

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IRON WORKERS DISTRICT COUNCIL OF
NEW ENGLAND HEALTH AND WELFARE
FUND, UTAH-IDAHO TEAMSTERS
SECURITY FUND, JACKSONVILLE POLICE
OFFICERS AND FIRE FIGHTERS HEALTH
INSURANCE TRUST, and NYST COUNCIL
HEALTH & HOSPITAL FUND, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

TEVA PHARMACEUTICAL INDUSTRIES
LTD.; TEVA PHARMACEUTICALS USA, INC.;
TEVA BRANDED PHARMACEUTICAL
PRODUCTS R&D, INC.; and NORTON
(WATERFORD) LTD.,

Defendants.

Civ. No. 23-cv-11131-NMG

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES,
AND SERVICE AWARDS**

Date filed: June 5, 2026

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I. INTRODUCTION

Before the Court is a proposed settlement to resolve this litigation between Plaintiffs¹ and defendants Teva Pharmaceutical Industries Ltd.; Teva Pharmaceuticals Usa, Inc.; Teva Branded Pharmaceutical Products R&D, Inc.; and Norton (Waterford) Ltd. (“Teva”) (collectively, Plaintiffs and Teva are the “Parties”). The Settlement² was reached after three years of complex, hard-fought antitrust litigation over Plaintiffs’ allegations that Teva acted to delay the onset of generic competition for its branded, beclomethasone dipropionate inhalers for treatment of asthma, QVAR and QVAR Redihaler, causing end-payors to pay supra-competitive prices for the inhalers.

The Settlement provides two valuable benefits to the Settlement Class³: (i) a non-reversionary, common fund of \$35 million cash from which Class Members may recover for their purchases of branded QVAR and QVAR Redihaler; and (ii) Teva’s agreement to de-list from the U.S. Food and Drug Administration’s (“FDA”) Orange Book the six remaining patents that do not claim the drug beclomethasone dipropionate.

The Settlement represents a strong result for the Settlement Class of end-payors. The \$35 million cash recovery represents 11.3 percent of the estimated damages, which is in line with similarly complex pharmaceutical antitrust litigations. And the specific performance relief stands out as particularly valuable. Teva’s agreement to de-list six device patents covering QVAR – a settlement obligation which Teva has already performed – is a Class-wide benefit, and indeed nationwide benefit, in that it removes a significant barrier to generic entry. Teva’s

¹ The named plaintiffs are Iron Workers District Council of New England Health and Welfare Fund; Utah-Idaho Teamsters Security Fund, Jacksonville Police Officers and Fire Fighters Health Insurance Trust; and NYST Council Health & Hospital Fund.

² Capitalized terms are those defined in the Settlement Agreement.

³ In its April 2, 2026 Preliminary Approval Order the Court defined the Settlement Class as: “All persons or entities that, for consumption by themselves, their families, or their members, insureds, or beneficiaries, purchased, paid, and/or provided reimbursement for some or all of the purchase price of QVAR and/or QVAR Redihaler in the Class States, . . . other than for resale, at any time from January 1, 2015 through July 31, 2025 (the ‘Class Period’).” Order Granting Prelim. Approval, ECF No. 204 (Apr. 2, 2026).

de-listing has already resulted in the arrival to the market of a cheaper, generic inhaler with beclomethasone dipropionate, and opens the door to others as well.

Plaintiffs will file a motion for final approval of the settlement in accordance with the Court-ordered schedule. The Court is familiar with the efforts expended on both sides of the litigation, the novelty and complexity of the issues, and the substantial risk that the Class and Class Counsel⁴ could come away from this litigation empty-handed. The benefits of the Settlement deliver an immediate and concrete result.

In this motion, Class Counsel respectfully requests that the Court award attorneys' fees equal to 33% of the Settlement Fund (\$11,550,000), and reimbursement of litigation expenses of \$666,412.26 from the Settlement Fund, plus interest on the awards at the same rate as earned by the Settlement Fund while in the escrow account. Declaration of Todd A. Seaver ("Seaver Decl.") ¶¶ 48-49 (citing Settlement Agreement ¶¶ 7 (a) & (b)). The requested fee represents a 1.18 multiplier on Plaintiff Counsel's lodestar, *id.* ¶ 48, well within the range of multipliers awarded in this district. The requested fee also falls within the range of percentages awarded in this district and others for work in similar cases. Plaintiff Counsel devoted more than 13,000 hours to prosecuting the case on a wholly contingent basis, foregoing other work and assuming the risk of total loss on the advanced expenses. *See id.* ¶ 43. Finally, to recognize the named plaintiffs for their time, effort, and willingness to bring this litigation on behalf of the prospective class Class Counsel ask the Court to approve a service award of \$20,000 each to the four Plaintiffs who stepped forward and advanced this case on behalf of the Class of end-payors.

II. SUMMARY OF REQUESTED FEES AND EXPENSES

As detailed below and in the accompanying declarations, from inception of the case through the date of the Settlement Agreement's execution on September 25, 2025, Plaintiff

⁴ "Class Counsel" refers to the law firms Berman Tabacco, Sperling Kenny Nachwalter, LLC (F/K/A Sperling & Slater, LLC), and Hilliard Shadowen LLP, which the Court appointed as class counsel on behalf of the Settlement Class. *See* Order Granting Prelim. Approval ¶ 12, ECF No. 204. "Plaintiff Counsel" refers to all eight firms which are counsel of record responsible for prosecuting the case, which is Class Counsel plus Hagens Berman Sobol Shapiro LLP, Glancy Prongay Wolke & Rotter LLP, Burke LLP, Rupp Pfalzgraf LLC, and Korein Tillery LLC.

Counsel devoted 13,230.20 hours with a corresponding lodestar of \$9,763,905.50. Litigation expenses total \$666,412.26.

Firm	Hours to 9/25/2025	Lodestar to 9/25/2025	Expenses
Berman Tabacco	7,851.00	\$5,172,730.50	\$358,905.52
Burke LLP	149.10	\$186,500.00	\$9,716.06
Glancy Prongay Wolke & Rotter LLP	261.40	\$317,080.00	\$8,012.39
Hagens Berman Sobol Shapiro LLP	479.90	\$400,935.00	\$57,757.60
Hilliard Shadowen LLP	2,453.30	\$1,980,793.50	\$68,761.15
Korein Tillery LLC	110.60	\$112,860.00	\$1,387.61
Rupp Pfalzgraf LLC	424.10	\$164,770.50	\$144.10
Sperling Kenny Nachwalter, LLC	1,500.80	\$1,428,236.00	\$161,019.27
Litigation Fund Interest Expended (\$1,179.79 (interest earned) minus \$471.23 (interest remaining in account as of 6/2/26))			\$708.56
Totals:	13,230.20	\$9,763,905.50	\$666,412.26

To facilitate the Court’s consideration of Class Counsel’s fee and expense requests, each firm has submitted a declaration that: (1) identifies the attorneys and staff members who worked on the case and the amount of time spent on tasks they performed; and (2) provides an itemization of the expenses incurred by each firm. *See* Seaver Decl. ¶¶ 43-54 & Exs. A-G (declarations of lead attorney at Sperling Kenny Nachwalter, LLC (F/K/A Sperling & Slater, LLC), Hilliard Shadowen LLP, Hagens Berman Sobol Shapiro LLP, Glancy Prongay Wolke & Rotter LLP, Burke LLP, Rupp Pfalzgraf LLC, and Korein Tillery LLC).

III. LEGAL STANDARD

In common fund cases, attorneys who secure a recovery for the class are “entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In evaluating whether a fee award is appropriate, the Court looks at seven factors:

- (1) the size of the fund and the number of persons benefitted;
- (2) the skill, experience, and efficiency of the attorneys involved;
- (3) the complexity and duration of the litigation;
- (4) the risks of the litigation;
- (5) the amount of time devoted to the case by counsel;
- (6) awards in similar cases; and
- (7) public policy considerations.

Arkansas Tchr. Ret. Sys. v. Insulet Corp., 546 F. Supp. 3d 11, 16 (D. Mass. 2021) (quoting

Arkansas Tchr. Ret. Sys. v. State St. Bank & Tr. Co., 512 F. Supp. 3d 196, 208, 222, 239 (D.

Mass. 2020), *aff'd in part, appeal dismissed in part sub nom. Arkansas Tchr. Ret. Sys. v. State St. Corp.*, 25 F.4th 55 (1st Cir. 2022)).

Courts in the U.S. Court of Appeals for the First Circuit may calculate attorneys' fees by either the percentage of the fund ("POF") method or the lodestar method. *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (describing "distinct advantages" of POF method in common fund cases). In practice, most courts use the POF method but may calculate a lodestar multiplier "cross-check." *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 246 (D. Mass. 2022) (Gorton, J.) ("The typical range of the lodestar multiplier allowed by this Court is between one and 2.7."). "As a percentage of the relevant common fund, standard awards in the First Circuit range from 20% at the low end to 33% at the high end" with courts treating 25% as a "benchmark" starting point from which the fee may be lowered or raised in the discretion of the district court. *Id.* at 245.

Additionally, attorneys "whose efforts succeed in creating a common fund for the benefit of a class are entitled not only to reasonable fees, but also to recover from the fund, as a general matter, expenses, reasonable in amount, that were necessary to bring the action to a climax." *In re Fid./Micron Sec. Litig.*, 167 F.3d 735, 737 (1st Cir. 1999); *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (recognizing the right to reimbursement of expenses where a common fund has been produced for the benefit of a class).

IV. THE REQUESTED ATTORNEYS' FEE IS REASONABLE

Class Counsel has secured a settlement that provides a common fund of \$35,000,000 for damages accrued during the class period and relief in the form of specific performance by Teva that will significantly reduce future harm to competition and to Class members. As compensation for generating the fund and securing the injunction, Class Counsel requests an attorneys' fee award of 33% of the Settlement Fund.

A. The Settlement achieves a cash recovery and specific performance that warrants the requested fee

The first factor the Court must consider when awarding attorneys' fees is "the size of the fund and the number of persons benefitted." *Insulet*, 546 F. Supp. 3d at 16 (quoting *State St. Bank & Tr.*, 512 F. Supp. 3d at 208, 222, 239). In other words, did Plaintiff Counsel achieve results that warrant the requested fee? Here, the size of the fund is just one part of the total value of the settlement. At the outset of this litigation, Class Counsel had two goals: (1) secure monetary relief for injuries to the prospective class; and (2) secure injunctive relief that would pave the way for generics to come to market, thereby reducing the cost of QVAR and QVAR Redihaler and their generic equivalents going forward. *See* Seaver Decl. ¶ 9; Compl. ¶¶ 698-703, ECF No. 1; Am. Compl. ¶¶ 703-708, ECF No. 31. With the proposed Settlement Agreement, Class Counsel met both goals.

Class Counsel secured a total settlement fund that accounted for 11.3% of the estimated single damages at issue in this case. Mem. in Supp. of Pls.' Prelim. Approval Mot. 12-13, ECF No. 197. This is in line with similarly complex pharmaceutical litigations. *See Nichols v. SmithKline Beecham Corp.*, No. Civ.A.00-6222, 2005 WL 950616, at *16 (E.D. Pa. Apr. 22, 2005) (approving settlement that amounted to "between 9.3% and 13.9% of damages" and noting that this percentage "is consistent with those approved in other complex class action cases").

In addition to the fund, the Settlement Agreement obligates specific performance by Teva that achieves the injunctive relief sought by Class Counsel from the outset of this case: requiring Teva to delist from the Orange Book the patents that Plaintiffs alleged did not claim the drug beclomethasone dipropionate. Seaver Decl. ¶ 39 & Settlement Agreement ¶ 7(c). Teva has already performed its obligation under the Settlement Agreement and de-listed the patents on or about December 10, 2025. Seaver Decl. ¶¶ 40-41. The injunctive relief provides **nation-wide** relief by removing a significant barrier to generic entry, providing increased access and reduced cost for beclomethasone dipropionate going forward. Indeed, the generic drugmaker Amneal Pharmaceuticals, Inc. received final FDA approval for its generic beclomethasone dipropionate

inhaler product on December 16, 2025 – within one week of Teva’s de-listing—and launched into the marketplace in April 2026. *Id.* ¶ 42.

To be clear, the value of the Settlement in direct pecuniary terms is \$35 million. Although the injunctive relief has already generated substantial additional economic benefits for the Class, Class Counsel do not seek a percentage of that value. But the Court should weigh that additional value in evaluating the reasonableness of the requested 33% fee on the cash portion of the settlement.

B. Plaintiff Counsel devoted time and resources to this complex litigation

1. Plaintiff Counsel invested substantial time and labor

Plaintiff Counsel collectively worked this case for three years, investing 13,230.20 hours in attorney and other legal professional time to prosecute this Action (the “Action”) from inception until executing the Settlement Agreement on September 25, 2025. As set forth in the Seaver Declaration (¶¶ 43-54) and other Plaintiff Counsel declarations (Exs. A-G to Seaver Decl.), Plaintiff Counsel engaged in a substantial effort:

- Conducted a year-long pre-complaint investigation into a drug product that had, at the time, escaped all governmental scrutiny. Seaver Decl. ¶¶ 5-7. The investigative process required identifying drug substances and drug products that had been on the market for over twenty years, surveying literature regarding pharmaceutical industry practices, and analyzing highly technical pharmaceutical patents to determine whether they claimed the drug, studying patent litigation that may have been improperly initiated. *Id.*
- Successfully opposed Teva’s Rule 12(b)(6) motion to dismiss. *Id.* ¶¶ 11-12, 14.
- Successfully defended Teva’s motion for judgment on the pleadings pursuant to Rule 12(c). *Id.* ¶¶ 15-17.
- Propounded written document discovery on Teva through multiple sets of document requests and engaged in more than a dozen meet and confers with Teva’s counsel regarding the requests for production. *Id.* ¶¶ 21-22.

- Subpoenaed three pharmaceutical companies, six pharmacy benefits managers, and three pharmaceutical wholesalers. Extensively met and conferred with multiple sets of counsel for the third parties to secure compliance with the subpoenas, and engaged in letter correspondence regarding disputes. Through these efforts, Plaintiffs collected more than 825,000 pages of previously non-public information including Abbreviated New Drug Application (“ANDA”) filings, market analyses and forecasts, correspondence with federal regulators, and transaction level purchase data relevant to proof of Plaintiffs’ claims. *Id.* ¶ 30.
- Reviewed over 2.5 million pages of documents produced, Class Counsel formed teams of reviewing attorneys from each firm to focus on specific issues, and batched documents out accordingly based on the time-frame of the document and the producing custodian’s role at the producing party. To maximize the value of the review, Class Counsel created thousands of pages of work product, including memoranda, summaries, and spreadsheets organizing the evidence by elements of the claims, by issue, and by witnesses. Witness binders and issue binders were later created based on this work product. Utilizing the document review platform from third-party vendor Everlaw retained for the litigation, Class Counsel conducted a linear review of the documents produced through July 17, 2025. At the time of Settlement, Class Counsel had analyzed nearly 75% of all the documents produced, and Plaintiffs’ experts had conducted extensive analysis of 685 gigabytes of transaction-level data. *Id.* ¶¶ 22, 33.
- Defended and managed discovery from the four named plaintiffs. Plaintiffs made initial disclosures, responded to Teva’s 65 requests for production of documents, identified custodians, negotiated and ran search terms, collected documents, and responded to interrogatories. Plaintiffs took the necessary steps to collect transaction level data from their respective pharmacy benefit managers. At the time the Settlement was reached, Class Counsel were working with Plaintiffs to prepare for 30(b)(6) deposition testimony concerning Teva’s 68 topics of examination served on the named plaintiffs. *Id.* ¶ 32.

- Litigated the crucial issue of Teva’s assertion of a regulatory mandate defense and the scope of the corresponding waiver of attorney-client privilege regarding the defense. The Parties briefed Teva’s proposed protective order seeking to curtail the scope of the waiver, argued at two motion hearings before Magistrate Judge Levenson, and continued to meet and confer regarding the scope of the waiver for weeks before reaching a settlement. *Id.* ¶¶ 23-29 & Ex. B (Shadowen Decl.) ¶ 7.
- Worked closely and extensively with experts within their varied fields of expertise: health care economics and estimated damages, FDA regulation and the ANDA approval process, patent issues (the ability to design around the patents, and the enforceability of the patents), and the manufacturing and design of inhalers. Had the case proceeded further toward trial, the testimony of each expert would have been crucial to proving plaintiffs’ claims. Seaver Decl. ¶ 34 & Ex. B (Shadowen Decl.) ¶ 7.

An analysis of Plaintiff Counsel’s hours devoted to various aspects of the litigation shows the largest percentages of hours were dedicated to merits discovery (49.84%), and pleadings and motions (17.83%). Combined with case planning and strategy (15.61%) and pre-complaint fact investigation and analysis (9.75%), these four areas are where 93.03% of total hours were focused. Seaver Decl. ¶¶ 45-46.

2. The complexity of the Action favors the fee request

When considering attorneys’ fee awards, courts consider the complexity of the litigation, including the number of hours involved, the theories of the case, and the effort put forth by Counsel. *See Gordan v. Massachusetts Mut. Life Ins. Co.*, No. 13-cv-30184-MAP, 2016 WL 11272044, at *2 (D. Mass. Nov. 3, 2016).

“Federal antitrust cases are complicated, lengthy, and bitterly fought,” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005), and antitrust class actions are “arguably the most complex action[s] to prosecute,” as the “legal and factual issues involved are always numerous and uncertain in outcome.” *In re Optical Disk Drive Prods. Antitrust Litig.*, No. 3:10-md-2143 RS, 2016 WL 7364803, at *4 (N.D. Cal. Dec. 19, 2016) (quoting *In re*

Linerboard Antitrust Litig., No. CIV.A. 98-5055, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004), *amended*, No. CIV.A.98-5055, 2004 WL 1240775 (E.D. Pa. June 4, 2004)).

Here, the case presented difficult legal issues and evidentiary hurdles. This case exemplified the complexities of antitrust class actions, especially in the pharmaceutical industry. In order to succeed at trial, Class Counsel would need to present the jury with the testimony regarding the merits (or lack thereof) of complex pharmaceutical patents, the likelihood that the FDA would have approved any of the competing ANDAs absent the patent listings in the Orange Book, and proof of Teva's market power and the economic impact of generic entry to that market. Additionally, Class Counsel would need to rebut Teva's claim that they had a subjective good faith belief that the patent listings were proper. Each element introduces more uncertainty that the jury would reach a verdict in Plaintiffs' favor.

Although there had been one previous antitrust litigation alleging that the wrongful listing of a device patent delayed the onset of generic competition, *see In re Lantus Direct Purchaser Antitrust Litig.*, 950 F.3d 1, 5-6 (1st Cir. 2020), at the time Class Counsel investigated, no similar cases had been brought with regards to inhalers. Nor has any Orange Book case gone to trial. Moreover, Class Counsel brought this case without the benefit of any previous government or private challenge to Teva's listings.

C. The requested fee is warranted by the risk undertaken by Class Counsel

The "foremost" factor is the risk of litigation, *Goldberger v. Integrated Res.*, 209 F.3d 43, 54 (2d Cir. 2000), which is "measured as of when the case is filed," *id.* at 55.

The risks in this litigation were daunting. First, no government enforcement action preceded the case. Indeed, it was only *after* Class Counsel filed this Action that the Federal Trade Commission ("FTC") first issued public warning letters to Teva for listing patents in the Orange Book that did not claim the drug. Seaver Decl. ¶ 13. Even then, the FTC stopped short of any enforcement action.

Second, the prospect of Plaintiffs prevailing grew more precarious as the litigation wore on. While initially Plaintiffs pursued antitrust claims based on an alleged reverse payment as

well as the improper Orange Book listing and product hop theories, Teva's motion for judgment on the pleadings succeeded in knocking out the reverse payment claim. *Id.* ¶ 17. This demonstrates the risk undertaken from the start.

Underscoring the risk taken by Class Counsel is the fact that a *direct* purchaser plaintiff filed a separate class action (more than a year after Plaintiffs here brought suit) but abandoned its case immediately after Teva showed there was not a reverse payment. Faced with the same increased risk, by contrast, Class Counsel here continued to prosecute what they viewed as justiciable issues.⁵

Class Counsel undertook this case on a wholly contingent fee basis, and advanced considerable out-of-pocket expenses at risk of total loss. Seaver Decl. ¶ 58. Teva is one of the world's largest pharmaceutical manufacturers and reported more than \$17 billion in revenue for 2025. To defend this litigation Teva hired one of the nation's most prestigious defense firms, Kirkland & Ellis.⁶ Teva and its counsel vigorously defended this suit, and would have continued to be a formidable adversary through trial.

The high level of risk undertaken by Plaintiff Counsel to take on and litigate this case strongly favors the requested fee.

D. The requested fee is in line with awards in similar cases

Courts in this district regularly approve one-third fee awards in generic delay pharmaceutical antitrust cases due to the technical and complex legal and factual issues

⁵ Over year after plaintiffs filed this Action, and shortly after the Court denied in large part Teva's motion to dismiss the Action, a direct purchaser plaintiff brought a class action on behalf of a putative class of direct purchasers of QVAR from Teva, captioned *RDC Liquidating Trust v. Teva Pharmaceutical Industries, Ltd.*, No. 1:24-cv-11320-NMG (D.Mass.). The direct purchaser action was substantially identical to Plaintiffs' Action. Seaver Decl. ¶ 18. Teva answered and filed a companion motion for judgment on the pleadings pursuant to Rule 12(c), which sought judgment on the identical grounds as Teva had moved against the Plaintiffs pursuant to Rule 12(c) in this Action. *Id.* ¶ 19. The direct purchaser plaintiff did not oppose Teva's Rule 12(c) motion, but instead stipulated to a voluntary dismissal of its action. *Id.* ¶ 20.

⁶ The 2026 AmLaw 100 ranks Kirkland & Ellis as the highest grossing law firm in the country, and second for profits per equity partner. AMERICAN LAWYER, "The 2026 Am Law 100" (Apr. 15, 2026), <https://www.law.com/americanlawyer/am-law-100/>.

implicated. The following are antitrust class actions in this district that are matched by this Action in their complexity and demand for skilled prosecution, brought by payors for pharmaceuticals alleging that anticompetitive conduct delayed generic entry. In each the court awarded a one-third fee:

- *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 77-82 (D. Mass. 2005) (Young, J.) (awarding “33–1/3% of the \$67,000,000 settlement fund” at a lodestar multiplier of 2.02);
- *In re Asacol Antitrust Litig.*, No. 1:15-cv-12730 (DJC), 2017 WL 11475275, at *4 (D. Mass. Dec. 7, 2017) (Casper, J.) (awarding “attorneys’ fees totaling 33 1/3% of the Settlement fund”);
- *In re Solodyn Antitrust Litig.*, No. 1:14-md-2503 (DJC), 2018 WL 7075881, at *2 (D. Mass. July 18, 2018) (Casper, J.) (awarding “attorneys’ fees totaling 33 1/3% of the combined [funds]”);
- *In re Prograf Antitrust Litig.*, No. 1:11-md-02242-RWZ, 2015 WL 13908415, at *4–5 (D. Mass. May 20, 2015) (Zobel, J.) (awarding 33 and one-third percent of settlement fund with 2.35 lodestar multiplier).

It appears that the only pharmaceutical antitrust class action in this district that did not award attorneys’ fees totaling one-third of the fund was *Ranbaxy*. There, this court adjusted the attorneys’ fees “significantly downward” because the “litigation was the successor of a civil settlement and criminal plea agreement.” *Ranbaxy*, 630 F. Supp. 3d at 248.

Unlike in *Ranbaxy*, Class Counsel initiated this class action without the benefit of any government action, let alone a criminal plea agreement and civil settlement. Plaintiffs’ complaint was filed on May 19, 2023, nearly four months *before* the FTC issued a policy statement regarding improperly listed device patents. Seaver Decl. ¶ 13 & Ex. H (Sep. 2023 FTC Policy Statement). In fact, even the Amended Complaint predates the Policy Statement. Am. Compl.,

ECF No. 31 (Sep. 1, 2023).⁷ Notably, although the Court in *Ranbaxy* denied those counsel’s request for a one-third fee, the Court awarded a lodestar multiplier of 2.1 for the end-payors and 1.55 for the direct purchasers. *Ranbaxy*, 630 F. Supp. 3d at 248.

Moreover, this is the only Settlement among the pharmaceutical generic-delay cases in this district that includes a form of injunctive relief. Amneal received final FDA approval for its generic QVAR within a week after Teva de-listed the six remaining improperly-listed patents as obliged by the Settlement Agreement. The relief clears the field for additional generic entry by others as well. This specific and valuable benefit weighs heavily in favor of the requested fee. *See In re Domestic Air Transp. Litig.*, 148 F.R.D. 297, 352 (N.D. Ga. 1993) (finding settling defendants’ agreements to implement antitrust compliance programs were “non-monetary benefits conferred on the class by the settlement” which were properly factored into fee award because they “will help forestall antitrust violations in the future”).

The factor of fees awarded in similar cases strongly supports the requested fee.

E. The 1.18 lodestar multiplier shows the requested fee is reasonable

Although courts in the First Circuit are not required to calculate a lodestar, doing so provides a pragmatic cross-check for the reasonableness of a requested fee. *In re Thirteen Appeals*, 56 F.3d at 307. This Court typically allows lodestar multipliers ranging “between one and 2.7.” *Ranbaxy*, 630 F. Supp. 3d at 246. Other Courts in the First Circuit have allowed similar lodestar multipliers. *See, e.g., Ford v. Takeda Pharms. U.S.A., Inc.*, No. 1:21-cv-10090-WGY, 2023 WL 3679031, at *2 (D. Mass. Mar. 31, 2023) (awarding lodestar multiplier of 2.41).

The reasonableness of the fee request here is confirmed by a lodestar cross-check. Plaintiff Counsel invested 13,230.20 hours in litigating the case, valued at \$9,763,905.50 in lodestar. Seaver Decl. ¶ 43. The requested fee of 33% amounts to \$11,550,000, which results in a multiplier of 1.18. *Id.* ¶ 48. This is at the low end of multiples of lodestar ordinarily found

⁷ Two months after the Amended Complaint was filed, the FTC issued warning letters concerning same patents alleged to be improperly listed in this case. Seaver Decl. ¶ 13.

reasonable in cases of this complexity and is substantially more modest than the multipliers in *Ranbaxy*.⁸

F. Public policy supports awarding the requested fee

There is a “significant societal interest in obtaining redress for prescription drug consumers whose harms could not, given the cost of litigation, be pursued on an individual basis.” *In re Lupron Mktg. & Sales Pracs. Litig.*, No. 01-cv-10861-RGS, 2005 WL 2006833, at *6 (D. Mass. Aug. 17, 2005).

This litigation was brought for that very reason—to compensate purchasers who had overpaid for an asthma medication that the FDA approved over fifty years ago, Am. Compl. ¶ 174, ECF No. 31, and over twenty-five years ago in its current hydrofluoroalkane formulation, *id.* ¶¶ 188-89. The Center for Disease Control (“CDC”) estimates that nearly 25 million Americans (7.7% of the total population) suffer from asthma.⁹ Put simply, any health plan purchasing prescription medications for as few as 10 people was more likely than not to buy asthma medication.¹⁰ Yet, prior to this litigation only two generic asthma medications were available: fluticasone/salmeterol and albuterol sulfate.

As one FTC commissioner declared “private antitrust enforcement [is] essential to protect competition, markets, and consumers.”¹¹ As mentioned above, this litigation predates any

⁸ Additionally, Class Counsel’s rates assigned to each of the attorneys is reasonable within the marketplace. In 2023, Judge Young observed that “current national hourly rates are: \$1,370 for attorneys with at least 25 years of experience; \$1,165 for attorneys with 15–24 years of experience; \$840 for attorneys with 5–14 years of experience; \$635 for attorneys with 0–4 years of experience; and \$425 for paralegals and law clerks.” *Ford v. Takeda Pharms.*, 2023 WL 3679031, at *2. The hourly rates for each of the Plaintiff Counsel firms are in line with the marketplace rates observed by Judge Young. *See, e.g.*, Class Counsel hourly rates, Seaver Decl. ¶ 57 (Berman Tobacco attorney hourly rates ranging \$1,345 down to \$450) & Exs. A (Sperling Kenny Nachwalter Decl.) ¶ 6 (\$1,375 down to \$525), B (Hilliard Shadowen Decl.) ¶ 6 (\$1,375 down to \$400).

⁹ Most Recent National Asthma Data, CDC, https://www.cdc.gov/asthma/most_recent_national_asthma_data.htm (accessed May 5, 2026).

¹⁰ There is a 55.1% chance, that at least 1 person in any group of 10 people will suffer from asthma.

¹¹ Remarks of the FTC Comm’r Terrell McSweeney, Am. Antitrust Inst. Private Antitrust Enforcement Conf. (Dec. 2,

government action regarding QVAR, and the Settlement Agreement's specific performance obligation on Teva to de-list certain patents has made, and will make, a difference in the market. Class Counsel stepped in where the federal government did not. The requested fee compensates Class Counsel for doing so, funds Class Counsel's future litigation in support of the public interest, and incentivizes other attorneys to do the same.

And the public has a significant interest in ensuring that private attorneys who seek and obtain valuable injunctive relief receive an adequate fee. Courts should not "shortchange efforts to seek effective injunctive or declaratory relief." Rule 23, Committee Notes on Rules – 2003 Amendment (quoting *Blanchard v. Bergeron*, 489 U.S. 87, 95 (1989)).

V. CLASS COUNSEL'S EXPENSES ARE REASONABLE

Under the common fund doctrine, attorneys who create a common fund for the benefit of a class are entitled to reimbursement of reasonable litigation expenses from the fund. Fed. R. Civ. P. 23(h); *Mills*, 396 U.S. at 392 (recognizing the right to reimbursement of expenses where a common fund has been produced for the benefit of a class).

As detailed in the accompanying Seaver Declaration and Class Counsel declarations, Class Counsel advanced litigation expenses over seven years totaling \$666,412.26. Seaver Decl. ¶ 49 (breaking down every category of expense in total dollars).

The single largest expense, \$401,478.75 (or 60.2% of the total expenses) was necessary to engage four expert consultants and witnesses: Dr. Keith Leffler, Todd Clark, Guy Donatiello and Michael Lusty. *Id.* ¶ 53. These experts were hired to provide consultation on issues including the estimated damages, FDA's ANDA approval process, the strength of the patents at issue, and the manufacturing and design of inhalers. *Id.* At the time of the Settlement Agreement, each of the four experts had reviewed significant portions of the documents and data relevant to their area of expertise, had provided insight to Class Counsel through both formal and informal reports, and were preparing to write their formal reports. The fees paid to these experts secured

2014), https://www.ftc.gov/system/files/documents/public_statements/602971/mcsweeny_-_aai_remarks_12-02-14.pdf.

valuable analyses that Class Counsel used to develop their case during the course of the litigation.

After expert expenses, the next largest expense was for the purchase of drug prescription data from IQVIA (17% of total), followed by legal research (7.5%), travel costs (7.0%) and the document hosting database platform (5.5%). *Id.* Combined, these particular litigation expenses account for 97.2% of all unreimbursed litigation expenses. *Id.*

These are all the types of out-of-pocket expenses that are normally billed to paying clients and routinely reimbursed from common funds. The \$666,412.26 of litigation expenses should be reimbursed from the Settlement Fund. They are reasonable in amount and were incurred to advance the claims of the Plaintiffs and the Settlement Class.

VI. SERVICE AWARDS FOR THE NAMED PLAINTIFFS ARE WARRANTED

Class Counsel seek a service award of \$20,000 for each of the four named plaintiffs, each a labor union paying for its members' and beneficiaries' pharmaceutical drug purchases. If granted, the awards would total \$80,000 to compensate them for the significant time and effort they devoted to this case and in recognition of the relief they have secured for absentee Class Members. The awards would amount to 0.2 percent of the \$35 million Settlement Fund.

Courts often grant service awards to named plaintiffs in class actions. In granting a service award, the courts consider the role the named plaintiffs played to bring their claims and the various time and effort each plaintiff exerted in the overall litigation. *See Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 352 (D. Mass. 2015) (considering class representative's participation in pre-complaint investigations, review of the complaint, responses to discovery requests, and communications with class counsel regarding settlement negotiations), *aff'd*, 809 F.3d 78 (1st Cir. 2015).

Each of the four named plaintiffs reviewed the operative complaint in advance, responded to discovery requests, and assisted in the collection of documents and data, including transaction level data from their respective Pharmacy Benefit Managers. *See Seaver Decl.* ¶¶ 67-70 & Exs. D (Glancy Prongay Decl.) ¶¶ 13-22, F (Rupp Pfalzgraf Decl.) ¶¶ 14-16. Each stepped

forward to serve as a named plaintiff knowing that it would be required to produce financial records and information, provide pretrial testimony and otherwise participate in pretrial discovery, and appear at trial if necessary. *See, e.g.,* Seaver Decl. Ex. D (Glancy Prongay Decl.) ¶ 13.

The Settlement could not have been achieved without the four named Plaintiffs' contributions, and so all are deserving of the requested service award.

VII. CONCLUSION

Class Counsel respectfully requests that the Court (1) award attorneys' fees equal to 33% of the Settlement Fund (\$11,550,000), reimbursement of litigation expenses of \$666,412.26 from the Settlement Fund, plus interest on the awards at the same rate as earned by the Settlement Fund while in the Escrow Account, and service awards to the four named Plaintiffs totaling \$80,000.

Dated: June 5, 2026

BERMAN TABACCO

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CERTIFICATE OF SERVICE

I, Todd A. Seaver, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access this filing through the Court's system, and notice of this filing will be sent to these parties by operation of the Court's electronic filing system.

Dated: June 5, 2026

Respectfully Submitted,

/s/ Todd A. Seaver

Todd A. Seaver