

submitted in support of the Fee and Expense Motion (Dkt. 945-1), had attached to it as Exhibit A an Excel spreadsheet purporting to reflect the \$2,519,904.62 total. (Dkt. 945-2). This included the costs incurred by the various law firms, as well as the accrual of \$931,255.51 related to notice to the 11-State Class. Supp. Wexler Decl. ¶ 2. Unfortunately, though depicted on the spreadsheet as of June 30, 2023, Co-Lead Counsel inadvertently failed to include in the total, and thus their request, the anticipated costs of notice and claims administration relating to the End Payor Settlement. *Id.* Co-Lead Counsel also discovered a mathematical error understating out-of-pocket expenses by \$66.13. *Id.*

3. In addition, at the time of submitting the Fee and Expense Motion, Co-lead Counsel had not yet been invoiced by their economist, Greylock McKinnon Associates, for Rena Conti's role in the settlement allocation process. Supp. Wexler Decl. ¶3. That invoice, attached to the Supp. Wexler Decl. as Exhibit 1, totals \$18,745.07.

4. This Amendment, supported by the Supplemental Wexler Declaration, supplies corrected and updated information regarding expenses and the costs of notice and administration, and it amends the request for reimbursement of costs incurred in the Fee and Expense Motion. The requests for attorneys' fees and service awards in Dkt. Nos. 944 & 945 remain unchanged. Nor are Co-Lead Counsel supplementing the hours and expenses they incurred after June 30, 2023. A new proposed order granting End Payor Plaintiffs' Fee and Expense Motion is submitted herewith.

5. As reflected in the Supplemental Wexler Declaration, as of November 9, 2023, the Settlement Administrator's invoice is \$2,010,311.56, which amount includes the \$931,255.51 already requested. *See* Supp. Wexler Decl. at ¶ 4, Exhibit 2. The Settlement Administrator has also advised that it expects to incur additional expenses of \$325,000 through the conclusion of the settlement administration and the payment of claims. *Id.* The notice and administration costs

submitted with the Fee and Expense Motion, therefore, were understated by \$1,404,056.05. Supp. Wexler Decl. at ¶4. Correcting for the mathematical mistake of \$66.13 and adding the Greylock McKinnon expense of \$18,745.07, by this Amendment, End Payor Plaintiffs are seeking \$1,422,867.25 in addition to the \$2,519,904.62 requested in their submission of September 5, 2023, for a total reimbursement of \$3,942,771.87. This includes out-of-pocket expenses of counsel in the amount of \$1,588,715.24. *Id.* at ¶¶2, 4-5.

6. An Excel spreadsheet reflecting the corrected and amended costs being sought in the Fee and Expense Motion is attached to the Supplemental Wexler Declaration as Exhibit 3.

7. Although Co-Lead Counsel regret having to revise their request for expense reimbursement, they were careful to notify the End Payor Class of this prospect. The nationwide notice described the Settlement and advised End Payor Class members of the administration, allocation, and distribution of the Settlement. *See generally* Dkt. No. 930-9. The notice stated that Co-Lead Counsel would be seeking from the Court “reimbursement of litigation expenses incurred in the case.” Dkt. No. 930-9 at p. 11. It further stated that “Co-Lead Counsel may also request additional...reimbursement of expenses in connection with the administration and preservation of the Settlement Fund.” *Id.*

WHEREFORE, for the reasons previously stated in the Fee and Expense Motion (Dkt. Nos. 944-945), End Payor Plaintiffs respectfully request the entry of an order awarding (1) attorneys’ fees of \$10,000,000 plus interest (1/3 of the \$30,000,000 Settlement Fund and interest that has accrued on the Settlement Fund), (2) reimbursement of costs and expenses of \$3,942,771.87, and (3) a contribution award to each Plaintiff of \$15,000.

Dated: November 22, 2023

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Liaison Counsel for End Payor Class

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2023, a true and correct copy of the foregoing document was electronically filed, will be available for viewing and downloading from the Court's ECF system and will be served by CM/ECF upon all counsel of record.

s/ Kenneth A. Wexler

Accordingly, End Payor Plaintiffs hereby supplement their motion

the End Payor Settlement. There also existed a mathematical error causing expenses of counsel to be understated by \$66.13.

3. In addition, at the time of submitting the Fee and Expense Motion, we had not yet been invoiced by our economist, Greylock McKinnon Associates, for Rena Conti's role in the settlement allocation process. That invoice, attached hereto as Exhibit 1, totals \$18,745.07.

4. As of November 9, 2023, the Settlement Administrator's total invoice is \$2,010,311.56, which amount includes the \$931,255.51 already requested. A true and correct copy of the Settlement Administrator's November 9, 2023, invoice is attached as Exhibit 2. The Settlement Administrator has also advised that it expects to bill for additional expenses of \$325,000 through the completion of Settlement administration and the payment of claims. Thus, the understatement of notice and administration costs submitted with the Fee and Expense Motion is \$1,404,056.05. Adding the economist's invoice of \$18,745.07 (Exhibit 1) and correcting for the \$66.13 mathematical error yields the sum of \$1,422,867.25, which is the amount by which the September 5, 2023, submission was understated.

5. All told, the costs and expenses accumulated by End Payor Plaintiffs' counsel in pursuit of this litigation, class notice, and settlement administration total \$3,942,771.87. Attached as Exhibit 3 is an Excel spreadsheet reflecting these costs and expenses.

6. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on November 22, 2023, in Chicago, Illinois.

/s/ Kenneth A. Wexler

Kenneth A. Wexler

EXHIBIT 1

Greylock McKinnon Associates

75 Park Plaza
 4th Floor
 Boston, MA 02116
 Tax ID No.: 04-3151187

Invoice submitted to:
 Kenneth Wexler
 Wexler Wallace LLP

November 20, 2023
 In Reference To: Suboxone [GMA # 442]
 Invoice #: 23447

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
<u>* Conti, Rena</u>		
7/1/2023-RC Work on settlement declaration and analysis. 7/31/2023	2.50 875.00/hr	2,187.50
SUBTOTAL:	[2.50	2,187.50]
<u>Duggan, TJ</u>		
7/24/2023 TJD KFF data check for Suboxone case.	2.50 220.00/hr	550.00
7/25/2023 TJD KFF data check for Suboxone case.	4.00 220.00/hr	880.00
SUBTOTAL:	[6.50	1,430.00]
<u>Hager, Audrey</u>		
7/24/2023 AH Checking the damages model for this case.	5.00 250.00/hr	1,250.00
7/25/2023 AH Checking the damages model for this case.	0.40 250.00/hr	100.00
SUBTOTAL:	[5.40	1,350.00]

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			<u>Hrs/Rate</u>	<u>Amount</u>
<u>Kovach, Martin</u>				
7/19/2023	MK	Call with R. Rushnawitz to discuss case.	0.20 630.00/hr	126.00
7/20/2023	MK	Read Conti report, and look at damage calculations.	1.60 630.00/hr	1,008.00
7/21/2023	MK	Develop method for allocating settlement; research Medicare Part D data.	1.40 630.00/hr	882.00
7/24/2023	MK	Calculate settlement allocation.	3.70 630.00/hr	2,331.00
7/25/2023	MK	Revise declaration; revise allocation calculations; send to client.	6.50 630.00/hr	4,095.00
7/28/2023	MK	Revise draft settlement declaration.	1.60 630.00/hr	1,008.00
7/30/2023	MK	Respond to client's questions about Form 5500 data.	1.50 630.00/hr	945.00
7/31/2023	MK	Work on declaration; send to client.	2.20 630.00/hr	1,386.00
		SUBTOTAL:	[18.70	11,781.00]
<u>Rushnawitz, R.</u>				
7/19/2023-RR 7/20/2023		Calls re analysis needed; follow up.	0.30 725.00/hr	217.50
		SUBTOTAL:	[0.30	217.50]
<u>Stone, Sarah</u>				
7/21/2023	SS	Research for Conti report on settlement allocation.	3.80 330.00/hr	1,254.00
7/24/2023	SS	Develop settlement allocation methodology and work on draft report.	12.10 330.00/hr	3,993.00
7/25/2023	SS	Review Conti draft and work on allocation spreadsheet.	5.70 330.00/hr	1,881.00
7/27/2023	SS	Update settlement allocation model.	0.70 330.00/hr	231.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
7/31/2023 SS Review Conti settlement allocation report and attachments.	0.20 330.00/hr	66.00
 SUBTOTAL:	<u>[22.50</u>	<u>7,425.00]</u>
For professional services rendered	<u>55.90</u>	<u>\$24,391.00</u>
Previous balance		(\$5,645.93)
 Balance due		<u><u>\$18,745.07</u></u>

EXHIBIT 2

54388 743484 - WEXLER WALLACE LLP - In re Suboxone Antitrust Litigation

Invoice	Invoice Date	Invoice Amt	Current	31to 60 Days	61to 90 Days	Over 90 Days	Invoice Bal
INV000302269	12/31/2021	326,741.20	0.00	0.00	0.00	326,741.20	326,741.20
INV000302356	01/31/2022	2,004.95	0.00	0.00	0.00	2,004.95	2,004.95
INV000302454	02/28/2022	3,065.60	0.00	0.00	0.00	3,065.60	3,065.60
INV000302519	03/31/2022	168,536.71	0.00	0.00	0.00	168,536.71	168,536.71
INV000302721	04/30/2022	410,588.37	0.00	0.00	0.00	410,588.37	410,588.37
INV000302840	05/31/2022	6,456.25	0.00	0.00	0.00	6,456.25	6,456.25
INV000302914	06/30/2022	1,618.74	0.00	0.00	0.00	1,618.74	1,618.74
INV000303114	07/31/2022	1,160.03	0.00	0.00	0.00	1,160.03	1,160.03
INV000303197	08/31/2022	1,133.65	0.00	0.00	0.00	1,133.65	1,133.65
INV000303333	09/30/2022	750.21	0.00	0.00	0.00	750.21	750.21
INV000303503	10/31/2022	811.69	0.00	0.00	0.00	811.69	811.69
INV000303614	11/30/2022	1,120.11	0.00	0.00	0.00	1,120.11	1,120.11
INV000303739	12/31/2022	610.01	0.00	0.00	0.00	610.01	610.01
INV000303941	01/31/2023	2,675.10	0.00	0.00	0.00	2,675.10	2,675.10
INV000304100	02/28/2023	435.77	0.00	0.00	0.00	435.77	435.77
INV000304582	03/31/2023	779.66	0.00	0.00	0.00	779.66	779.66
INV000304748	04/30/2023	750.12	0.00	0.00	0.00	750.12	750.12
INV000304871	05/31/2023	836.24	0.00	0.00	0.00	836.24	836.24
INV000305029	06/30/2023	687.06	0.00	0.00	0.00	687.06	687.06
INV000305136	07/30/2023	494.04	0.00	0.00	0.00	494.04	494.04
INV000305383	08/31/2023	942,868.39	0.00	0.00	942,868.39	0.00	942,868.39
INV000305532	09/30/2023	61,397.72	0.00	61,397.72	0.00	0.00	61,397.72
INV000305668	10/30/2023	74,789.94	74,789.94	0.00	0.00	0.00	74,789.94
Totals:		2,010,311.56	74,789.94	61,397.72	942,868.39	931,255.51	2,010,311.56

EXHIBIT 3**In re Suboxone Antitrust Litigation****From Inception through June 30, 2023**

FIRM	EXPENSES
Cohen Milstein Sellers & Toll	\$9,978.36
Hach Rose Schirripa & Cheverie	\$13,416.50
Heins Mills & Olson	\$14,803.01
Hellmuth & Johnson	\$0.00
Hilliard & Shadowen	\$293,789.17
Milberg, LLP	\$9,975.99
Miller Law	\$296,258.91
Motley Rice	\$298,848.77
Pomerantz Law	\$105.65
Scott & Scott	\$16,415.29
Miller Shah	\$11,285.90
Spector Roseman Kodroff & Willis	\$309,422.88
Wexler Boley & Elgersma LLP	\$296,665.75
Wilentz Goldman	\$10,179.53
Zimmerman Reed	\$7,569.53
Glancy Prongay & Murray LLP	0.00
Notice & Settlement Administration to 11/9/2023	2,010,311.56
Anticipated Settlement Administration to completion	325,000.00
Greylock McKinnon	18,745.07
TOTAL	\$3,942,771.87

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE SUBOXONE (BUPRENORPHINE
HYDROCHLORIDE AND NALOXONE)
ANTITRUST LITIGATION

MDL NO. 2445

Master File No. 2:13-MD-2445-MSG

THIS DOCUMENT RELATES TO:

End Payor Actions

[AMENDED PROPOSED] ORDER GRANTING END PAYOR PLAINTIFFS' MOTION
FOR (1) AWARD OF ATTORNEYS' FEES, (2) REIMBURSEMENT OF
LITIGATION EXPENSES, AND (3) PAYMENT OF SERVICE
AWARDS TO THE CLASS REPRESENTATIVES

On September 5, 2023, End Payor Plaintiffs filed a Motion for (1) Award of Attorneys' Fees, (2) Reimbursement of Litigation Expenses, and (3) Payment of Service Awards to the Class Representatives ("Fee and Expense Motion"). (Dkt. No.944). The Court held a hearing on the Fee and Expense Motion on October 19, 2023, and Plaintiffs filed an amendment to the Fee and Expense Motion, with updated litigation expenses ("Amendment"), on November 22, 2023, (Dkt. ____).

The Court, having reviewed the Fee and Expense Motion, the Amendment, and supporting materials, and having heard the arguments of Co-Lead Counsel, hereby finds that the Fee and Expense Motion, as modified by the Amendment, should be **GRANTED** [in whole or in part, or denied], with attorneys' fees, expenses, and service awards to be distributed in the amounts as set forth herein.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Pursuant to Fed. R. Civ. P. 23(h), End-Payor Plaintiffs have moved for an award of attorneys' fees to Co-Lead Counsel in the amount of one-third of the \$30,000,000 Settlement Fund (\$10,000,000) (plus one-third of the interest accruing in the Escrow Account) under the common

fund doctrine. The Fee and Expense Motion further seeks reimbursement of expenses in the amount of \$3,942,771.87 and the award of \$15,000 to each class representative for the services they rendered to the End Payor Class.

2. The Court has assessed the request for attorneys' fees by considering the factors set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F. 3d 190, 195 n. 1 (3d Cir. 2000). The Court now makes the following findings:

- a. The size of the fund and number of persons benefitted. Co-Lead Counsel litigated on behalf of the End Payor Class for more than 10 years, all on a contingent basis, with the risk of non-payment throughout. They represented a litigation class that was certified on a limited issue, and that issue did not include the recovery of damages from which Co-Lead Counsel could seek payment. Yet they vigorously persisted on behalf of the 11-State Class, defeating summary judgment and *Daubert* motions and preparing for trial. The risks to Defendant posed by Co-Lead Counsel's zealous representation contributed to the achievement of a \$30,000,000 Settlement Fund beyond the 11-State Class and extending to purchasers in 48 states plus 2 territories. The size of the fund and the number of people who will benefit from it weighs in favor of granting the Fee and Expense Motion.
- b. The presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel. There have been no objections to either the Settlement Agreement or the fees requested. This factor weighs heavily in favor of granting the Fee and Expense Motion.
- c. The Skill and Efficiency of the Attorneys Involved. Co-Lead and Liaison Counsel are experienced litigators of pharmaceutical antitrust cases. Defendant was

represented by experienced attorneys from Jones Day and Hogan Lovells, two nationally prominent law firms. Co-Lead Counsel's achievement of the Settlement in the face of such formidable opposition favors granting the Fee and Expense Motion.

- d. The complexity and duration of the litigation; the risk of nonpayment; and the amount of time devoted to the case by End Payor Plaintiffs' counsel. This case has complex and novel issues and involved extensive discovery and hard-fought motion practice. Co-Lead and Liaison Counsel, along with their colleagues, spent over 26,000 hours for over 10 years on a wholly contingent basis and faced a serious risk of non-payment. These factors strongly weigh in favor of granting the Fee and Expense Motion.
- e. Awards in similar cases. A request for one-third of a settlement fund is in the range of reasonable fees in the Third Circuit, and courts in this District have approved such awards in similar cases. *See e.g., Vista Healthplan, Inc. v. Cephalon, Inc.*, No.06-cv-1833, 2020 WL 1922902, *30 (E.D. Pa. Apr. 21, 2020). This factor supports granting the Fee and Expense Motion.
- f. Benefits attributable to others, including government agencies. Co-Lead Counsel did not benefit from anyone's efforts but their own. Government cases were not filed until some 5 years after filing of the End Payor complaint. If anything, the government settlements adversely affected the financial status of Defendant and increased the risk that the End Payor Class would recover nothing. This factor, too, favors granting the Fee and Expense Motion.

- g. The percentage fee that would have been negotiated had the case been subject to a private fee agreement. The fee requested by Co-Lead Counsel is the same or less than what is routinely negotiated in the private marketplace. Thus, this factor favors granting the Fee and Expense Motion.
- h. Innovative terms of settlements. While a \$30,000,000 Settlement Fund may not be innovative, Co-Lead counsel's Allocation Plan reflects a unique understanding of the varying interests of End Payor Class Members. The lack of objections to the Allocation Plan is evidence that Co-Lead Counsel got it right. This factor favors granting the Fee and Expense Motion.

Co-Lead Counsel reported that, as of June 30, 2023, counsel spent 26,172.55 hours working on behalf of the End Payor Class, representing \$13,447,884.69 in attorneys' fees. A lodestar cross-check utilizing these figures shows that a fee award of one-third of the Settlement Fund would provide counsel with 74% of the reported fees incurred as of June 30, 2023.

3. The Court finds that the \$1,588,715.24 in expenses reflected in the submissions of Co-Lead counsel were reasonably incurred and of the type routinely billed by attorneys to their clients in similar cases, such as for experts, depositions, and document hosting. In addition, Co-Lead Counsel incurred expenses of \$931,255.51 providing notice to the 11-State Class and \$1,404,056.05 for nationwide notice and settlement administration. Correcting for a \$66.13 mathematical error and upon submission of a recent invoice from End Payor Plaintiffs' economist, \$3,942,771.87 paid and/or accrued over a ten-year period warrants reimbursement.

4. The class representatives – End Payor Plaintiffs – were active participants in the Action, producing documents, providing data to experts, consulting with counsel, and sitting for

depositions. The requested award of \$15,000 to each End Payor Plaintiff is warranted for their efforts on behalf of the End Payor Class and the amount requested is reasonable.

5. The Court has found that the notice disseminated to the End Payor Class was the best notice practicable under the circumstances and complied with Fed. R. Civ. P. 23(c)(2)(B), Rule 23(e)(1), and due process. That notice advised members of the End Payor Class that Co-lead Counsel would be seeking an award of attorneys' fees in the amount of one third (1/3) from the Settlement Fund (plus a proportionate share of the interest on any portion of the funds deposited in escrow pursuant to Court Order), reimbursement of litigation, notice, and administration expenses incurred in the case, and service awards in the sum of \$15,000 for each of the named End Payor Plaintiffs.

6. The Court hereby grants the Fee and Expense Motion and directs the following to be paid from the Settlement Fund as directed by Co-Lead Counsel when and as permitted by the Settlement Agreement

- a. Attorneys' fees of \$10,000,000, representing one-third of the Settlement Fund, plus one-third of the interest earned on the Settlement Fund as of the date of this Order.
- b. Reimbursement of expenses in the amount of \$3,942,771.87.
- c. \$105,000, from which \$15,000 shall be distributed to each of the End Payor Plaintiffs.

BY THE COURT:

Honorable Mitchell S. Goldberg
United States District Court Judge