

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

THE HOSPITAL AUTHORITY OF
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY,
TENNESSEE, d/b/a NASHVILLE GENERAL
HOSPITAL and AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES DISTRICT COUNCIL 37
HEALTH & SECURITY PLAN,

Plaintiffs,

v.

MOMENTA PHARMACEUTICALS, INC. and
SANDOZ, INC.,

Defendants.

Civil Action No. 3:15-cv-01100

Chief Judge Waverly D. Crenshaw, Jr.
Magistrate Judge Barbara D. Holmes

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS'
FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARDS**

The Court, having reviewed Plaintiffs' Motion for Attorneys' Fees, Costs, and Class Representative Service Awards, the pleadings, other papers on file in this Action, and the argument of counsel, hereby finds that:

1. Where the efforts of counsel results in a common benefit for a class, it is appropriate to assess attorney's fees against the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

2. Class Counsel's requested fee award is fair and reasonable under the percentage-of-the-fund approach. This is the preferred method where, as here, "a substantial common fund has been established for the benefit of class members through the efforts of class counsel." *In re Se. Milk Antitrust Litig.*, No. 07-208, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013). While the requested fee of one-third of the fund is significant, it "is certainly within the range often awarded in common fund cases, both nationwide and in the Sixth Circuit," and is appropriate given the exceptional result Class Counsel achieved in the face of substantial risk. *Id.* at *3.

3. The requested fee meets all of the factors the Sixth Circuit articulated in *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974):

a. the non-reversionary recovery of \$120 million, which represents half of Plaintiffs' estimated Class-wide damages, is an excellent outcome for the Class, especially relative to the norm in indirect purchaser pharmaceutical cases, *see, e.g., In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 74 (D. Mass. 2005) (\$75 million settlement was 26% of damages estimate); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 258 (D. Del. 2002) (\$44.5 million settlement was 33% of maximum damages);

b. society has a strong interest in compensating Class Counsel for the significant risks and complex issues posed by this case, thereby encouraging plaintiffs to bring similar litigation in the future, *see Milk*, 2013 WL 2155387, at *5;

c. fees and reimbursement of costs in this case were entirely contingent upon success, creating a serious risk of under-compensation in the absence of settlement or victory at trial, *see Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 795 (N.D. Ohio 2010);

d. Class Counsel devoted tens of thousands of hours to this case and the time-value of their services was substantial;

e. this case, which involved highly complex drug distribution channels and novel theories of harm and liability, presented more risk than most pharmaceutical indirect purchaser litigation, forcing Class Counsel to overcome “a multitude of difficult issues in the areas of antitrust law, patent law, and the laws governing pharmaceutical drugs[.]” *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 533 (E.D. Mich. 2003); and

f. Class Counsel, who are among the most experienced and successful class action and antitrust practitioners in the country, displayed superior skill and commitment throughout the litigation.

4. The Court has confirmed the reasonableness of Class Counsel’s fee request by conducting a lodestar cross-check. This involves multiplying reasonable rates by reasonable hours. *See Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016). The “sum may then be increased by a ‘multiplier’ to account for the costs and risks involved in the litigation, as well as the complexities of the case and the size of the recovery.” *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907, 922 (N.D. Ohio 2003). The Court finds that Class Counsel’s reasonable lodestar was \$12,838,694.00 based on Counsel’s

hourly billing rates for the period from the inception of the case until February 25, 2020, and that an award of \$40 million yields a multiplier on a one-third fee of 3.12. This multiplier falls within the regularly accepted range. *See, e.g., Cardizem*, 218 F.R.D. at 533 (noting that direct purchaser class plaintiffs received a fee award that equated to a lodestar multiplier of 3.7); *In re Cardinal Health Inc. Sec. Litigs.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (awarding a multiplier of 6.0 and noting that typical multipliers range from 1.3 to 4.5). The use of current (2020) rates is appropriate to “compensate for the delay in payment during the pendency of the litigation.” *In re UnumProvident Corp. Deriv. Litig.*, No. 02-386, 2010 WL 289179, at *9 (E.D. Tenn. Jan. 20, 2010).

5. Class Counsel reasonably incurred a total of \$2,269,268.79 in litigation expenses (for which Class Counsel seek reimbursement at this time) in prosecuting this case. Class Counsel “is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and settlement, including expenses incurred in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses.” *Allen v. Realcomp II, Ltd.*, No. 10-14046, 2014 WL 12656718, at *2 (E.D. Mich. Sept. 4, 2014) (citation omitted). These are precisely the types of costs and expenses for which Class Counsel seeks reimbursement. At 1.89% of the Settlement Fund, the reimbursement request is also significantly less than the average costs award of around “4 percent of the relief for the class.” *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1041 (N.D. Ill. 2011).

6. The requested service awards of \$200,000 each for Class Representatives Nashville General and DC 37 are justified by the significant time and resources both invested into supervising and prosecuting this case. *See Lonardo*, 706 F. Supp. 2d at 787;

UnumProvident, 2010 WL 289179, at *9. The service awards are also justified as an economic incentive to spur individuals and entities to bring antitrust litigation even though their own claims may not be sizable. See *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003) (noting that “courts have stressed that incentive awards are efficacious ways of encouraging members of a class to become class representatives”).

Accordingly, it is hereby ORDERED that:

7. Class Counsel are awarded attorneys’ fees of \$40,000,000 (one-third of the \$120,000,000 Settlement Fund), together with a proportional share of interest earned on the Settlement Fund. Should Defendant Momenta Pharmaceuticals, Inc. fail to make the Second Payment contemplated by Paragraph D.11 of the Settlement Agreement, the fee award shall be reduced proportionally with the reduction in the Settlement Fund.

8. Class Counsel are awarded reimbursement of their litigation expenses in the amount of \$2,269,268.79.

9. Class Representatives Nashville General and DC 37 are granted service awards of \$200,000 each for their contributions to the litigation.

10. The attorneys’ fees awarded, including any interest, reimbursement of litigation costs and expenses, and service awards shall be paid from the Settlement Fund.

IT IS SO ORDERED.

Dated: _____, 2020 _____

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2020, the foregoing document was filed electronically with the U.S. District Court for the Middle District of Tennessee. Notice of this filing was served via the court's electronic filing system on counsel listed below:

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