

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

IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION

MDL No. 2724
Case No. 2:16-MD-2724

THIS DOCUMENT RELATES TO:

HON. CYNTHIA M. RUFE

Direct Purchaser Class Plaintiffs' Actions

**DECLARATION OF DIANNE M. NAST
IN SUPPORT OF MOTION BY DIRECT PURCHASER CLASS
PLAINTIFFS FOR AN ORDER PURSUANT TO PARAGRAPH 26 OF
THE COURT'S MAY 11, 2022 ORDER**

Pursuant to 28 U.S.C. § 1746, I, Dianne M. Nast, hereby declare and state as follows:

1. I am admitted to practice before Courts in the Commonwealth of Pennsylvania and the State of New Jersey, the Eastern District of Pennsylvania where this Multidistrict Litigation ("MDL") is pending, the Courts of Appeals for the Third, Fifth, Sixth, Seventh, Eighth, and Eleventh Circuits, the Supreme Court of the United States, and various federal district courts. I am the founder and managing partner of NastLaw LLC. I have been appointed by this Court as Lead and Liaison Counsel for the Direct Purchaser Plaintiffs ("DPPs"). *See* Pretrial Order No. ("PTO") 2.

2. I provide this Declaration in support of the Motion by DPPs for an Order granting: (A) Reimbursement of \$6,300,000 for expenses and partial payment of future expenses, (B) Service Awards in the amount of \$20,000 to each of the four Named Plaintiffs, and (C) Establishing of a set aside in escrow of one-third of the

Settlement Fund net of expenses and service awards, plus accrued interest, for payment of any fees awarded by the Court pursuant to any future application for attorneys' fees by DPPs.

BACKGROUND

3. This MDL has been pending since 2016 and involves dozens of DPP complaints and complaints brought by other Plaintiff groups. Each complaint alleges anticompetitive conduct by some or all of approximately 40 different Defendant Corporate Families. *See* PTO 158 at fn.3. Each complaint alleges that Defendants artificially inflated the prices of the hundreds of different pharmaceutical products at issue here.

4. Much of this MDL – and nearly the entirety of DPPs' settlement negotiations with Sun and Taro – has occurred under the shadow of the COVID-19 public health crisis, which created additional challenges in this litigation.

5. DPPs have been directly involved in the management of this MDL and participated in all facets of the litigation, from inception ongoing through the present. After reaching settlements with Sun and Taro, creating a common Settlement Fund of \$85,000,000 (eighty-five million dollars) for all direct purchasers, DPPs continue to litigate claims against the other Defendants in this MDL.

6. Under PTO 188, fact discovery for the bellwethers continues until January of 2023, and thereafter DPPs are to try their bellwether claims involving

Clobetasol and Clomipramine. It can be reasonably anticipated that DPPs may be litigating claims in this MDL for at least several years.

**DPPS' EXPENSES AND REQUEST FOR SET ASIDE FOR
FUTURE FEE PETITION**

7. After the creation of the MDL, I was appointed by the Court to serve as Lead and Liaison Counsel for DPPs, with a Plaintiffs' Steering Committee of five additional members. *See* PTO No. 6. As part of that role, my firm has maintained a litigation fund on behalf of DPPs that is financed through assessments of DPP firms and utilized to pay for DPPs' litigation expenses.

8. In DPPs' Motion for Preliminary Approval of the Sun and Taro Settlements, DPPs requested approval to apply for expenses up to \$6,800,000, less \$500,000 for administrative expenses that this Court has already approved. The Court has so authorized that application, which is the subject of the instant motion.

9. The attached Exhibit A contains a summary of DPPs' shared expenses totaling \$6,110,999.74 that DPPs have incurred from inception of this action through July 31, 2022. Exhibit A includes all expenses paid or billed to DPPs' common benefit litigation fund. It does not include held expenses that individual DPP law firms have incurred to date.

10. Pursuant to Paragraph 13 of this Court's May 11, 2022 Order Granting DPPs' Motion for Preliminary Approval of the Sun and Taro Settlements, DPPs have withdrawn \$400,000 from the Settlement Fund for administrative expenses and will withdraw the remaining \$100,000 for administrative expenses, as previously authorized by the Court. *See* ECF No. 2093 at ¶ 13.

11. Accordingly, of the \$6,800,000 authorized for application, after deducting \$500,000 for administrative expenses for the Sun and Taro Settlements as authorized by this Court, a balance of \$6,300,000 remains. As noted in Paragraph 9 above, \$6,110,999.74 in expenses has been incurred to date, leaving a balance of \$189,000.26. DPPs request that the Court authorize the withdrawal of the remaining balance, to be applied toward future expenses such as those listed in Exhibit A.

12. DPPs' expenses have been incurred for the common benefit of the settlement class, are reasonable in amount, and are adequately supported by documentation in DPPs' possession. These documents can be tendered to the Court at any time. These expenses are consistent with those identified in PTO 8 as common benefit expenses, many of which are ongoing. *Compare Exhibit A with PTO 8 at p. 3-6.*

13. In sum, I respectfully request that DPPs be permitted to withdraw \$6,300,000 from the Settlement Fund pursuant to DPPs' contemporaneously filed Motion.

14. At this time, DPPs are not seeking fees from the Sun and Taro Settlement Fund. Instead, DPPs propose setting aside in escrow one-third of the net Settlement Fund plus accrued interest. Doing so will allow payment to DPPs of any fees awarded by this Court upon a future application.

CONTRIBUTIONS OF NAMED PLAINTIFFS

15. Named Plaintiffs are César Castillo, LLC, FWK Holdings, LLC, Rochester Drug Co-Operative, Inc., and KPH Healthcare Services, Inc. a/k/a Kinney Drugs, Inc. Each Named Plaintiff has directly purchased drugs at issue in this MDL from one or more of the named Defendants.

16. Named Plaintiffs have been involved in this MDL since inception, assisting with pleadings and investigation of DPPs' claims, responding to Defendants' discovery requests, and preparing for and sitting for depositions.


17. Without the contributions of Named Plaintiffs, it would have been more challenging to litigate the class claims of the direct purchaser class.

18. As a result, I believe it is reasonable to grant service awards to the Named Plaintiffs for services they performed for the benefit of the DPP class. Based on the significant contributions Named Plaintiffs have made, I believe \$20,000 is an appropriate service award for each Named Plaintiff at this time.

I declare that the above is true and correct to the best of my knowledge.

Dated: August 9, 2022

Respectfully submitted,



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EXHIBIT A

***IN RE: GENERIC PHARMACEUTICALS PRICING
ANTITRUST LITIGATION***

MDL NO. 2724

Summary DPP Shared Expenses Incurred – Inception through July 31, 2022

Expense	Amount
Depositions and Court Reporter Costs	\$33,202.15
Costs for the Electronic Storage, retrieval and searches of ESI	\$468,593.04
Court, filing, and service costs	\$100,919.20
Expert witnesses and consultant fees and expenses	\$5,149,017.98
Postage	\$4,901.18
Data and materials provided by outside third-party vendors, consultants and attorneys	\$342,838.42
Bank or financial institution charges	\$16,428.95
Total	\$6,110,999.74