SOUTHERN DISTRICT OF FLORIDA
Miami-Dade Division

CASE NO. 13-21158-CIV-LENARD/GOODMAN

MONICA BARBA, JONATHAN REISMAN, KAREN and RAYNA DEREUS, JODI and MINDI LEIT, and BARRIE and BRIAN SHANAHAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SHIRE U.S., INC., a New Jersey Corporation, SHIRE, LLC, a Kentucky Limited Liability Company, and DOES 1 through 100, inclusive,

Defendants.

PLAINTIFFS' UNOPPOSED MOTION AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

PLEASE TAKE NOTICE that on November 9, 2016, at 2:30 p.m., or on such date as may be specified by the Court, in the courtroom of the Honorable Joan A. Lenard, United States District Court for the Southern District of Florida, 400 North Miami Avenue, Miami, Florida 33128, Plaintiffs Monica Barba, Jonathan Reisman, Karen and Rayna DeReus, Jodi and Mindi Leit, and Barrie and Brian Shanahan ("Plaintiffs"), on behalf of themselves and the Class, will and hereby do move for an entry of an order, pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), granting the following relief:

1) An award to Class Counsel of $5,162,500 in attorneys' fees;

2) An award to Class Counsel of $1,336,278.56 in costs and other litigation expenses;

3) The costs of notice and administration in the approximate amount of $605,000.00, and

4) Service awards to named plaintiffs, ranging between $2,500 and $5,000 each, totaling $35,000.

This motion will be heard concurrent with Plaintiffs' Motion for Final Approval of Class Action, which is separately briefed. D.E. 429.

This motion is based on this notice; the incorporated Memorandum of Law; the Joint Declaration in Support of Plaintiffs' Motion for Attorneys' Fees and Costs (filed concurrently herewith); the Settlement Agreement (D.E. 423-1); the Motion for Final Approval and accompanying documentation (D.E. 429); the Declarations of the named plaintiffs (filed concurrently herewith); the Declaration of Gina Intrepido-Bowden Regarding Class Notice and Administration (D.E. 429-3), and on such further oral and documentary evidence which may be submitted, and any further evidence as the Court may receive. Pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel files this Motion in advance of the October 7, 2016 deadline for objecting to the Settlement. Upon filing, a copy of this Motion will be posted to the Settlement Website, www.adderallxrsettlement.com, where it can easily be accessed by Settlement Class Members.

Date: September 23, 2016

Respectfully submitted,

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I. INTRODUCTION

After years of hard-fought litigation, Settlement Class Counsel negotiated the Settlement Agreement ("Settlement") (D.E. 423-1) with Defendants Shire U.S., Inc. and Shire, LLC (collectively, "Shire"). The Settlement consists of Shire's deposit of $14,750,000.00 into a Settlement Fund from which payments will be made to Class Members, for notice and claims administration, and for attorneys' fees, costs, and service awards upon Court approval. D.E. 423-1 ¶ 1.6.5. This is an excellent result for the Settlement Class. *See* Joint Declaration of Conlee Whiteley, Esq., Ruben Honik, Esq., Gillian L. Wade, Esq, and Brian T. Ku, Esq. ("Joint Decl."), ¶¶ 93-95. The Settlement is fair, adequate, and reasonable. *Id.* ¶ 33.

Plaintiffs and Class Counsel have separately moved for Final Approval of the Settlement D.E. 429. Pursuant to the Settlement Agreement, Plaintiffs and Class Counsel hereby respectfully move for (i) attorneys' fees equal to thirty-five percent (35%) of the Settlement Fund to compensate Class Counsel for their work in achieving the Settlement, (ii) costs and expenses in prosecuting this Action including the costs of class notice and administration, and (iii) Service Awards for the named plaintiffs. Shire does not oppose this motion.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On April 2, 2013, Plaintiffs Monica Barba and Jonathan Reisman filed a class action complaint on behalf of themselves and a Florida Class of indirect purchasers against Shire in this District seeking monetary damages and injunctive relief regarding Shire's anticompetitive conduct including, primarily, Shire's payments to generic competitors Teva and Impax to delay the entry of generic products intended to compete with the sale of Shire's prescription medication Adderall XR®, prescribed to treat attention deficit hyperactivity disorder (the "Barba action"). Plaintiffs alleged that these payments, along with other anticompetitive conduct (in

violation of the Sherman Act, the Florida Antitrust Act, and Florida's Consumer Protection laws) violate Florida's Deceptive and Unfair Trade Practices Act (FDUTPA), Fla. Stat. §§ 501.201, *et seq*.

The Parties in the Barba action vigorously litigated the case through contentious motion practice, including fully briefed class certification, summary judgment and *Daubert* motions, on some of which Magistrate Judge Goodman had issued R&Rs. At the time of settlement, full trial preparation was underway, as the Parties had exchanged witness lists, deposition designations, exhibit lists and filed a joint pre-trial stipulation and Motions *in Limine*.

For full details regarding the litigation ("Litigation") and the settlement negotiations, Plaintiffs respectfully refer to the Procedural History section of their Motion for Final Approval of Class Action Settlement, which is incorporated herein by reference, D.E. 429 at pp. 6-9.

III. SUMMARY OF THE SETTLEMENT

For purposes of this Motion, Plaintiffs reiterate here that the Settlement required Shire to deposit an aggregate amount of $14.75 million into a Settlement Fund. D.E. 423-1 ¶ 1.6.1. This Settlement Fund, and any interest thereon, shall be used to pay (1) the settlement amounts owed to Settlement Class Members, (2) reasonable attorneys' fees and costs approved by the Court, (3) any Court-approved service awards pursuant to ¶ 1.4.3 of the Settlement Agreement, (4) taxes payable on the Settlement Fund, (5) costs and expenses associated with the administration of funds, and (6) any and all notice and administration expenses. *Id*. ¶ 1.6.3. Shire has agreed not to oppose Class Counsel's request for attorneys' fees of up to 35% of the Settlement Fund, plus the reimbursement of litigation costs. Shire has also agreed not to oppose Service Awards for each of the Class Representatives in the *Barba* matter, as well as the named plaintiffs in the *Netwall*, *Peluso*¸ and *Hartenstine* matters in the total amount of $35,000. These Service Awards

will compensate the Class Representatives and other named plaintiffs for the time, effort, and risks they undertook in prosecuting the Litigation. Further details regarding the Settlement are found in Plaintiffs' Motion for Final Approval of Class Action Settlement. D.E. 429, pp. 9-13.

IV. CLASS COUNSEL'S UNOPPOSED REQUEST FOR ATTORNEYS' FEES IS REASONABLE AND AUTHORIZED BY THE SETTLEMENT AGREEMENT

At the conclusion of a successful class action, class counsel may apply to the Court for an award of attorneys' fees. *See* Fed. R. Civ. P. 23(h). As indicated in the Court-approved Notice disseminated to the Class, and consistent with standard class action practice and procedure, Class Counsel request attorneys' fees in the amount of $5,162,500 (or 35% of the Settlement Fund), to be paid from the total settlement fund made available through Class Counsel's efforts in reaching this Settlement.

This fee request is well within the guidelines set forth by the Eleventh Circuit. "It is well-established that when a representative party has conferred a substantial benefit upon a class, counsel is entitled to an allowance of attorneys' fees based upon the benefit obtained." *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991).[1] Not only does the Settlement provide for reasonable attorneys' fees to be paid from the Settlement Fund by Shire, but Class Counsel's requested attorneys' fees fall within the acceptable range in this Circuit.

A. The Settlement Agreement and Eleventh Circuit Law Support an Award of Attorneys' Fees from the Settlement Fund

The requested amount of attorneys' fees of $5,162,500, representing 35% of the Settlement Fund, comports with both the Settlement Agreement and Eleventh Circuit law.

[1] "…Eleventh Circuit attorneys' fee law governs this request, not the law of Florida." *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362, n.3 (S.D. Fla. 2011) (district court presiding over diversity-based class action has equitable power to apply federal common law in deciding fees); *see also Allapattah Servs., Inc. v. Exxon Corp.,* 454 F. Supp. 2d 1185, 1200 (S.D. Fla. 2006).

Under the Settlement, Class Counsel are entitled to request, and Shire does not oppose, attorneys' fees of up to 35% of the Settlement Fund, plus reimbursement of litigation costs and expenses and Service Awards for the named plaintiffs. *See* D.E. 423-1 ¶¶ 1.4.3, 1.6.5. The Parties negotiated and reached agreement regarding attorneys' fees, costs, and Service Awards only after reaching agreement on the other material terms of the Settlement. This was an appropriate way to resolve attorneys' fees. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorneys' fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of the fee"); *see also Cohn v. Nelson*, 375 F. Supp. 2d 844, 854 (E.D. Mo. 2005) (explaining that where "parties have agreed on the amount of attorneys' fees and expenses, courts give the parties' agreement substantial deference").

It is also "well-established in the Eleventh Circuit that, when a representative party confers a benefit upon a class, counsel is entitled to an allowance of attorneys' fees based upon the benefit obtained." *Camden I*, 946 F.2d at 771; *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1358; *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). As the Supreme Court, Eleventh Circuit, and courts of this District have all recognized: "'a litigant or 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.'" *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (quoting *Boeing*, 444 U.S. at 478); *Camden I*, 946 F.2d at 771 ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval."). As the Eleventh Circuit further noted in *Camden I*, "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys' fees awarded from a common fund shall be based upon a

reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774. Adequate attorneys' fees also encourage efforts to seek redress for wrongs caused to entire classes of persons, and deter future misconduct of a similar nature. *See, e.g.*, *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1367; *Mashburn v. Nat'l Healthcare*, 684 F. Supp. 679, 687 (M.D. Ala. 1988); *See also Deposit Guar. Nat'l Bank v. Rope*, 445 U.S. 326, 338-39 (1980).

The Court has discretion to determine an appropriate fee percentage. *See Hensley*, 461 U.S. at 437. "'There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case.'" *In re Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 774). "To avoid depleting the funds available for distribution to the class, an upper limit of 50% may be stated as a general rule, although even larger percentages have been awarded." *Camden I*, 946 F.2d at 774-75. [2]

Class Counsel's fee request falls within this acceptable range. As discussed *infra*, application of the *Camden I* factors supports Class Counsel's fee request. In addition, a fee award of 35% is consistent with the fee awards in similar cases. *See In re Checking Overdraft Litig.*, 830 F. Supp. 2d at 1366, n.35 (collecting cases) (awarding 35% noting that, in private marketplace, "contingent fees of 33-44 percent are common in mass action[s] and . . . higher fees often prevail"); *In re Remeron Direct Purchaser Antitrust Litig.,* Case No. 03-cv-0085 (D.N.J 2005) (awarding fees of one-third of $75 million)*; In re Buspirone Antitrust Litig.,* 2003 U.S. Dist. LEXIS 26538, at *11 (S.D.N.Y.2003) (awarding fees of one-third of $220 million);

[2] The calculation of attorneys' fees is based on a percentage of the entire Settlement Fund, not just the amount claimed against it. *See Waters v. Intl. Precious Metals Corp.*, 190 F.3d 1291, 1297 (11th Cir. 1999) ("[C]lass counsel are entitled to a reasonable fee based on the funds potentially available to be claimed, regardless of the amount actually claimed").

Bradburn Parent Teacher Store, Inc. v. 3M, 513 F. Supp. 2d 322, 336-341 (E.D.PA 2007) (awarding fees in the amount of 35% of $35 million);and *In re Vitamins Antitrust Litig.*, No. 99-197, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding fees of 34% of an approximately $360 million fund).

B. The *Camden I* Factors Support Class Counsel's Requested Fee

In ruling on a fee request, courts consider the "*Camden I* factors" (sometimes referred to as the "*Johnson* Factors"). *Camden I*, 946 F.2d at 772 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). These factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is contingent; (7) the time limitations imposed; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney(s); (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id*. These twelve factors are merely guidelines, as the Eleventh Circuit has "encouraged the lower courts to consider additional factors unique to the particular case." *Walco Inv., Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) (citing *Camden I*, 946 F.2d at 775). Additional factors include "'time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement, and the economics involved in prosecuting a class action." *In re Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Camden I*, 946 F.2d at 775). Application of the *Camden I* and other salient factors here supports Class Counsel's fee request.

1. Class Counsel Devoted a Substantial Amount of Time and Effort to This Case on a Purely Contingent Basis, and Were Precluded From Other Employment as a Result

The first, fourth, sixth and seventh *Camden I* factors – the time and labor involved, the preclusion of other employment, whether the fee was contingent and the time limitations imposed – are interrelated inquires, each supporting the reasonableness of Plaintiffs' fee request.

In total, Class Counsel has spent over 16,000 hours working on the case, totaling over $6,350,000 in lodestar. Joint Decl. ¶ 34. Class Counsel's lodestar is reasonable under the circumstances of this case. *First,* the hourly rates of Class Counsel in this Litigation ($400 to $750 for partners and $165 to $450 for associates) are comparable to those awarded in other cases in Florida and this District. *Id*. ¶ 35. *Second,* the hours billed by Class Counsel in the Litigation are reasonable. Prosecuting this case entailed extensive motion practice, fact and expert discovery and trial preparation. *Id*. ¶ 36. Given the contentious, multi-year history of the Litigation and the result achieved, the number of hours is reasonable. *Id*.

Prosecuting and settling this Litigation required substantial time and resources. *Id*. ¶¶ 35-40. Indeed, the case did not settle until just a few weeks short of trial, after all expert reports were exchanged, all experts were deposed, a trial consultant had been retained and nearly all pre-trial work was completed. This Litigation demanded that Class Counsel research, understand, synthesize, and brief various topics relating to pharmacology, the prescription drug supply chain, patent practice and prosecution, antitrust theories, healthcare economics, and economic modeling. *Id*. ¶ 97. Discovery and litigation strategy, therefore, required a significant amount of Class Counsel's time and labor to develop the legal theories and arguments presented in the pleadings and crafted through discovery. *Id*. Class Counsel took more than 15 depositions of Shire fact and expert witnesses, presented 6 experts on behalf of Plaintiffs, and reviewed over 2.5 million pages of documents. *Id*. Along the way, Class Counsel took appropriate steps to avoid duplication of effort and to efficiently manage and staff the cases. All tasks were coordinated and

assigned by Kanner & Whiteley among the four law firms and amongst lower and higher-level attorneys. *Id*. ¶ 87. The mediation and settlement process itself also required substantial time and labor, as Class Counsel prepared for and participated in two separate all-day mediations (besides informal lead-up or post-mediation discussions), and worked for many weeks with defense counsel to finalize the Settlement Agreement after an agreement in principle had been reached. *Id*. ¶¶ 16-25.

Class Counsel's labors were not for naught. The Settlement represents a significant benefit to the Class. If the lodestar approach were applied, this case would justify a significant multiplier.[3] "In a *pre-Camden I* case, the Court performed both methods of analysis and gathered cases on the range of fee awards under either method and noted that the lodestar multiples 'in large and complicated class actions' range from 2.26 to 4.5, while 'three appears to be the average.'" *Pinto v. Princess Cruise Line, Ltd*. 513 F. Supp.2d 1334 (S.D. Fla. 2007). Considering a multiplier would certainly be justified in this case, Class Counsel's fee request, which is well under their lodestar without application of a multiplier, demonstrates that it would more than satisfy a cross-check using the lodestar method. *Id* ¶ 89.

Moreover, Class Counsel's work is not yet done. Class Counsel will be required to, among other things: (1) continue to monitor the notice program and communicate with the Claims Administrator, Kurtzman Carson Consultants (KCC), (2) respond to class member inquiries now and for years to come; (3) respond to objections, if any; (4) prepare for and attend the Final Approval Hearing; (5) continue to oversee the claims administration process, including addressing any claim review issues; (6) monitor distribution of benefits to the Settlement Class; (7) monitor the distribution of the *Cy Pres* funds, if any, and (8) potentially handle post-judgment appeals. Joint Decl. ¶ 90. Notably, Class Counsel's fee request does not seek any

[3] Courts may consider *Camden I* factors to adjust the lodestar. *Hensley*, 461 U.S. at 434 & n.9.

additional funds for future work on behalf of the Class. *Id.*

Furthermore, the time spent on the Litigation was time that could not be spent on litigating other matters. Joint Decl. ¶ 91. Each of the four firms involved are small firms with very busy practices. Class Counsel were required to forego other opportunities to properly prosecute this action over a three year period. *See Yates v. Mobile Cnty Pers. Bd.*, 719 F.2d 1530, 1535 (11th Cir. 1983) (recognizing that the expenditure of 1,000 billable hours, often in significant blocks of time, "necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work"). The *Yates* court further acknowledged that such devotion of time and resources to complex matters like the instant Action "should raise the amount of the award". *Id.*; *see Schlage Lock Co.*, 505 F. Supp. 2d 704, 708 (D. Colo. 2007) ("[T]he *Johnson* court concluded that priority work that delays a lawyer's other work is entitled to a premium."). Finally, "a determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high." *Pinto*, 513 F. Supp. 2d at 1339. "A contingency fee arrangement often justifies an increase in the award of attorney's fees." *In re Checking Overdraft Litig.*, 830 F. Supp. 2d at 1364 (citing *In re Sunbeam*, 176 F. Supp.2d at 1335). Here, Class Counsel has worked on this case for over three years, from when they first communicated with Plaintiffs Barba and Reisman, investigated their claims and filed suit, to the present. Joint Decl. ¶ 91. In effect, Class Counsel have advanced their legal services to the Settlement Class since that time. Class Counsel have prosecuted this case wholly on a contingency basis, and did so at great risk of never receiving any compensation. These factors strongly militate in favor of the requested fee.

2. This Action Involved Difficult Issues of Developing Law and Plaintiffs' Claims Entailed Considerable Risk

The second and tenth *Camden I* factors – the novelty and difficulty of the issues raised in the litigation and the "undesirability" of the case, respectively – are also interrelated and support the requested fee award.

Although Class Counsel were able to achieve fair, adequate and reasonable relief for the Class in this case, the relief obtained cannot be viewed in a vacuum. *See In re Checking Overdraft Litig.*, 830 F. Supp. 2d at 1364 ("Undesirability and relevant risks must be evaluated from the standpoint of plaintiffs' counsel *as of the time they commenced the suit*, not retroactively, with the benefit of hindsight.") (emphasis added). Ultimately, the "attorneys' risk is perhaps the foremost factor in determining an appropriate fee award." *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-cv-61677, 2008 U.S. Dist. LEXIS 125370, at *33 (S.D. Fla. Jan. 31, 2008) (citing *Pinto*, 513 F. Supp. 2d at 1339).

Antitrust class actions are "arguably the most complex actions to prosecute as the legal and factual issues involved are always numerous and uncertain in outcome." *Glaberson v. Comcast Corp.*, No. 06-6604, 2015 U.S. Dist. LEXIS 127370, at *10 (E.D. Pa. Sept. 22, 2015) (internal quotations and alterations omitted). This is especially true for indirect purchaser antitrust litigation, such as this one, involving challenges to allegedly anticompetitive reverse payments arising out of patent litigation settlements. The Supreme Court's recent decision in *FTC v. Actavis, Inc.*, 133 S. Ct. 2223 (2013) may have resolved a circuit split in favor of evaluating reverse payments under the antitrust rule of reason, but, as predicted by Justice Roberts, the majority opinion left many questions unanswered. *Id.* (Roberts, J., dissenting) at 2245 ("Good luck to the district courts that must, when faced with a patent settlement, weigh the 'likely anticompetitive effects, redeeming virtues, market power, and potentially offsetting legal considerations present in the circumstances.'"). As one district court noted: "We are

confronting this issue early in a law refinement process that will take some time to shake out; as Yogi Berra would say, it ain't over 'til it's over.' And it certainly ain't over yet." *In re Loestrin 24 FE Antitrust Litig.*, 45 F. Supp. 3d 180, 194-95 (D.R.I. 2014), *vacated on other grounds*, 814 F.3d 538 (1st Cir. Feb. 22, 2016). Combined with some of the "famously difficult" obstacles in indirect purchaser antitrust litigation such as *Illinois Brick*[4] issues, *see Campos v. Ticketmaster Corp.*, 140 F.3d 1166, 1170 (8th Cir. 1998), Class Counsel's litigation of Plaintiffs' claims has been fraught with risk since inception of this matter, as further evidenced by Shire's multiple Rule 12(b)(6) and Rule 56 motions.

While Plaintiffs and Class Counsel are confident in the strength of their case, they are also pragmatic in their awareness of the fact that in order to succeed at trial, Plaintiffs would be required to surmount additional hurdles. For instance, although the Magistrate Judge recommended Class Certification (D.E. 333), Shire filed its objection to that decision with the District Court (D.E. 383), and there was considerable risk to the Class given that the Magistrate Judge subsequently recommended exclusion of Plaintiffs' damages expert (D.E. 396). Also, Shire's motion for summary judgment (D.E. 262) was fully briefed and pending at the time a settlement was reached. *See* Joint Decl. ¶ 92. If Plaintiffs' claims survived these pretrial pitfalls, they also faced the uncertainty of a lengthy, complicated trial with no guaranteed outcome. *Id.* Indeed, one need only look to the *Nexium* trial to see multiple risks and pitfalls Plaintiffs and their counsel face in the litigation, trial and appeal of a pay-for-delay class action. *See In re Nexium Antitrust Litigation*, Case No. 12-2409 (D. Mass.). Finally, even if Plaintiffs obtained a favorable jury verdict, Shire would re-raise its arguments before the Eleventh Circuit following entry of judgment, thereby creating new risks and years of delay. *Id.*

In addition to the legal risks undertaken, Class Counsel also took a tremendous financial

[4] *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

risk. As in any legitimate antitrust class action, particularly one as complicated as this, Class Counsel is required to retain experts to support the class claims. Here Class Counsel retained several experts including a health economist liability expert, Dr. Thomas McGuire; a health economist damages expert, Dr. Meredith Rosenthal; a reasonable royalty and valuation expert, Christopher Tregillis, CPA, ABV; a patent expert, Bruce Sunstein; a prescription data expert for class certification issues, Dr. Elan Rubinstein; and, a rebuttal FDA expert, Gordon Johnston. Each expert prepared extensive and detailed reports and were deposed at length by Shire's counsel. The costs expended for these experts exceeded $1,019,972. Class Counsel moved forward with these experts as required to amply support the class case and expended the majority of these costs even before receiving a ruling on Defendant's motion to dismiss with no certainty of success at the dispositive motion stage or trial.

Each of these risks, standing alone, could have impeded Plaintiffs' successful prosecution of these claims at trial (and in any appeal). *Id*. Together, they overwhelmingly demonstrate that Class Counsel bore significant risk to obtain an excellent class-wide result. *Id.* ¶ 93.

3. Class Counsel Achieved an Excellent Result for the Class

The eighth factor looks to the amount involved in the litigation, with particular emphasis placed on the "monetary results achieved" in the case by Class Counsel. *See Allapattah,* 454 F. Supp. 2d 1185; *Hensley*, 461 U.S. at 436 (finding that the "most critical factor is the degree of success obtained"). The Settlement is tremendous in this regard. Instead of facing additional years of costly and uncertain litigation, upon settlement approval, Class Members will receive an immediate cash benefit. A full report on the success of the claims administration and processing will be filed prior to the Fairness Hearing.

Further evidence of the excellent result Class Counsel achieved is the fact that the

Settlement has been met with near-universal approval at this stage. Joint Decl. ¶ 95 (More than 19,250 claims have been submitted to date, no objection has been submitted to date, and only three Class Members have opted out. *Id.* ¶ 95.); *See Lee v. Ocwen Loan Servicing, LLC,* Case No. 14-CV-60649-GOODMAN, 2015 U.S. Dist. LEXIS 121998, at *83 (S.D. Fla. Sept. 14, 2015) ("Obviously, a low number of objections suggests that the settlement is reasonable…." (internal quotations omitted)) (awarding $9.85 million in fees and expenses, and a $5,000 service award to each named plaintiff, in a claims-made settlement). The Notice informed the Class about the Settlement terms, including that Plaintiffs would seek attorneys' fees of up to 35% (or $5,162,500), plus costs and service awards totaling $35,000 for the named plaintiffs. *See* Joint Decl. ¶ 95.

4. The Requested Fee is Consistent with Attorney Fees Awarded in Other, Similarly Complex Class Settlements

The fifth and twelfth *Camden I* factors – the customary fee and awards in similar cases, respectively – also support a finding that the agreed-upon fee request is reasonable.

The requested fee falls squarely within the range of awards made in numerous cases brought in this Circuit and District. *See, e.g.*, *In re Checking Overdraft Litig.*, 830 F. Supp. 2d at 1366, n.35 (collecting cases) (awarding 35% noting that, in the private marketplace, "contingent fees of 33-44 percent are common in mass action and . . . higher fees often prevail"); *In re Managed Care Litig.,* MDL No. 1334, 2003 U.S. Dist. LEXIS 27228 (S.D. Fla. Oct. 24, 2003) (approving 35.5% including costs on settlement of $100 million); *Wolff v. Cash 4 Titles*, No. 03-22778, 2012 U.S. Dist. LEXIS 153498, at *3 (S.D. Fla. Sept. 26, 2012) (33.8%); *Allapattah,* 454 F. Supp. 2d at 1210 (awarding fees equaling 31.5% of settlement of over $1 billion including interest); *See also Waters v. Int'l Precious Metals Corp.,* 190 F. 3d 1291 (11th Cir. 1999) (affirming fee award where district court determined benchmark should be 30% then adjusted fee

award higher based on circumstances, even though most of fund ultimately reverted back to defendant).

Furthermore, the percentage requested here matches the percentage typically awarded (and affirmed) in similar antitrust actions. *See, e.g.*, *In re Lease Oil Antitrust Litig.,* 186 F.R.D. 403 (S.D. Tex. May 10, 1999) (35.1%); *In re Combustion, Inc.,* 968 F. Supp. 1116, 1130 (W.D. La. June 4, 1997) (36%); *In re Ampicillin Antitrust Litig.,* 526 F. Supp. 494, 498 (D.D.C. Oct. 19, 1981) (45%); *Beech Cinema, Inc. v. Twentieth Century Fox Film Corp.*, 480 F. Supp. 1195, 1199 (S.D.N.Y. Nov. 23, 1979) (approximately 53%), *aff'd,* 622 F.2d 1106 (2d Cir. 1980); *In re Remeron Direct Purchaser Antitrust Litig.,* Case No. 03-cv-0085 (D.N.J 2005) (awarding fees of one-third of $75 million)*; In re Buspirone Antitrust Litig.,* 2003 U.S. Dist. LEXIS 26538, at *11 (S.D.N.Y. 2003) (awarding fees of one-third of $220 million); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 336-341 (awarding fees in the amount of 35% of $35 million); and *In re Vitamins Antitrust Litig*., 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding fees of 34% of an approximately $360 million fund).

Accordingly, factors five and twelve favor Class Counsel's request for a fee award of $5,162,500.

5. A High Level of Skill was Necessary to Perform the Legal Services Properly

The remaining *Camden I* factors – the skill required to perform the legal services properly and the experience, reputation, and ability of the attorneys – confirm that the requested fee is reasonable.

As noted above, antitrust class actions are "arguably the most complex actions to prosecute as the legal and factual issues involved are always numerous and uncertain in outcome." *Glaberson*, 2015 U.S. Dist. LEXIS 127370, at *10 (internal quotations and

alterations omitted). This litigation was no exception, as it involved the abstruse intersection of antitrust and patent law. *See, e.g.*, Kaplow, Louis, *The Patent-Antitrust Intersection: A Reappraisal*, 97 Harv. L. Rev. 1813, 1816 (1984) ("This Article is an attempt to clarify the issues, but its revelation of the unavoidable complexity of the problem indicates that, in practice, the untangling of the myriad strands in the patent-antitrust conflict might prove impossibly difficult.").

Class Counsel are seasoned attorneys with considerable experience litigating and settling class actions of similar size, scope and complexity. Joint Decl. ¶ 96. Class Counsel regularly engage in major complex litigation involving consumer fraud and antitrust claims, and have been appointed class counsel by courts throughout the country. *Id.* Class Counsel's skill at adapting their litigation strategies to address the challenges posed by adverse case law on Rule 23 and unsettled reverse payment claims in the wake of *FTC v. Actavis*, as well as the formidable defense mounted by Shire's counsel, was critical in opposing multiple Rule 12(b)(6) motions to dismiss, obtaining a favorable recommendation from the Magistrate Judge to certify the merits class, and briefing *Daubert* and summary judgment motions. *Id*.

Moreover, Class Counsel thoroughly investigated Plaintiffs' claims and made skillful use of documents and information to assess Shire's potential exposure as to the claims at issue. Joint Decl. ¶ 97. With this information, Class Counsel developed theories of liability and damages after a detailed study of key information buried in the more than 2,500,000 pages of documents Shire produced in discovery (along with additional discovery from third parties), and working with multiple experts in the fields of healthcare and general economics, pharmaceutical economics, prescription drug supply chain management, and patent practice. *Id.* ¶ 97. Class Counsel synthesized all of this discovery and information to ultimately obtain a favorable Report

and Recommendation on class certification, and to oppose Shire's robust *Daubert* and summary judgment challenges. *Id.*

Also, the skill and competence of Defendant's lawyers should be considered and cannot be doubted. *See In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d at 1334 ("In assessing the quality of representation, courts have also looked to the quality of the opposition the plaintiffs' attorneys faced."). Shire is represented by Frommer Lawrence & Haug LLP, a law firm specializing in patent, antitrust, and other complex areas, as well as Shutts & Bowen LLP, a full-service law firm with more than 270 attorneys in seven offices in Florida. *See* http://www.flhlaw.com/; http://shutts.com/. Notably, both of these firms focus on intellectual property matters, which were at the center of this Litigation. In fact, Frommer Lawrence & Haug has uniquely deep, firsthand experience from representing Shire in the underlying patent litigation. Thus, there is little doubt that both of Shire's law firms have the resources, reputations, and experience to vigorously and effectively advocate Shire's interests. *See* http://www.flhlaw.com/; http://shutts.com/. For this reason, Class Counsel had to work with a high level of expertise to faithfully litigate each of the many, sprawling issues at play during the life of the Litigation.

V. CLASS COUNSEL'S COSTS ARE REASONABLE AND WERE NECESSARILY INCURRED

Class Counsel also request reimbursement for a total of $1,338,729.23 in certain litigation costs and expenses. Joint Decl. ¶ 3; *see Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970). This sum corresponds to certain actual out-of-pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution of this litigation and the Settlement. Joint Decl. ¶ 3. Such costs are compensable in a class action. *See* Fed. R. Civ. P. 23(h) (permitting award of "nontaxable costs that are authorized by law or by the parties' agreement"). In addition to being compensable under Rule 23, these costs are also compensable

under FDUTPA: "In addition to the award of taxable costs, FDUTPA allows for the award of non-taxable costs, i.e., those costs that are not taxable under federal law at 28 U.S.C. §1920." *Chow v. Chak Yam Chau*, --- Fed. Appx. ---, 2015 WL 7258668, at *2, n. 4 (11th Cir. 2015) (citing Fla. Stat. 501.2105(1)-(4) and affirming award of $182,992.12 in costs in FDUTPA action).

The categories of expenses for which Class Counsel seek reimbursement here are the type of expenses routinely charged to paying clients in the marketplace and, therefore, the full requested amount should be reimbursed. *See* Joint Decl. at ¶¶ 53, 66, 74, 82. These expenses include but are not limited to: filing fees and court reporter charges; photocopies; non-local telephone and conference calls; postage and overnight delivery; mediation fees; fees for Plaintiffs' liability and damages experts; travel expenses (transportation and lodging) for court hearings, two mediations, expert witness meetings and expert and fact witness depositions in the locations chosen by the deponents or by Shire, throughout the country.[5] *Id.* ¶¶ 39, 53, 66, 74, 82. Indeed, $1,019,972 of these costs were for Plaintiffs' experts who prepared reports and were deposed. These expenses are reasonable and justified. *See, e.g., Gevaerts v. TD Bank, N.A.,* No. 11:14-cv-20744-RLR, 2015 U.S. Dist. LEXIS 15034, at *40 (S.D. Fla. Nov. 5, 2015) (approving request for reimbursement of $300,666.95 in out-of-pocket costs and expenses for expert fees, photocopies, travel, online research, and mediator fees) (citing *Mills*, 396 U.S. 375 at 391-92);[6] *see also, e.g.*, *In re Polyurethane Foam Antitrust Litig.*, 10-MD-2196, 2016 U.S. Dist. LEXIS 9609, at *63 (D. Kan. Jan. 27, 2016) (approving $5.1 million in costs); *In re Vitamin C Antitrust*

[5] Both Shire and the Class were represented by national counsel as well as local counsel. These counsel agreed to coordinate the discovery from the Pennsylvania, New Jersey and Massachusetts cases with the Florida case to avoid multiple depositions and additional travel expenses.

[6] Class Counsel's future costs (e.g., travel to the Final Approval Hearing) are not included in the requested cost award, and Class Counsel do not seek reimbursement for those costs. Joint Decl. ¶ 86.

Litig., 2012 U.S. Dist. LEXIS 152275, at *29, *33-4 (S.D.N.Y. 2012) (approving $2.5 million in out-of-pocket expenses in indirect purchaser antitrust case); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106 (E.D. Pa. June 19, 2013) (awarding costs of $1,848,720.15 in indirect purchaser antitrust action); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-MDL-1317, 2005 U.S. Dist. LEXIS 43082, at *22-23 (S.D. Fla. Apr. 19, 2005) (awarding $3,133,070.86 in costs, plus interest). Class Counsel's costs are also reasonable given the number of depositions taken, the number of important litigation experts retained, and the joint retention of third-party mediators. *See, e.g.*, *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 354 (S.D.N.Y. 2014) ("The lion's share of these [$591,011.17 in] expenses was for experts (approximately $490,000) and mediation (approximately $25,000), both critically important to this litigation. Courts routinely award such costs.").

VI. THE REQUESTED SERVICE AWARDS ARE REASONABLE AND SHOULD BE APPROVED

Service awards "compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Allapattah Servs.*, 454 F. Supp. 2d at 1218. "[A]mple precedent" exists for awarding service awards to named plaintiffs at the conclusion of a class action. *David v. Am. Suzuki Motor Corp.*, No. 08-cv-22278, 2010 U.S. Dist. LEXIS 146073, at *19 (S.D. Fla. Apr. 15, 2010). "Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become class representatives." *Gevaerts*, 2015 U.S. Dist. LEXIS 150354, at *25.

The service awards requested for Class Representatives in this case, and the named plaintiffs in the related *Netwall*, *Peluso*, and *Hartenstine* cases, are reasonable and appropriate. Each plaintiff committed time and effort to this Litigation, and bore the risks involved in prosecuting this Litigation. *See* Joint Decl. ¶102; Decl. of Monica Barba, ¶¶ 4-6; Decl. of

Jonathan Reisman, ¶¶ 4-6; Decl. of Karen DeReus, ¶¶ 4-6; Decl. of Rayna DeReus, ¶¶ 4-6; Decl. of Jodi Leit, ¶¶ 4-5; Decl. of Mindi Leit, ¶¶ 4-5; Decl. of Barrie Shanahan, ¶¶ 4-5; Decl. of Brian Shanahan, ¶¶ 4-5; Decl. of Allyson Netwall, ¶¶ 4-5; Decl. of Michael Peluso, ¶¶ 4-5; Decl. of Jessica Hartenstine, ¶¶ 4-5; Decl. of Rosmary Autrey, ¶¶ 4-5; Decl. of Jayme Dearing, ¶¶ 4-5.

The Class Representatives encountered reputational risks in commencing suit, including disclosing and making public that they (or, in some cases, their minor children) have been diagnosed with Attention Deficit Hyperactive Disorder (ADHD) and were prescribed and purchased Adderall XR® to treat it. The Class Representatives also took risks attaching their names to publicly filed class action lawsuits in the hopes of helping others. Thus, their willingness to disclose personal information to prosecute their claims on behalf of putative classes warrants a reasonable service award.

The service awards total an agreed-upon amount of $35,000. *See* Agreement, ¶¶ 1.4.3, 1.6.5. The Notice informed Class Members of this. *See* Joint Decl. ¶ 102. The service awards requested are in the amount of $5,000 for Plaintiffs Barba and Reisman, and $2,500 for each of the remaining named plaintiffs. *Id.* The awards requested for Plaintiffs Barba and Reisman are higher to reflect their additional effort, namely, that they were the first two named plaintiffs to initiate this Litigation, and they were the only named plaintiffs to be deposed. *Id.*

The service awards, both individually and collectively, fall well within the range approved in other cases. Collectively the service awards total $35,000, which is less than .00237% of the Settlement Fund. *See, e.g.*, *In re Checking Account Overdraft*, 2013 U.S. Dist. LEXIS 190559, at *30-31 (approving service award that "represented less than .3% of the Settlement Fund."). The individual settlement awards of either $2,500 or $5,000 are also well within the range of those courts typically approve in similar cases. *See, e.g.*, *Almanzar v. Select*

Portfolio Servicing, Inc., No. 1:14-cv-22586, 2016 U.S. Dist. LEXIS 40457, at * (S.D. Fla. Mar. 25, 2016) ("For their service, above and beyond that provided by any other Settlement Class member, a $5,000 award is fair, reasonable, and adequate."); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106-07 (E.D. Pa. 2013) (approving $5,000 service award to consumer in indirect purchaser antitrust action); *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 476 (E.D. Pa. 2010) ("If the named plaintiff was deposed, the named plaintiff's incentive payment will be $5,000; if the named plaintiff was not deposed, the named plaintiff's incentive payment will be $2,500."); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99-MDL-1317, 2005 U.S. Dist. LEXIS 13992, at *53 (S.D. Fla. July 8, 2005) (approving $2,500 awards for consumers in indirect purchaser antitrust litigation).

VII. CONCLUSION

For the foregoing reasons, Class Counsel's request for attorneys' fees, litigation costs, class notice and administration costs, and service awards for the named Plaintiffs are reasonable, and should be granted.

Date: September 23, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that on this 23rd day of September, 2016, this filing complies with Local Rule 5.1 and this Court's January 29, 2015 Order (Dkt. 173).

By: /s/ Brian T. Ku
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2016, a true and correct copy of the foregoing has been furnished via CM/ECF electronic filing.

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