Court Appearances</b>	<b>(8) Settlement</b>	<b>Total Hours</b>	<b>Lodestar</b>
Jennifer Sarnelli	Partner	2003	\$725.00	0	0	0	0	0	0	4.25	9	13.25	\$9,606.25
<b>TOTAL</b>	N/A	N/A	N/A	0	0	0	0	0	0	4.25	9	13.25	\$9,606.25



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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**[PROPOSED] ORDER**

Upon consideration of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives, and the papers filed in support thereof (the "Motion"), it is hereby **ORDERED** as follows:

1. The Motion is hereby **GRANTED**.
2. Plaintiffs' Counsel are hereby awarded attorneys' fees to be paid from the Settlement Fund in the amount of \$11,333,333.33 plus one-third of the interest earned in the Settlement escrow account.
3. Plaintiffs' Counsel are hereby awarded \$3,613,490.78 out of the Settlement Fund to reimburse them for the expenses they incurred in the prosecution of this complex lawsuit.

4. Plaintiffs' Co-Lead Counsel shall allocate the fees and expenses among all of Plaintiffs' Counsel in a manner that Co-Lead Counsel in good faith believe reflects the contributions of each firm working for Plaintiffs and the Class in the prosecution and settlement of the claims against the Defendant in this action.
5. Finally, the Class Representatives are hereby awarded service awards in the following amounts as requested by Co-Lead Counsel:
  - A. \$10,000 for International Union of Bricklayers and Allied Craft Workers Local 1 Health Fund;
  - B. \$10,000 for City of Providence;
  - C. \$10,000 for International Union of Operating Engineers Local 39 Health and Welfare Trust Fund;
  - D. \$10,000 for The Detectives' Endowment Association, Inc.;
  - E. \$10,000 for David Mitchell; and
  - F. \$10,000 for New England Carpenters Health Benefits Fund.
6. The awarded fees, expenses, and service awards shall be distributed from the Settlement Fund in accordance with the terms of the Settlement Agreement.
7. Without affecting the finality of this Order in any respect, this Court reserves jurisdiction over any matters related to or ancillary to this Order.

**IT IS SO ORDERED this \_\_ day of \_\_\_\_\_, 2020.**

BY THE COURT:

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Hon. Madeline Cox Arleo  
United States District Judge

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

**IN RE THALOMID AND REVLIMID  
ANTITRUST LITIGATION**

**Civil No. 14-6997 (MCA) (MAH)**

**CERTIFICATE OF SERVICE**

I, Katie R. Beran, counsel for Plaintiffs, do hereby certify that Plaintiffs filed and served on all counsel electronically via the Court's CM/ECF system the following:

- Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives;
- Memorandum of Law in Support;
- August 2020 Declaration of Co-Lead Counsel Melinda R. Coolidge and accompanying exhibits; and
- Proposed Order.

Date: August 7, 2020

/s/ Katie R. Beran  
Katie R. Beran