

**IN 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 Plaintiff Actions*

**DECLARATION OF KENNETH A. WEXLER  
IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF END  
PAYOR SETTLEMENT AND FOR OTHER RELIEF**

I, Kenneth A. Wexler, hereby declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, as follows:

1. I have personal knowledge of the matters described below, and if called to testify upon them, would be competent to do so.
2. I am managing partner in the law firm Wexler Boley & Elgersma LLP and submit this Declaration in support of the Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion”). A copy of the Settlement Agreement is attached as **Exhibit A**. I have served as lead or co-lead counsel on numerous nationwide class actions and have substantial experience litigating class actions and complex civil litigation.
3. The End Payor cases came to this Court in June 2013 pursuant to an order of the Judicial Panel for Multidistrict Litigation. Dkt. 1. On August 7, 2013, the Court designated me,

Steve Shadowen of Hilliard Shadowen LLP, Michael Buchman of Motley Rice LLC, and Marvin A. Miller of Miller Law LLC as Interim Co-Lead Counsel for the End-Payor Class (“the Class”), and designated Jeffrey L. Kodroff of Specter Roseman & Kodroff, P.C. as Liaison Counsel for the EPP Class [Dkt. No. 44]. The firm and attorney profiles describing our professional background and qualifications to serve as Class Counsel are attached as **Exhibit B**. Interim Co-Lead and Liaison Counsel have been intimately involved in every aspect of the litigation since its inception.

4. On August 15, 2013, End Payor Plaintiffs filed a Consolidated Amended Class Action Complaint (“CAC”). Dkt. 48. The CAC alleged antitrust, consumer protection, and unjust enrichment claims under the laws of 48 States, plus Puerto Rico and the District of Columbia, and it named multiple defendants, including Reckitt Benckiser, Inc. and a number of its affiliates. *Id.* The defendants moved to dismiss the CAC for failure to state a claim and for lack of Article III standing. Dkt. 57. After extensive briefing and oral argument, the Court dismissed the claims arising under the laws of 37 States and territories and otherwise denied the motion with respect to the other 13 States. The Court also dismissed the Reckitt entities, leaving Indivior as the sole defendant. Dkt. 98.

5. Thereafter, the parties engaged in a wide array of discovery, including interrogatories, document productions, depositions, the retention of experts, and motion practice relating to perceived defects in the various responses. Along with the direct purchasers and State Attorneys General, who had brought separate cases but were coordinated in this Court for pre-trial proceedings, End Payor Plaintiffs helped craft and sought to enter orders relating to authenticity and admissibility of documents, ESI, protective orders, and the case schedule. On March 17, 2015, the Court entered a scheduling order regarding motions for class certification, expert reports,

briefing on class certification, a fact discovery cut-off, motions for summary judgment, and Daubert motions. Dkt. 143.

6. On March 6, 2015, End Payor Plaintiffs filed a Second Amended Consolidated Class Action Complaint (“SAC”). Dkt. 152. Defendant answered on May 15, 2015, Dkt. 161, and the litigation proceeded.

7. On September 18, 2018, End Payor Plaintiffs filed their motion for class certification of an issues-only class pursuant to Rule 23(c)(4). Dkt. 472. Interim Co-Lead Counsel filed such a motion in large part because the Court had recently refused to certify a Rule 23(b)(3) damages class in the context of a different pharmaceutical antitrust case. The Court there found that the class of end payors was not ascertainable under Third Circuit law and that individual issues predominated. Arguments could have been made distinguishing the two cases factually and based on legal developments. However, based on their experience and expertise, Interim Co-Counsel believed that moving for an issues-only class enhanced their ability to avoid the deficiencies the Court held existed in the other case and, therefore, they asked the Court to certify a class on issues confined to anti-competitive effect. *Id.* On September 27, 2019, after extensive briefing and argument, the Court certified the 11-state issues-only class (the 11-State Class”) End Payor Plaintiffs had requested. Dkt. 588.

8. Just before the Court certified the issues-only class, on July 11, 2019, the United States Department of Justice announced a \$1.4 billion settlement with Reckitt over Indivior’s marketing of Suboxone. Indivior had been indicted for its conduct as a subsidiary of Reckitt and trial was set to begin on May 11, 2020. The settlement resolved the criminal proceeding and civil governmental claims regarding the marketing of Suboxone. The settlement included Reckitt’s forfeiture over time of proceeds totaling \$647 million received from Indivior, civil settlements

with the federal government and the states totaling \$700 million, and an administrative resolution with the Federal Trade Commission for \$50 million.

9. The actual financial impact of the settlement on Indivior was unknown but presumed to be negative. End Payor Plaintiffs pressed on, however, responding to summary judgment and Daubert motions that Defendant filed in an effort to defeat the case without a trial. Dkt. No. 671. The Court denied the Daubert and summary judgment motions on February 19, 2021, and August 22, 2022, respectively. Dkt. Nos. 686, 813.

10. Following the August 22, 2022, decision denying summary judgment, the Court held a status conference to address the remainder of the schedule. Dkt. No. 848. At that conference the parties and the Court discussed issues that remained in dispute and Defendant stated its intent to file a motion to dismiss the End Payor Plaintiffs' claims on the grounds of the Supreme Court's relatively recent decision on Article III standing in *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021). The Court gave Indivior permission to do so, and set a pre-trial schedule leading to a September 18, 2023, trial date.<sup>1</sup> Dkt. No. 852. The Court also inquired whether the Parties were interested in discussing settlement and, if so, whether they would consent to the Court serving as the mediator.

11. The Parties ultimately advised the Court that they did consent to mediation with the Court. Before the first session, Indivior moved to dismiss the End Payor case for lack of Article III standing and – alternatively – to decertify the 11-State Class on the theory that End Payor Plaintiffs could not go to trial on issues that did not include injury. Dkt. No. 871. End Payor Plaintiffs responded to this motion on May 29, 2023. Dkt. No. 883.

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<sup>1</sup> The Court later reset trial for October 30, 2023. See Dkt. No. 912.

12. Interim Co-Lead and Liaison Counsel first met with the Court as mediator on January 25, 2023. Dkt. 851. There ensued six months of adversarial and sometimes contentious negotiations facilitated by the Court and resulting in the proposed \$30 million all cash Settlement. The Settlement resolves all the claims brought or which could have been brought in the litigation by the End Payor Plaintiffs, including all rights of appeal from the Court's dismissal order of December 3, 2014. Dkt. 97.

13. There were no commitments made to or by Co-Lead counsel other than what is set forth in the Settlement Agreement and the *In Camera* Supplement to Settlement Agreement referenced in paragraph 15 of the Settlement Agreement, which paragraph grants Defendant the right to terminate the Settlement Agreement under the condition set forth in the *In Camera* Supplement. Attorneys' fees were never a part of negotiations for the Settlement.

14. Based on extensive experience representing plaintiffs in similar class actions, I and my fellow Interim Co-Lead and Liaison Counsel recognize the costs and risk of continued prosecution of the Action and believe that it is in the best interest of End Payor Plaintiffs and the End Payor Settlement Class to resolve it on the terms set forth in the Settlement Agreement.

15. I and my fellow Co-Lead and Liaison Counsel believe the Settlement Agreement is fair, adequate, reasonable, and is in the best interests of, and will provide significant benefits to, the End Payor Class in light of all known facts and circumstances, including the significant risks and uncertainties that are presented by the case in its current posture. These risks and uncertainties include the pending motion to dismiss the End Payor Plaintiffs' claims for purported lack of Article III standing and a related motion decertify the 11-State Class, significant unknowns related to post-trial proceeding for members of the 11-State Class, and the difficulties inherent with the appeals

process. Interim Co-Lead and Liaison Counsel believe that a \$30 million dollar recovery for the End Payor Class in these circumstances is an excellent result.

16. Interim Co-Lead and Liaison Counsel have vigorously represented the interests of End Payor Plaintiffs and the Settlement Class members from inception, including the initial investigation, legal and factual analysis, written discovery, depositions, expert work, coordination with counsel for the direct purchasers and State Attorneys General, and motion practice, including motions to dismiss, summary judgment, class certification and a motion to decertify the class. Such extensive involvement has enabled Interim Co-Lead and Liaison Counsel to negotiate this beneficial settlement from a position of knowledge and strength, and as advocates for the entirety of the End Payor settlement class.

17. Attached as **Exhibit C** is a true and correct copy of the Declaration of Kevin Roddy.

18. Attached **Exhibit D** is a true and correct copy of the Declaration of Lee Albert.

19. Attached **Exhibit E** is a true and correct copy of the Declaration of Rena Conti.

20. Attached **Exhibit F** is a true and correct copy of is a true and correct copy of the Declaration of Elaine Pang to which the proposed Notice Plan is attached as Exhibit C.

21. Attached as **Exhibit G** is a true and correct copy of the proposed Plan of Allocation.

22. Attached as **Exhibit H** is a true and correct copy of the proposed Short Form Notice to Class Members.

23. Attached as **Exhibit I** is a true and correct copy of the proposed Long Form Notice to Class Members.

24. Attached as **Exhibit J** are true and correct copies of the proposed Consumer and Third-Party Payor claim forms.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 19, 2023 in Chicago, Illinois.

/s/ Kenneth A. Wexler

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Kenneth A. Wexler