UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION	:	No. 3:17-cv-00558 (SRU)
THIS DOCUMENT RELATES TO:	:	All Class Actions

DECLARATION OF JOSEPH A. FONTI IN SUPPORT OF (I) CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND PLAN OF ALLOCATION AND (II) LEAD COUNSEL'S MOTION FOR AWARDS OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND REASONABLE COSTS AND EXPENSES TO CLASS REPRESENTATIVES

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I, Joseph A. Fonti, hereby declare pursuant to Section 1746 of Title 28 of the United States Code:

1. I am an attorney admitted to practice *pro hac vice* in this Court and a founding Partner of Bleichmar Fonti & Auld LLP ("BFA"), Lead Counsel for the Class and counsel for Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System (together, "Class Representatives" or "Plaintiffs"). I have personal knowledge of the matters set forth herein.[1]

2. I respectfully submit this declaration in support of (1) Class Representatives' motion for final approval of the proposed settlement and approval of the Plan of Allocation; and (2) Lead Counsel's motion for awards of attorneys' fees, litigation expenses, and reasonable costs and expenses to Class Representatives pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA").

I. INTRODUCTION

3. This declaration sets forth Class Counsel's efforts, over more than five years, to litigate this action to the brink of summary judgment and achieve the proposed $420 million settlement. We believe this is a superlative result in what Defendants' counsel has described as "one of the nation's largest pending securities class actions." (No. 21-661 (2d Cir.), ECF 1 at 1.)

4. Based on Class Counsel's research, the $420 million settlement, if approved, would be the second-largest class settlement in this District.[2] Within the Second Circuit, this settlement

[1] "Class Counsel" are BFA; Bleichmar Fonti & Auld Canada ("BFA Canada"); The Law Offices of Susan R. Podolsky; and Carmody Torrance Sandak & Hennessey LLP ("Carmody"). Capitalized terms not defined herein have the meanings specified in the Stipulation of Settlement, dated January 18, 2022 (ECF 919-2).

[2] *See Carlson v. Xerox*, No. 3:00-cv-01621-AWT (D. Conn. Jan. 14, 2009), ECF 528 (approving $750 million settlement).

is the third-largest securities settlement in the last five years, and the fourth-largest ever without a financial restatement or arising from the 2008-09 financial crisis—which are circumstances that reduce plaintiffs' burden and risk and have resulted in some of the largest securities class action settlements.[3] The proposed settlement also sends an important message about preserving the integrity of the securities markets and robust competition in the markets for generic drugs.

5. Under Class Representatives' leadership, Class Counsel's efforts resulted in this action being the first—and, to date, only—case to obtain any meaningful recovery from Teva based on its alleged generics price increases.[4] In the *Generics MDL*, for example, the Court has entered an order indicating that summary judgment briefing will not be complete until early 2024. *See In re Generics Pharmaceuticals Pricing Antitrust Litig.*, 2:16-md-02724 (E.D. Pa.), ECF 1901 at 2. The pending criminal antitrust case against Teva's U.S. subsidiary, filed in August 2020 (nearly four years after this action commenced), has no trial date. The U.S. Securities and Exchange Commission never initiated an inquiry into Teva. By independently working to develop compelling proof and advance this case toward trial, Class Counsel achieved an exceptional settlement result before and independent of any government enforcement action against Teva.

[3] The two larger securities settlements in the last five years are *In re Petrobras Sec. Litig.*, No. 1:14-cv-09662 (S.D.N.Y. July 2, 2018), ECF 838 (approving $3 billion settlement); and *In re American Realty Capital Properties Inc. Litig.*, No. 1:15-mc-00040 (S.D.N.Y. Jan. 22, 2020), ECF 1309 (approving $1.025 billion settlement). The three larger securities settlements without a financial restatement or arising from the 2008-09 financial crisis are *Petrobras*, No. 1:14-cv-09662; *In re Initial Public Offering Sec. Litig.*, No. 1:21-mc-00092 (S.D.N.Y. Oct. 6, 2009), ECF 5861 (approving $586 million settlement); and *In re Pfizer, Inc. Sec. Litig.*, No. 1:04-cv-9866 (S.D.N.Y. Dec. 21, 2016), ECF 728 (approving $486 million settlement).

[4] Last year, Teva reached a $925,000 civil antitrust settlement with one state, Mississippi, and touted the "modest settlement amount." Noah Higgins-Dunn, *Teva reaches $925K settlement with Mississippi in price-fixing case—and it hopes other states will follow suit*, FIERCEPHARMA (June 23, 2021), *available at* https://www.fiercepharma.com/pharma/teva-reaches-925k-settlement-mississippi-as-part-generic-price-fixing-case.

6. The circumstances faced by Class Representatives and Class Counsel were daunting. Far from a "deep pocket" corporate defendant, Teva is financially distressed, saddled with over $20 billion in debt, and facing existential threats on multiple fronts. These include thousands of opioids litigations around the country and a pending criminal prosecution that could end much of Teva's business in the U.S., its largest market. In addition, Teva is a notoriously combative litigant; as just one example, Teva has elected to try multiple opioids cases, resulting in a recent jury trial loss in New York. Further, the core of this litigation—and Class Counsel's work—occurred during the Covid-19 pandemic. Indeed, Class Counsel secured the proposed settlement despite a challenging litigation and corporate environment that has demonstrably resulted in reduced settlement values in securities cases.

7. The $420 million settlement reflects Class Counsel's ability to advance this action and willingness to shoulder these significant risks for over five years. Class Counsel eschewed opportunities for an earlier resolution in order to achieve maximum value for the Settlement Class. For instance, Class Counsel were unwilling to settle this matter in a July 2020 mediation before significant discovery had taken place. Instead, Class Counsel invested heavily in time and expenses to achieve class certification, complete 40 fact and expert depositions, finish fact and expert discovery, and prepare summary judgment and *Daubert* motions.

8. Class Counsel surmounted serious risks at every phase of the litigation. More than half of securities class actions are dismissed at the pleading stage. Here, the Court granted Defendants' initial motions to dismiss. While Class Counsel refined the pleading and largely defeated Defendants' renewed motions through intensive effort, there was no guarantee of ultimate success.

9. In discovery, Defendants vigorously opposed providing important evidence, including complete pricing and sales data fundamental to proving the Class's claims. Defendants' intransigence necessitated three motions to compel and numerous status conferences with the Court. Class Representatives also commenced a separate proceeding to obtain documents from a key third party (Sandoz Inc.). As a result of these efforts, over 8.2 million pages of documents were produced. Class Counsel efficiently mastered this complex record to obtain more than 7,000 pages of testimony from 23 fact witnesses, including all seven Individual Defendants.

10. At class certification, market efficiency for Teva's ADS, Preferred Shares, and Notes was strongly contested. Class Representatives and their expert, David Tabak, Ph.D. of NERA Economic Consulting ("NERA"), faced three experts for the defense and a *Daubert* motion that sought to exclude Dr. Tabak's opinions in full. While the Class was ultimately certified, success was far from assured. After the Court's decision, Defendants continued to contest class certification, filing a Rule 23(f) petition with the Second Circuit, and—despite their stipulation to Class Representatives' adequacy, typicality, and standing—sought broad discovery from Class Representatives and third parties.

11. Further, Class Counsel worked extensively with four merits experts to present opinions on highly technical issues of damages, loss causation, generic drug pricing and competition, materiality, and disclosure requirements; the parties exchanged 17 merits expert reports. Finally, based on the voluminous fact and expert record, Class Counsel marshalled the strongest proof for use at summary judgment and trial, and invested significant effort to complete summary judgment and *Daubert* motions supported by 150 pages of briefing. While these papers were not filed in light of the proposed settlement, Class Counsel were prepared to file them and

litigate through trial when the settlement was reached just hours before the deadline (following two prior extensions).

12. The parties' settlement negotiations, under the auspices of former United States District Judge Layn R. Phillips, were similarly hard-fought. The parties' initial July 2020 mediation was unsuccessful. Over a year elapsed before two arduous full-day mediation sessions took place in September 2021, by which point Class Counsel had completed expert discovery and were preparing summary judgment and *Daubert* motions. These mediation sessions also proved unsuccessful, although the parties' differences narrowed. Numerous follow-up discussions continued through mid-November 2021. Ultimately, in November 2021, Judge Phillips issued a mediator's recommendation to resolve the action for $420 million. (*See* Ex. 1 (Phillips Decl.).) Nearly three more weeks elapsed with no resolution in sight until the last hours. Judge Phillips's Declaration (Exhibit 1 ("Phillips Decl.")) speaks further to the parties' protracted, arm's-length mediation efforts.[5]

13. Class Counsel devoted over 77,000 hours of effort to prosecuting this action, overcame significant risks, and fully developed the merits to obtain the maximum recovery for the Settlement Class.

14. On behalf of Class Counsel, I led the work and played a hands-on role from inception, directing the conception and execution of all major strategic decisions. Class Counsel employed a dedicated, skilled, and efficient team, including a core team of just seven attorneys that committed most of their time to this action at various points over an extended period. This core team's concentrated effort was paired with the effective use of advanced analytics technology and targeted attorney review to efficiently analyze over 8.2 million pages of documentary evidence

[5] The attached Appendix identifies each exhibit to this Declaration, referenced as "Ex.__."

and prepare for 40 depositions. I personally committed the majority of my time over the last several years to this case, which is among the most complex, riskiest, and hardest-fought cases I have encountered in over two decades of securities litigation.

15. Since the Court granted preliminary approval of the proposed settlement, the Court-approved Claims Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"), has implemented a robust notice program through individual mailings to 942,255 potential Settlement Class Members, publishing the Summary Notice, and providing a case-specific website. *See infra* ¶¶340-350; Ex. 2 (McGuinness Decl.) ¶¶3-24. Thus far, only 39 potential requests for exclusion and no objections have been received. (Ex. 2 (McGuinness Decl.) ¶¶30, 32.) The Declaration of Michael McGuinness (Exhibit 2 ("McGuinness Decl.")) describes Epiq's notice program in more detail.

16. In addition, Class Representatives seek approval of the Plan of Allocation as fair and reasonable. As detailed below, Class Counsel developed the Plan of Allocation with the assistance of Class Representatives' damages expert, Dr. Tabak. The Plan of Allocation is designed to achieve the fair, equitable, and reasonable distribution of the Net Settlement Fund, which will be distributed *pro rata* to Authorized Claimants based on estimates of their recognized losses from transactions in Teva Securities during the Class Period.

17. Lead Counsel also seeks awards of a 23.70% attorneys' fee and $9,717,887.47 in litigation expenses, supported by Lead Counsel's memorandum of law and declarations from Jeffrey Davis of Ontario Teachers' (Exhibit 3 ("Davis Decl.")), Edward Jarvis of Anchorage (Exhibit 4 ("Jarvis Decl.")), Judge Christopher Droney (Ret.) (Exhibit 5 ("Droney Decl.")), Professor Geoffrey Miller of New York University Law School (Exhibit 6 ("Miller Decl.")), Joseph A. Fonti on behalf of BFA and BFA Canada (Exhibit 7 ("Fonti F&E Decl.")),

Marc Kurzman on behalf of Carmody (Exhibit 8 ("Kurzman F&E Decl.")), and Susan R. Podolsky on behalf of The Law Offices of Susan R. Podolsky (Exhibit 9 ("Podolsky F&E Decl.")). Lead Counsel respectfully submits that the requested fee is appropriate and reasonable in light of the extraordinary result obtained, the risks surmounted, the magnitude and complexity of this case, the amount of high-quality work performed, and awards granted in comparable class actions. A lodestar cross-check also confirms that the proposed fee is reasonable. Class Counsel's litigation expenses, which are largely driven by expert services, were also reasonably and necessarily incurred to advance this complex and highly technical case to the brink of summary judgment.

18. Finally, the requested awards to Class Representatives of $56,293.02 are reasonable in light of their significant time and effort devoted to this action. As detailed below and in the Davis and Jarvis Declarations, Class Representatives are experienced fiduciaries and PSLRA class representatives that actively collaborated with Class Counsel throughout the litigation. Their diligent work directly contributed to the historic result achieved for the Settlement Class.

II. SUMMARY OF CLAIMS

19. As set forth in the operative pleading (ECF 310), this action asserts claims against Defendants for violations of the federal securities laws and state law. The federal securities claims are asserted under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, as well as Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act").

20. These claims arise from Defendants' alleged misstatements and omissions concerning (among other things) competition in the markets for Teva's generic drugs; Teva's generic drug pricing, including the extent and impact of price increases and price erosion; the attribution of Teva's financial performance to causes other than generics price increases; and

alleged omissions in violation of affirmative disclosure requirements under Item 303 of SEC Regulation S-K and Item 5 of SEC Form 20-F.

21. Class Representatives allege that, as a result of these alleged misstatements and omissions, Class members paid artificially inflated prices for eight Teva Securities: the ADS, Preferred Shares, and six Notes. Class Representatives further allege that when the truth was revealed in piecemeal fashion through a series of corrective events, the prices of the Teva Securities declined, causing investors to suffer losses.

III. PROSECUTION OF THE ACTION

22. Based in New York City, BFA specializes in complex class actions of national scope. BFA is highly selective in the cases it pursues on behalf of its clients, focusing on substantial cases of high public importance. In each matter, BFA develops and relies on a core litigation team to forcefully and effectively litigate all stages of an action. (Ex. 7-A (BFA Firm Resume) at 1-2.)

23. Here, BFA's core team prosecuted this case with the assistance of Ms. Podolsky and attorneys from Carmody. In leading this effort, I developed a concerted strategy to maximize the recovery for the Settlement Class.

24. Class Representatives Ontario Teachers' and Anchorage also dedicated significant time and resources to this action, contributing their extensive experience as lead plaintiffs and class representatives in PSLRA actions and as fiduciaries to their own beneficiaries.

25. Specifically, Ontario Teachers' has served as lead plaintiff in several PSLRA securities actions and recovered nearly $2.4 billion dollars for investors (including in this action). Here, attorneys in Ontario Teachers' General Counsel's office were dedicated to the oversight of the action, directly supervised Class Counsel, and provided valuable direction throughout the case.

Ontario Teachers' was also integrally involved in every phase of mediation and settlement. (*See* Ex. 3 (Davis Decl.).)

26. Similarly, Anchorage has served as lead plaintiff in several PSLRA securities actions and has recovered more than $600 million for investors (including in this action). Edward Jarvis, Anchorage's Director, supervised the litigation, was actively involved in setting litigation strategy, and was integrally involved in the mediation and settlement negotiations in parallel with Ontario Teachers'. (*See* Ex. 4 (Jarvis Decl.).)

27. Class Representatives' and Class Counsel's full experience and commitment were necessary to prosecute this action against Teva, the world's largest generic pharmaceutical company, represented by numerous lawyers from two leading national defense firms and Connecticut counsel. As detailed below, the case was vigorously contested at every stage, requiring more than 77,000 hours of intense work to succeed.

A. Commencement of the Action and Appointment of Lead Plaintiff

1. Class Counsel's Initial Investigation

28. Following the November 3, 2016 publication of the *Bloomberg* article first indicating Teva's potential involvement in widespread generic drug price increases and collusion, the initial complaint was filed by another law firm on behalf of Amram Galmi on November 6, 2016 in the Central District of California (ECF 1). The *Galmi* complaint was only 20 pages and lacked particularity and detail, relying solely on general allegations of concealed price-fixing.

2. Ontario Teachers' Authorization to Seek Appointment as Lead Plaintiff

29. BFA immediately commenced an investigation to assess the merits of the newly filed action. To do so, BFA collected and reviewed Teva's SEC filings, conference call transcripts,

analyst reports, and other information to assess Defendants' statements and disclosures. BFA summarized its findings to Ontario Teachers'.

30. In December 2016, Ontario Teachers' authorized BFA to prepare and file a motion seeking Ontario Teachers' appointment as Lead Plaintiff and approval of BFA as Lead Counsel. This authorization was significant. Although Ontario Teachers' has recovered nearly $2.4 billion dollars for investors over two decades, Ontario Teachers' is highly selective about the cases in which it chooses to participate. (Ex. 3 (Davis Decl.) ¶¶5, 9.) Ontario Teachers' decision to participate in this case reflected the action's significant public importance, including its implications for corporate governance and the integrity of the securities markets, as well as the negative social impact of large price increases on generic drugs.

31. The lead plaintiff process was complex and heavily contested, requiring intensive research and analysis. On January 5, 2017, Ontario Teachers' filed its lead plaintiff motion in the Central District of California (ECF 18), as one of five movants seeking appointment. On the face of the submissions, Ontario Teachers' had only the third-largest financial interest, and therefore was not the presumptively most adequate plaintiff entitled to appointment under the PSLRA.

32. On January 13, 2017, Ontario Teachers' filed its opposition to the other lead plaintiff motions. (ECF 33.) Based on extensive analysis, Ontario Teachers' demonstrated that it in fact had the largest losses. One movant, the Teva Investor Group, consisted of three investors with no pre-existing relationship. (*Id.* at 7-14.) Another movant (TIAA) asserted losses that did not account for "in-and-out" transactions prior to the first corrective disclosure. These alleged losses lacked the causal connection to Defendants' conduct required under *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005). (ECF 33 at 14-19.) Ontario Teachers' argued that the Court should extend *Dura*'s reasoning to the lead plaintiff process. (*Id.*)

33. On January 23, 2017, Ontario Teachers' filed its reply brief in further support of its lead plaintiff motion. (ECF 48.)

34. On March 20, 2017, Ontario Teachers' filed a supplemental brief raising a potential conflict concerning Oregon Public Employees Retirement System ("OPERS"), a member of the competing movant Teva Investor Group. (ECF 68.) The Oregon Attorney General ("AG") (an OPERS decision-maker) had joined the State Attorneys Generals' ("State AGs'") civil antitrust action against Teva, giving it access to confidential discovery, and exposing OPERS to potential conflicts arguments. (*Id.*)

3. Defendants' January 2017 Motion to Transfer from C.D. Cal. to E.D. Pa.

35. In the midst of lead plaintiff briefing, on January 17, 2017, Defendants filed a motion to transfer this action to the Eastern District of Pennsylvania, the location of Teva's U.S. headquarters. (ECF 37.) Ontario Teachers' opposition argued that transfer should be decided after the appointment of lead plaintiff and lead counsel to avoid undue delay to the Class. (ECF 55.) Shortly thereafter, the District Court for the Central District of California *sua sponte* transferred the case to the District of Connecticut, where it was assigned to this Court. (ECF 74.)

4. Post-Transfer, the Lead Plaintiff Motions Are Resolved

36. Following transfer, Ontario Teachers' filed a notice of supplemental authority applying Second Circuit law to the legal issue of calculating movants' financial interests for purposes of appointing a PSLRA lead plaintiff. (ECF 112.)

37. On April 26, 2017, the Court held a 1-hour-and-45-minute hearing on the lead plaintiff motions. I argued on behalf of Ontario Teachers'. (ECF 123.)

38. On July 11, 2017, the Court issued a 28-page decision appointing Ontario Teachers' as Lead Plaintiff and BFA as Lead Counsel. (ECF 124.) The Court applied the *Dura*-based

reasoning advanced by Ontario Teachers' to conclude that Ontario Teachers' had the largest financial interest and was otherwise qualified to serve as lead plaintiff in this action. (*Id.* at 17, 25 (citing *Dura*, 544 U.S. 336).)

B. Class Counsel's Preparation of the Complaints and Oppositions to Defendants' Motions to Dismiss

1. Class Representatives' First Set of Complaints

39. After being appointed as Lead Counsel, BFA devoted significant time and resources to further investigation of Teva's generic drug price increases and resulting profits. This task was complicated because Teva's actual, customer-specific drug pricing was confidential and not available from any public source. Thus, BFA retained a consulting expert to perform econometric analysis of Teva's drug pricing using subscription-based services. Class Counsel also conducted legal research, including into the intersection of antitrust violations and securities law, and consulted with experts and outside consultants regarding antitrust, accounting, disclosure, and damages issues.

a. Class Representatives File Securities Act Complaints to Preserve the Class's Claims

40. Class Counsel also prepared and filed two complaints on behalf of Class Representatives to preserve the Class's claims under the Securities Act of 1933. During the Class Period, Defendants had raised over $22 billion through public offerings of ADS, Preferred Shares, and Notes pursuant to registration statements and offering materials that incorporated certain alleged misstatements and omissions. Because none of the previously filed complaints alleged Securities Act claims, the Class faced potential statute of limitations arguments if such claims were not asserted within one year after Teva's August 4, 2016 disclosure that it had received subpoenas seeking information concerning its generic drug pricing. *See* 15 U.S.C. § 77m.

41. Thus, on August 2, 2017, Ontario Teachers' filed a Class Action Complaint for Violation of the Securities Act concerning the ADS/Preferred Offerings and the Notes Offering. (ECF 129.) Ontario Teachers' had purchased ADS and Preferred Shares in or traceable to the Offerings. As to the Notes (which Ontario Teachers' had not purchased), the Securities Act claims utilized the doctrine of "class standing."

42. Class Counsel and Ontario Teachers' also initiated discussions about the Securities Act claims with Anchorage, which had acquired Teva Notes in the Notes Offering. Ontario Teachers' authorized Class Counsel to file an amended Securities Act complaint with Anchorage as a named plaintiff, and I advised the Court during an August 30, 2017 status conference that Class Representatives would do so. On September 5, 2017, Class Representatives filed their Amended Class Action Complaint for Violation of the Securities Act of 1933 (ECF 138).

b. Class Representatives File the Consolidated Class Action Complaint

43. On September 11, 2017, Class Representatives filed the Consolidated Class Action Complaint (the "Complaint"), alleging both Exchange Act and Securities Act claims concerning the Teva ADS, Preferred Shares, and Notes. (ECF 141.)

44. This pleading significantly expanded the allegations in the original complaints filed in 2016 by other plaintiffs, which were less than 30 pages each. In the Complaint, Class Representatives alleged that Teva was part of a wide-ranging antitrust conspiracy to manipulate the U.S. generic drug market, based on numerous Congressional, DOJ, and State AG investigations and enforcement actions. (*Id.* Section V.B.) Working with consulting experts who performed econometric analysis of data from various subscription-based data services, Class Representatives also identified eight drugs with price increases that allegedly generated

more than $1 billion in revenue during the class period alleged at the time (February 6, 2014 through August 3, 2017). (*Id.* Section V.C.) Class Representatives further alleged that Defendants' concealment of this anticompetitive conduct rendered their statements regarding the competitiveness of Teva's U.S. generic drug business, its financial performance, and Teva's involvement in collusive activity materially false and misleading. (*Id.* Section V.J.) Class Representatives alleged that Defendants were motivated to pursue the scheme to inflate Teva's ADS price and complete the Actavis Acquisition, including the Offerings that were used to pay for it. (*Id.* Section V.E.)

2. Opposition to Defendants' First Round of Motions to Dismiss

45. From the outset, Class Representatives faced significant risks that their claims would be dismissed at the pleading stage. As described further in Section IV.A, motions to dismiss are filed in nearly all securities class actions, and data from recent studies indicate that following the passage of the PSLRA, more than half of such motions are granted with prejudice.

46. Here, on December 1, 2017 and January 16, 2018, the defendants named in the Complaint filed five separate motions to dismiss:

a. The Exchange Act defendants, including certain Teva executives and directors;
b. The Securities Act defendants, including members of Teva's Board of Directors and Teva Finance;
c. The underwriter banks for Teva's offerings of ADS, Preferred Shares, and Notes during the Class Period;
d. PwC Israel, Teva's auditor; and
e. Bank of China London.

47. The defendants' opening briefs totaled 101 pages and challenged nearly every element of Class Representatives' claims, including the sufficiency of the allegations under the

Rule 9(b) and PSLRA pleading standards, timeliness, and (as to Bank of China London) personal jurisdiction. (*See* ECF 187-1, 188-1, 189-1, 190-1, 198-1.)

48. Class Representatives filed a 96-page omnibus opposition to the motions to dismiss on January 10, 2018, addressing each of the defendants' arguments (ECF 196), and filed their opposition to Bank of China London's motion on February 1, 2018. (ECF 203.) In total, Class Representatives presented 101 pages of briefing in opposition to the motions.

49. In the next two weeks, the defendants filed five replies. In total, the parties' motion to dismiss briefing spanned 284 pages.

50. Given the number and complexity of the defendants' arguments, preparation for oral argument was extensive. Among other things, Class Counsel prepared detailed rebuttals to each of the defendants' arguments, and worked with a graphic design firm to prepare demonstratives and a slide presentation to assist the Court.

51. On April 2, 2018, the day before the hearing, Class Representatives submitted by email a notice of additional authority regarding a recent decision from the Southern District of New York denying a motion to dismiss in a securities class action against Mylan N.V. involving alleged collusive generic drug pricing.

52. On April 3, 2018, the Court held an hour-and-a-half hearing on the defendants' motions, where I argued on behalf of Class Representatives. Although the Court indicated that the Complaint was "too unwieldy" and that the antitrust allegations were drawn from law enforcement actions, it recognized that the oral presentation was "more effective" and also noted that "the proof is easier and the damages are the same if you don't plead antitrust." (ECF 218 at 21:7-16; 24:20-24; 45:3-4.) The Court granted the defendants' motions without prejudice to repleading. (ECF 215.)

3. Class Representatives Amend the Complaint

53. In response to the Court's guidance at oral argument that the Complaint would be better framed around the points presented at the hearing, Class Counsel extensively revised the Complaint to clarify that Defendants' alleged misstatements and omissions were false for two distinct reasons: because they concealed (i) the financial impact of Teva's price increases, and (ii) anticompetitive conduct.

54. Amplifying these two separate grounds for falsity paid dividends throughout the case. In particular, focusing on the financial impact of the price increases streamlined the Class's proof by making clear that antitrust violations were not necessary to prove securities liability. Indeed, as detailed below, Class Representatives were able to obtain significant discovery concerning Teva's price increases without being significantly affected by DOJ's intervention or its criminal investigation of Teva and indictment of Teva's U.S. subsidiary. The reformulated pleading also enabled the Class to prove its claims by providing merits experts' analyses of the financial impact of all of Teva's price increases, regardless of whether they were the product of actual collusion.

55. Significantly, Class Counsel also worked with their consulting expert to expand their analysis of Teva's generic drug portfolio to broadly identify: (a) Teva's large generic drug price increases, and (b) Teva's price increases with indicia of collusion. This analysis found 76 large price increases on 60 Teva drugs. (ECF 226 at 11 of 168.) In addition, the investigation found that Teva's price increases on 16 drugs occurred in parallel with competitors (and demonstrated other indicia of collusion). (*Id.* at 156-59 of 168.) Working with the consulting expert, Class Counsel estimated that Teva's 76 price increases generated $2.3 billion in excess profits. (*Id.* at 11 of 168.)

56. Based on this expanded econometric analysis, Class Counsel also provided detailed comparisons between (a) the allegedly concealed financial impact of Teva's price increases and (b) the publicly disclosed financial metrics to which Teva attributed its success. (*See, e.g., id.* ¶¶174-76, 178, 180, 182, 188-90, 192-93, 195, 197, 207-10, 216-17.)

57. Quantitatively, the new pleading's allegations regarding at least 60 drugs, 76 price increases, and $2.3 billion in excess profits significantly surpassed the Complaint, which had alleged price increases on only eight drugs that generated approximately $1 billion in profits. In addition, to bolster the new pleading's allegations of falsity and scienter, BFA engaged an investigative firm to locate and interview former Teva employees on a voluntary basis. The additional facts gained from these efforts expanded and further supported the allegations, including by detailing the internal financial reports tracking the impact of price increases and identifying Teva employees centrally involved in generic drug pricing and alleged collusive activity. (ECF 226 ¶¶241-45.)

58. On June 22, 2018, Class Representatives filed the Amended Consolidated Class Action Complaint (the "Amended Complaint"), which was 145 pages (excluding appendices). (ECF 226.) This more focused pleading targeted the key facts supporting falsity, materiality, and scienter, which proved instrumental in overcoming Defendants' second set of motions to dismiss and securing the discovery necessary to prove the Class's claims.

4. Opposing Defendants' Second Round of Motions to Dismiss

59. On September 14, 2018, Defendants filed three motions to dismiss the Amended Complaint. The motions were filed by: (i) Teva and certain executives (the "Exchange Act Defendants"); (ii) Teva Finance; and (iii) two Teva USA executives (Allan Oberman and Maureen Cavanaugh). Because Defendants sought to dismiss the Amended Complaint with

prejudice—and the Court had already dismissed once with leave to replead—Defendants' renewed motions to dismiss were potentially case-dispositive. To develop the pleadings and oppose Defendants' two rounds of motions to dismiss, Class Counsel invested over 17,000 hours of work that would have resulted in zero recovery if the action were dismissed with prejudice.

60. Again, the motions attacked nearly every element of Class Representatives' claims, including the falsity and materiality of the alleged misstatements and omissions, the adequacy of the scienter and loss causation allegations, and the timeliness of the Securities Act claims. (*See, e.g.*, ECF 238-1, 239-1.) In addition, the Teva USA executives argued that they were not the "makers" of the alleged misstatements or omissions under the securities laws. (ECF 240-1.) The opening briefs totaled 96 pages.

61. Class Representatives filed three opposition briefs, totaling 96 pages, in November 2018. (ECF 244, 246, 247.)

62. On January 11, 2019, Defendants filed an additional 50 pages of reply briefs. In total, the parties' briefs spanned 241 pages.

63. On March 5, 2019, Class Representatives advised the Court that the State AGs had filed an unredacted copy of their antitrust complaint against Teva, which corroborated Class Representatives' prior allegations that Nisha Patel, Teva's Director of Strategic Customer Marketing (referenced as "N.P." in the State AGs' complaint), was involved in price-fixing on generic drugs. (ECF 269.)

64. The hearing on Defendants' renewed motions to dismiss again involved substantial preparation, including detailed responses to each aspect of Defendants' arguments and their cited cases, and collaboration with the graphic design firm to create new demonstratives and a slide presentation.

65. On March 12, 2019, the Court held a two-and-a-half-hour hearing on the motions, where I argued on behalf of Class Representatives.

66. In post-hearing submissions on May 20, 2019 and August 8, 2019, Class Representatives advised the Court that two other courts had recently denied motions to dismiss in securities class actions against Lannett Co. and Allergan plc based on allegations similar to those advanced in the Amended Complaint. (ECF 273-1, 278-1.)

5. The Court's September 25, 2019 Ruling

67. On September 25, 2019, the Court issued a 74-page decision denying Defendants' motions to dismiss in substantial part. (ECF 283.)

68. The opinion held that Class Representatives had alleged actionable misstatements and omissions concerning the competitive nature of Teva's business practices (*id.* at 29-35), Teva's generic drug pricing (*id.* at 35-40), and the sources of Teva's generic segment's financial performance (*id.* at 40-44). As for the pricing statements in particular, the Court held that Class Representatives had adequately alleged Defendants' violations of SEC trend disclosure requirements, and that the statements were adequately alleged to be misleading half-truths. (*Id.* at 35-40.) The Court also sustained the scienter allegations based on extensive allegations of Teva's internal decision-making, reporting, and budgeting of the impact of price increases. (*Id.* at 46-54.)

69. Further, the Court sustained the allegations of loss causation, notwithstanding Defendants' argument that no disclosure revealed the true causes of Teva's profits, concluding that "it is hard to imagine that the price-fixing conspiracy could be constructively disclosed without the price-hike strategy also necessarily being disclosed." (*Id.* at 57-58.)

70. The Court also rejected Defendants' statute of limitations argument with regard to the Securities Act claims (*id.* at 63-68), and confirmed that Ontario Teachers' had class standing to represent investors who purchased Notes in the Notes Offering. (*Id.* at 68-70.)

71. The Court granted Defendants' motions on two issues. First, the Court dismissed claims against Cavanaugh and Oberman on scienter grounds. (*Id.* at 53-54.) Second, the Court held that Defendants were not liable for failing to disclose Teva's receipt of subpoenas concerning generic drug pricing. (*Id.* at 44-46.) In all other respects, Defendants' motions were denied.

C. Consolidation and Intervention, Including as to Related Class Actions, Individual Plaintiffs (Opt-Outs), and the U.S. Department of Justice

72. Both before and during fact discovery, Class Counsel expended significant time addressing various motions to consolidate or intervene in this litigation.

1. Initial Consolidation/Intervention Issues

73. On December 14, 2017, the Court noted that a related case, *Huellemeier v. Teva Pharmaceutical Industries Ltd. et al.*, 17-cv-1938, had been transferred to the District of Connecticut and requested briefing regarding possible consolidation with this action. (ECF 192.) Class Representatives opposed consolidation at such time. (ECF 193.)

74. Over time, several investors also filed individual (non-class) securities actions against Defendants (the "Direct Actions") or sought intervention. Class Counsel endeavored to streamline these entities' involvement. For example, Class Counsel engaged in extensive dialogue with counsel for the California State Teachers' Retirement System ("CALSTRS") regarding its motion to intervene to toll the statute of limitations. The Court eventually permitted CALSTRS to intervene for this limited purpose. (*See* ECF 281.)

2. Joint Consolidation Motion

75. In November 2019, Class Counsel held extensive negotiations with Defendants regarding a joint motion to consolidate three later-filed putative class actions and all then-pending Direct Actions (and any that are later filed) asserting claims against Defendants based on substantially identical allegations to those asserted by Class Representatives.

76. On December 13, 2019, the parties filed a joint motion to consolidate the related cases (ECF 311, 326) and filed the Second Amended Consolidated Class Action Complaint (the "SAC"), which named additional defendants, asserted additional claims, and expanded the Class Period to encompass August 4, 2017 through May 10, 2019 (ECF 310).

77. Importantly, Class Counsel also obtained Defendants' agreement not to "advance at any stage of the case the arguments that Plaintiffs do not have standing to advance the claims that are the subject of the amendments, or that Plaintiffs are not adequate or typical representatives for purposes of representing the class." (ECF 311-1 ¶7; ECF 352 at 4.)

78. The consolidation motion was strongly contested by several other litigants. Three oppositions were filed by: (a) Robert Huellemeier, the named plaintiff in a later-filed putative class action; (b) HMG Global Initiative Inc., a lead-plaintiff movant in a second later-filed putative class action; and (c) the Direct Action Plaintiffs. Class Representatives drafted and filed an omnibus reply brief (ECF 326) and the Court granted consolidation in March 2020 (ECF 341).

79. In addition, Class Representatives successfully opposed HMG's motion to intervene and strike portions of the SAC. (ECF 324.)

80. On March 12, 2020, the Court held a hearing to address issues related to consolidation, and its April 28, 2020 opinion adopted many of Class Representatives' positions, including:

a. The Direct Action Plaintiffs cannot serve separate expert reports;
b. Only one representative of the Direct Action Plaintiffs may communicate with Lead Counsel;
c. Direct Action Plaintiffs' counsel may attend depositions, but may not use any of the Class's seven-hour time limit; and
d. The Direct Action Plaintiffs may only serve non-duplicative discovery requests after conferring and Lead Counsel declining to issue such requests.

(ECF 352.)

3. DOJ Intervention Motion and Related Negotiations

81. In August 2020—nearly a year after fact discovery commenced—the DOJ indicted Teva's U.S. subsidiary for violations of the Sherman Act. DOJ then contacted Class Counsel, stating that it intended to intervene due to a concern over certain fact witnesses being deposed in this action. As a result, Class Counsel had to reassess their deposition strategy to avoid DOJ seeking to stay discovery. Class Counsel also refined their ongoing analysis of the risks posed by Teva's various other litigations, including with regard to Teva's financial capacity to withstand a guilty verdict or other adverse result in the newly filed criminal prosecution.

82. Class Counsel engaged in several discussions with DOJ in an effort to negotiate a compromise that would minimize any impact on this action. Ultimately, DOJ filed a motion to intervene (ECF 550), which Class Representatives opposed (ECF 564), stressing the importance to the Class of permitting this case to go forward and suggesting that certain fact depositions could be temporarily deferred if necessary. Although the Court permitted DOJ to intervene, DOJ was limited to "seeking to stay certain depositions and requesting that it be served simultaneously with any future written discovery requests." (ECF 584 at 4.)

83. Class Representatives eventually agreed to postpone the deposition of seven witnesses until after the close of fact discovery. At the time of settlement, Class Counsel were prepared to pursue their testimony if litigation continued.

D. Class Counsel Devote Significant Time and Resources to Obtaining a Substantial Volume of Document Discovery from Defendants and Third Parties, Efficiently Analyzing the Documents, and Ensuring a Complete Privilege Log

84. Immediately after the PSLRA discovery stay was lifted following the Court's ruling on the motions to dismiss in September 2019, Class Counsel commenced exhaustive discovery efforts, ultimately serving 116 document requests, 13 interrogatories and 119 requests for

admission. Demonstrating that discovery was heavily contested, the Court held a total of twenty hearings and conferences to provide guidance and resolve numerous discovery disputes over nearly two years.

85. The heart of these discovery efforts were Class Representatives' four sets of document requests to Defendants, served between October 3, 2019 and January 27, 2021, and 20 subpoenas to Teva's generic drug competitors. As set forth below, as a result of Class Representatives' vigorous pursuit of these discovery requests (including motions to compel and an enforcement proceeding against a third party), from December 13, 2019 to August 9, 2021, Class Representatives obtained over 8.2 million pages of produced documents from 27 Teva custodians and 23 third parties.

86. Analysis of this large volume of documents required development of robust processes to ensure efficiency and the use of a dedicated review team to analyze documentary evidence in support of the Class's claims and identify deficiencies in the productions and privilege logs. This work paved the way to completing fact depositions and expert discovery, and marshalling the evidence to develop summary judgment and *Daubert* motions and prepare for trial.

1. Obtaining a Timely, Robust, and Organized Document Production from Defendants Required Extensive Effort and Negotiation

87. Ensuring a complete and timely production was not an easy task. Despite Defendants' recalcitrance, Class Counsel were able to negotiate and resolve a number of deficiencies in Defendants' productions and discovery responses without Court intervention, such as:

a. A protocol for Defendants to rapidly resolve technical production deficiencies for specific documents identified by Class Representatives, such as cut-off or missing content;

b. Production of additional documents regarding Teva's internal controls and disclosure controls and procedures, Sarbanes-Oxley certifications, and approvals of SEC filings; and

c. Supplementation of Defendants' deficient interrogatory responses regarding Teva's internal periodic financial reporting and the personnel involved.

88. However, resolving other production disputes required the Court's guidance and rulings. As described more fully below, Class Counsel had to press the issue of the sequencing and progress of Defendants' document production and engage in numerous meet-and-confer conferences before Defendants' production was sufficiently complete to proceed with depositions. (ECF 354 (April 28, 2020 conference), ECF 369 (May 13, 2020 conference), ECF 432 (June 23, 2020 conference), ECF 472 (July 16, 2020), ECF 484 (August 3, 2020 conference), ECF 521 (August 11, 2020 conference), ECF 549 (September 16, 2020 conference), ECF 569 (October 1, 2020 conference), ECF 653 (December 3, 2020 conference); *see also* ECF 375 (stipulation regarding production milestones).) Status conferences were also necessary to secure Defendants' agreements to add custodians, expand the use of the parties' agreed-upon search terms, and adopt an agreed-upon production schedule. (ECF 484, 521.)

89. Defendants' failure to timely produce documents, particularly at the inception of discovery, was a significant problem. Notwithstanding service of Class Representatives' initial document requests in early October 2019, Defendants' production did not begin until several months later. Even then, the first few months of discovery saw production of only a trickle of ancillary documents from relatively junior employees. By the end of March 2020, six months after discovery commenced, Defendants had produced only 22,694 documents in total, of which just 61 documents came from the custody of the seven Individual Defendants.

90. In addition, Defendants initially refused to produce documents on an organized, custodian-by-custodian basis. Instead, Defendants insisted on producing documents by "topic."

This fragmented approach would have impeded Class Counsel's ability to prepare efficiently for depositions because the flow of production would be dictated by Defendants' subjective determination of which documents related to a certain "topic," rather than the ordinary process of completing production for specific custodians to ensure efficient preparation for their depositions.

91. In response to Class Representatives' concerns, at the April 28, 2020 status conference, the Court expressed "frustration with what I perceive to be the slow pace of document production" and indicated that a custodian-by-custodian production, with interim production deadlines for specific custodians, was critical to ensure timely and efficient fact depositions. (*See* ECF 354 at 3-4.)

92. Class Counsel also determined that Defendants were not prioritizing production of the highest-priority documents early in discovery, including custodial files of key Individual Defendants, materials from Teva's Board of Directors, periodic financial reports identified in the SAC, and documents from centralized files. Class Counsel pressed for and secured prompt production of these documents. This prioritization expedited the disclosure of key facts and increased Class Counsel's efficiency in fully developing the merits.

93. As discovery proceeded, Class Counsel also required Defendants to add additional document custodians and focused supplemental search terms. Defendants had initially agreed to 19 document custodians. Based on the developing documentary evidence, Class Counsel demanded that Defendants add eight custodians (for a total of 27) and apply additional search terms targeting key internal financial reports, including Teva's "Long Range Plans," "Annual Operating Plans," and "Latest Best Estimates." Defendants finally agreed to do so on a defined schedule after numerous meet-and-confers and argument before the Court. (*See* ECF 521 at 4.) This effort ensured that important documents were collected and produced.

94. Class Counsel also identified important deficiencies in Defendants' productions. For example, Class Counsel's analysis revealed that Defendants had produced only a handful of materials related to preparation for Teva's earnings calls, and Defendants eventually agreed to produce hundreds of additional documents. Class Counsel also detected a gap in Defendants' production of quarterly spreadsheets detailing Teva's price erosion on generic drugs, which Defendants corrected. In addition, Class Counsel identified telephone numbers associated with Teva-issued mobile devices, which were critical pieces of evidence as to spoliation and collusion (discussed below).

95. Importantly, all of this work substantially accelerated Defendants' document production. As noted above, by March 2020—six months after discovery commenced—Defendants had produced a mere 22,694 documents, largely in haphazard, disorganized fashion. Over the next five months, Defendants' production rate increased more than tenfold: interim agreements in response to the Court's guidance yielded an additional 304,680 documents (1.51 million pages), organized by custodian, by the end of August 2020. Between September and the end of December 2020, Defendants produced an additional 216,651 documents (1.14 million pages). The table below summarizes Defendants' production rate by month:[6]

Month/Year	Documents Produced	Pages Produced	Total Documents Produced	Total Pages Produced
Oct. 2019	0	0	0	0
Nov. 2019	0	0	0	0
Dec. 2019	40	1,503	40	1,503
Jan. 2020	412	35,976	452	37,479
Feb. 2020	11,998	15,483	12,450	52,962
Mar. 2020	10,244	23,577	22,694	76,539
Apr. 2020	14,825	34,787	37,519	111,326

[6] Class Representatives served their first set of requests for production on October 3, 2019. This table includes Defendants' production of telephone records produced to Teva in the *Generics MDL* (comprising 207 documents, or 124,123 pages).

Month/Year	Documents Produced	Pages Produced	Total Documents Produced	Total Pages Produced
May 2020	44,929	108,786	82,448	220,112
June 2020	97,938	441,815	180,386	661,927
July 2020	109,093	594,688	289,479	1,256,615
Aug. 2020	37,895	332,197	327,374	1,588,812
Sept. 2020	21,548	152,108	348,922	1,740,920
Oct. 2020	66,815	436,175	415,737	2,177,095
Nov. 2020	117,706	481,622	533,443	2,658,717
Dec. 2020	10,582	67,585	544,025	2,726,302
Jan. 2021	20,311	156,745	564,336	2,883,047
Feb. 2021	78	2,126	564,421	2,885,171
Mar. 2021	275	1,223	564,696	2,886,394
Apr. 2021	15	239	564,711	2,886,633
May 2021	92	5,739	564,803	2,892,372
June 2021	358	11,900	565,161	2,904,272
July 2021	675	4,706	565,836	2,908,978
Aug. 2021	42	359	565,878	2,909,337
TOTAL			**565,878**	**2,909,337**

96. As indicated above, Class Counsel's efforts ensured that Defendants completed the vast majority of their production before depositions commenced in earnest in January 2021, enabling Class Counsel to efficiently prepare for and complete numerous fact depositions by early May 2021.

2. Class Representatives' Motion to Compel Secured Production of Pricing, Sales, and Profit Data for Teva's Entire Generic Drug Portfolio

97. Early in discovery, while the parties were disputing the timing and sequence of Defendants' production, a crucial dispute arose from Defendants' refusal to produce complete data concerning pricing, sales, and profit for Teva's full generic drug portfolio. Class Counsel recognized that this evidence would form a crucial foundation for future expert work and was necessary to demonstrate the full financial implications of Teva's alleged price increases and rebut Defendants' anticipated defenses.

98. Despite Class Counsel's months-long efforts to obtain this key data, Defendants were only willing to produce certain data for the 60 drugs listed in the Complaint and for a limited time period from 2013 to 2016. (ECF 411.) Defendants also resisted producing complete sets of certain types of reports and data, including in response to interrogatories Class Representatives served on January 27, 2020.

99. After several unsuccessful meet and confer conferences, Class Representatives filed a motion to compel on June 2, 2020. (ECF 411.) Importantly, the Court rejected Defendants' attempt to cabin discovery to 60 drugs, agreeing with Class Representatives that "the entire portfolio is at issue in this case" (ECF 432 (June 23, 2020 Tr.) at 13:20-21, 17:14-16). The Court instructed the parties to confer about the form of production of Defendants' profit reports and data (*id*. at 16:15-21), but subsequent efforts to negotiate with Defendants did not resolve the issue. (ECF 443.) At the next status conference (July 16, 2020), the Court ordered Defendants to "produce profit reports as kept in the ordinary course of business." (ECF 472 at 3.)

100. After efforts to resolve the remaining disputes also proved unsuccessful, the Court held a further conference on August 3, 2020, at which it ordered the parties to submit competing proposed orders regarding Defendants' production of NDC-level[7] data regarding "generic drug pricing, sales, revenue, and profit for the period January 1, 2013 through February 28, 2018." (ECF 484 at 3-4.) Two weeks later, the Court ordered Defendants to produce existing reports and to further confer regarding Defendants' data production. (ECF 521 at 6.)

101. Only after further intense negotiations did Defendants finally agree to an order providing the complete parameters of Defendants' required data production, including sales and

[7] "NDC" refers to National Drug Code, a unique three-segment product identifier for drugs required by law.

profit data for all drugs in Teva's generic drug portfolio from January 1, 2013 through Q1 2018. (ECF 534.) Production milestones were provided in a separate stipulation. (ECF 536.)

102. In the end, Class Counsel's hard-fought efforts to compel Defendants' production of crucial data allowed the Class's experts to perform rigorous analysis to identify Teva's price increases and quantify their financial impact.

3. The Substantial Volume of Documents Required Implementation of an Efficient Method of Analysis

103. The voluminous document production by Defendants and third parties, which included various document formats (such as emails, complex accounting and financial reporting spreadsheets, lengthy slide presentations, customer contracts, and draft SEC filings), required a comprehensive yet efficient review process to identify key evidence and pinpoint production deficiencies to secure additional productions where required.

104. Rather than conduct a simple linear review of productions, Class Counsel used a variety of methods to focus and streamline review, including advanced analytics utilizing state-of-the-art technology; sequencing review to begin with high-value documents related to key custodians and events; and targeted searches. As detailed below, this approach allowed Class Counsel to efficiently identify key documents for depositions and other purposes without excessive staffing.

105. With the benefit of advanced analytics tools, first-level review and analysis was conducted by a team of attorneys that elevated select documents to senior attorneys. Class Counsel continuously monitored and refined the review team's work, and developed protocols to efficiently capture key evidence as the litigation progressed. Class Counsel were also careful to expand the review team only as needed, gradually increasing the team to a maximum of 14 attorneys, and reducing its size as deposition preparations were completed and review needs decreased.

The attorney team devoted to discovery analysis developed detailed factual knowledge of the case and contributed materially to the preparation of deposition outlines and other work product.

a. Preparation for Extensive Document Discovery

106. Beginning in early 2020, as the Covid-19 pandemic and lock-down restrictions created unprecedented and evolving logistical complications, Class Counsel worked to assemble a review team and process that would operate remotely throughout the case, while simultaneously pressing Defendants to complete their productions in a more efficient manner.

107. Among other work, Class Counsel drafted a 30-page document review protocol that summarized the allegations in this action, provided examples of important information, and delineated a process to analyze documents for their overall relevance and significance to discrete, case-specific issues. This protocol was continuously updated as the review progressed and was used to quickly bring new attorneys up to speed.

108. Class Counsel also retained an electronic discovery vendor to host document productions and rapidly process and evaluate incoming productions. With the vendor's assistance, Class Counsel prepared a customized, state-of-the-art document review platform that enabled the review team to run complex searches, efficiently review and analyze prioritized batches of documents, and perform case management and quality control tasks.

109. In addition, Defendants produced certain documents (including important communications involving the Individual Defendants) in Hebrew, requiring Class Counsel to use machine translation for initial review and to obtain certified translations of key documents for use in depositions.

b. Use of Advanced Analytics to Target Review

110. Rather than utilizing a large team of attorneys to manually review every produced document page by page, Class Counsel deployed analytical tools to screen large volumes of

documents and identify those most likely to be relevant. These tools enabled attorney review to focus time and effort on analyzing the most probative and significant documents from the millions of pages produced. This significantly increased Class Counsel's efficiency, enabled lean staffing, and expedited progress on the case.

111. In particular, the advanced analytical tools (developed with Class Counsel's input and refined through continuous testing) scored all incoming documents to rapidly identify the most important documents. This scoring was supplemented with "emotional intelligence" analysis that identified documents with positive or negative tone or content that indicated high-pressure situations or deviations from typical patterns of a custodian's behavior. These tools facilitated Class Counsel's analysis of documents from a particular witness's custodial file, as well as documents referencing that witness from other custodians' files, ensuring a comprehensive review for a given deposition.

112. In addition, Class Counsel analyzed incoming productions' metadata to systematically identify potential high-value documents and potential production deficiencies. For example, Class Counsel received a report for each production breaking down the number of documents produced on a custodian-by-custodian basis, the file types of documents in the production, and other metrics designed to assess the adequacy of production from the Individual Defendants and other key witnesses, and to spotlight technical production defects.

c. Efficient Review Workflow

113. Class Counsel also developed a review structure to maximize focus on high-value documents. The review prioritized documents that: (i) involved the Individual Defendants or other high-level executives; (ii) contained particularly important words or phrases; (iii) were created near the time of significant events; or (iv) received particularly high scores from the advanced analytics modeling described above. As Class Counsel received productions on a rolling

basis, prioritized documents from each production were continuously added for review ahead of lower-priority documents from earlier productions. This approach maximized the review team's efficiency in identifying important emails, presentations, and other documents throughout discovery, and enhanced Class Counsel's preparation for depositions of key witnesses.

114. Further, senior attorneys developed and assigned more than 75 targeted search assignments for review team attorneys to develop factual proof on particular issues. The resulting work product (including compilations of relevant documents and written summaries of findings) was saved in the review platform and logged in a central research database for ease of reference. These searches identified important documents that supported the Class's claims, including lists of generic drug price increases, complete sets of Teva's periodic internal financial reports, materials presented to Teva's Executive Committee and Teva's Board of Directors, and presentations concerning Teva's U.S. generic drug business.

115. Throughout the review process, senior review team members, with the assistance of BFA's eDiscovery manager, performed regular quality control checks, using key search terms and analytics, to ensure that important documents were being efficiently identified and properly analyzed. Review team attorneys provided twice-weekly updates on their work and weekly submissions of the most relevant documents, and used chat and email to elevate important documents to associates in real time.

116. BFA associates and senior review team attorneys also led weekly conferences with the review team to discuss key documents, update targeted assignments, and communicate important findings as discovery progressed. Senior review team attorneys also held weekly conferences with individual review team attorneys to address assignments, quality control, and

questions or concerns. Further, the review team's questions and answers were compiled in a regularly updated "decision log" to provide ongoing guidance.

d. Development of a Detailed Fact Chronology

117. To synthesize the results of discovery analysis, Class Counsel prepared a detailed chronology of the most important documents identified during the review.

118. To do so, associates analyzed all documents elevated by review team leaders as potentially important and determined which should be included in the chronology. Review team leaders and associates summarized those documents' importance and categorized each document as relevant to key issues, such as collusion or the economic impact of Teva's price increases, using a customized review interface. With the assistance of the review interface, Class Counsel then created a chronology that provided the document's date, custodian, and email participants, along with the attorney summary and identification of relevant issues. This approach facilitated Class Counsel's factual analysis regarding specific witnesses, time periods, and events and streamlined regular revision of the chronology as the factual record developed.

119. Although constructing the chronology required substantial effort, it yielded significant dividends, as it served as a primary reference in preparing for dozens of depositions, drafting lengthy responses to Defendants' contention interrogatories, working with the Class's experts, preparing an order of proof, and preparing summary judgment and *Daubert* papers.

4. Substantial Third-Party Discovery Yielded an Additional 5 Million Pages of Documents

120. Concurrently with party discovery and the transaction data dispute with Defendants, Class Counsel launched a concerted effort to secure third-party discovery from former Teva employees, other generic drug manufacturers, Teva's auditor, and the underwriters for the Offerings. Class Counsel served subpoenas on 49 third parties and pursued negotiations that

obtained more than 5 million pages of documents (as well as other key evidence described below). This voluminous evidence was comprehensively analyzed for use in depositions, discovery responses, and summary judgment.

a. Class Representatives' Subpoenas to Competitors, Distributors, and Wholesalers and Motion to Compel Sandoz's Production

121. The heart of third-party discovery was Class Representatives' subpoenas to twenty generic drug manufacturers and four generic drug distributors and wholesalers.

122. These third parties were generally uncooperative, and negotiations with their counsel continued for well over a year in some cases. Ultimately, these extensive efforts paid off, yielding more than 5 million pages of documents.

123. Sandoz Inc. was particularly intransigent. Despite having entered into a Deferred Prosecution Agreement admitting that it had engaged in collusion and price-fixing, and paying a $195 million criminal penalty to DOJ, Sandoz initially insisted that it had no relevant, responsive documents. After months of meet and confer efforts, Sandoz was willing to produce fewer than 10 documents, and only on the condition that Class Representatives waive all rights to seek any additional Sandoz documents. Class Representatives declined this offer and instead filed an enforcement action to compel Sandoz's production.[8]

124. Even after the Court granted Class Representatives' motion on September 10, 2020 and ordered Sandoz to produce documents at its own expense (No. 3:20-cv-01283-SRU (D. Conn.), ECF 36), Sandoz continued to delay and refused to produce key documents or correct deficiencies in its production. All told, Class Counsel's effort to secure Sandoz's compliance with

[8] *In the Matter of Rule 45 Subpoena Issued to Sandoz Inc.*, No. 1:20-mc-00213 (S.D.N.Y.).

the subpoena included three appearances before the Court and ten submissions, resulting in Sandoz's production of 1.8 million pages of documents.

b. Class Representatives' Subpoenas to Former Teva Personnel

125. Class Representatives also subpoenaed five former Teva employees (Maureen Cavanaugh, Kevin Green, Allan Oberman, Nisha Patel, and David Rekenthaler) and a former Teva Board member (Dr. Phillip Frost) to obtain additional documentary evidence. For example, following unsuccessful meet and confer conferences with Defendants, Class Counsel sought—and obtained—a Court order requiring the production of Cavanaugh's "dynamic personal document" (ECF 472 at 3), which substantiated the individuals whose contact information was contained in Cavanaugh's personal files. Oberman, Rekenthaler, and Frost also produced documents.

c. Class Representatives' Subpoenas to Teva's Underwriters and Auditor

126. Class Representatives served a subpoena on eighteen underwriters of Teva's Offerings during the Class Period, which yielded more than 22,000 pages of important documentary evidence concerning the Class's Securities Act allegations.

127. Finally, Class Representatives served a subpoena on PwC Israel, Teva's auditor, which yielded more than 300,000 pages of important evidence concerning Teva's SEC filings and the governing disclosure requirements.

5. Class Counsel Successfully Secured Complete Privilege Logs from Defendants after Extended Effort

128. While working to secure the productions detailed above, Class Counsel also successfully pressed for Defendants to produce custodian-based privilege logs on a rolling basis. This effort enhanced Class Counsel's ability to obtain improperly withheld materials before

depositions of key witnesses, and to examine custodians about particular log entries. Defendants initially resisted the production of rolling privilege logs, but as a result of Class Counsel's persistence and the Court's urging, Defendants finally agreed to a stipulated schedule filed in May 2020 (ECF 375) that imposed interim deadlines for rolling privilege logs, beginning in June 2020, tied to the milestones for custodial productions.

129. Class Counsel effectively policed Defendants' resulting production of privilege logs and identified several deficiencies. For example, in several instances, Defendants failed to provide basic information to substantiate their claims of privilege, including the identities of counsel. And substantively, Defendants improperly asserted privilege or work product protection over numerous documents that were disclosed to third parties, contained business advice, discussed political or lobbying activities and strategies, or were otherwise unrelated to legal advice.

130. Following Defendants' repeated refusals to address such deficiencies, Class Counsel promptly raised their concerns in a July 31, 2020 submission to the Court (ECF 481 at 5). At the August 3, 2020 status conference, Defendants agreed to produce revised privilege logs, resulting in a further order modifying certain production deadlines. (ECF 484.)

131. However, these deficiencies still were not fully corrected. Class Counsel had to pore through thousands of privilege entries and identified numerous remaining deficiencies. Class Counsel raised these issues at the December 3, 2020 status conference, and the Court ordered the parties to again meet and confer. (ECF 653.) After considerable negotiation, Defendants yet again agreed to produce revised logs. As a result of Class Counsel's persistence, Defendants ultimately withdrew their privilege claims over, and therefore produced, numerous documents from their privilege logs.

E. Class Counsel Completed 23 Fact Depositions of Defendants, Teva Personnel, and Third Parties in a Period of Intensive Effort

132. Class Representatives' and Class Counsel's vigorous pursuit of document discovery from Defendants and third parties, as well as their insistence on a rolling privilege log, enabled the commencement of fact depositions.

133. The complexity of this matter required Class Counsel to take a significant number of depositions to establish the relevant facts and obtain impeachment material for trial. Class Counsel took 23 fact depositions. These deponents included all seven Individual Defendants (including Teva's current CEO Schultz); Teva's and Teva Finance's Rule 30(b)(6) representative (over two days); a current member of Teva's Board of Directors and Audit Committee; executives in Teva's senior management, sales, pricing, finance, accounting, and investor relations departments in the U.S. and abroad; and Rule 30(b)(6) representatives of PwC Israel and Barclays Capital Inc., one of the lead underwriters of Teva's Offerings.

134. These depositions yielded important testimony that further supported many elements of the Class's claims, including the falsity and materiality of the alleged misstatements and omissions, Defendants' scienter, loss causation, and damages.

135. Class Counsel initially identified 32 deponents and proposed a deposition schedule of these witnesses to Defendants. In response to Defendants' and/or the DOJ's concerns as to deposing certain witnesses in light of the pending criminal case, Class Counsel expended considerable effort to negotiate a schedule of initial deponents and a separate list of witnesses who would be deposed after the close of fact discovery (the "out of time" depositions). The parties exchanged several proposals before reaching an agreement, which was memorialized in a joint proposal approved by the Court on December 28, 2020. (ECF 677.) The schedule allowed for 32 fact depositions, with 7 designated as "out of time" depositions. (*Id.*) The initial deposition

schedule was further modified as deponents were added and removed. At the March 31, 2021 status conference, the Court permitted Class Representatives to take two additional fact depositions (ECF 751).

136. In light of the pandemic, all depositions were taken remotely. As a result, the parties had to negotiate a deposition protocol to specify the procedures and logistics applicable to remote depositions and to ensure that the resulting testimony would be admissible. An agreement on the protocol was reached in January 2021.

137. To prepare for each deposition, Class Counsel leveraged their review team to perform a comprehensive analysis targeted to each deponent. This process consisted of several steps:

a. The team utilized their advanced analytical modeling tools to score and prioritize each deponent's most important documents for detailed review;

b. In a multi-tiered review process, a targeted subset of the review team and a review team leader reviewed all potentially important documents for each deponent;

c. Based on that review, the team drafted a summary of key documents, organized by issue, for use in deposition outlines; and

d. The taking attorney (or second-chair attorney) used the summary and set of key documents to draft a deposition outline, performed independent research and analysis of other relevant evidence, and planned the highest-impact deployment of critical documents within the overall deposition sequence.

138. In addition, Class Counsel coordinated logistical support for the remote depositions, including delivery of potential exhibits in hard copy to witnesses (including nine deponents located outside of the U.S.) and opposing counsel, and uploading copies of marked exhibits to the remote deposition platform.

139. Class Counsel's 23 fact depositions are listed in Table 4 below. Fact depositions began in earnest on January 21, 2021, and concentrated effort was required to complete these depositions by May 5, 2021, with Class Counsel taking more than one deposition per week on

average. Many depositions took place over two days (with additional debriefing and preparation between sessions) to accommodate time zone differences for witnesses in Israel or Europe. All 23 depositions were conducted by a core group of four BFA attorneys to maximize efficiency and collective knowledge of the factual record as it developed through each deposition.

Date	Deponent (non-US location)	Deponent's Role	Taking Attorney	Tr. Pages
Dec. 8, 2020	Brian Lapp	Revenue Manager, Teva	T. Stoddard	217
Jan. 21, 2021	Jamie Berlanska	VP and Controller, Teva Americas	T. Stoddard	312
Jan. 22, 2021	Mayra Avila	Director and Senior Director, Finance, Teva	B. Burry	368
Jan. 27, 2021	Brendan O'Grady	President and CEO, Teva North America Generics from April 2015 through August 2016	E. Kubota	294
Jan. 28, 2021	Fred Andrush	Associate Director, Business Analysis and Forecasting, Teva	B. Burry	321
Feb. 9, 2021	Gilad Shadur	Senior roles in Teva Global Generic Medicines Financial Planning & Analysis group, and interim CFO, North America	J. Fonti	338
Feb. 11, 2021	Brandon Boyd	Strategic Associate to Allan Oberman (CEO and President, Teva Americas Generics)	B. Burry	310
Feb. 16-17, 2021	Yitzhak Peterburg (Israel)	Individual Defendant; Teva's Interim President and CEO from Feb. 6, 2017 to Oct. 31, 2017, a Teva Director from 2012 until Dec. 2017, and Chairman from Jan. 1, 2015 to Feb. 6, 2017	E. Kubota	277
Feb. 23-24, 2021	Kobi Altman (Israel)	SVP and CFO Teva Americas from Aug. 2013 to July 2014, and SVP and CFO, Global Generics Medicines from July 2014 to April 2015	E. Kubota	312
Mar. 2, 2021	Andrew Boyer	President and CEO, Teva North America Generics from Aug. 2016 to Feb. 2018	E. Kubota	288
Mar. 5, 2021	Sigurdur Olafsson	Individual Defendant; Teva's President and CEO of Global Generics from July 2014 through Jan. 2017	J. Fonti	373
Mar. 8, 2021	Eti Mitrany (Israel)	SVP, Head of Business Analysis and Planning	E. Kubota	223
Mar. 12, 2021	Kevin Mannix	Head of Global Investor Relations, Teva	E. Kubota	308

Date	Deponent (non-US location)	Deponent's Role	Taking Attorney	Tr. Pages
Mar. 24, 2021	Deborah Griffin	Individual Defendant; SVP and Chief Accounting Officer, Teva	E. Kubota	358
Apr. 8-9, 2021	Erez Vigodman (Israel)	Individual Defendant; Teva's President and CEO from Feb. 2014 through Feb. 2017	J. Fonti	456
Apr. 12, 2021	Michael McClellan (Spain)	Individual Defendant; Teva's CFO from July 2017 through Nov. 2019	E. Kubota	225
Apr. 14, 2021	James Gutow	Barclays Capital Inc.'s Rule 30(b)(6) Witness	T. Stoddard	240
Apr. 16, 2021	Kåre Schultz (Israel)	Individual Defendant; Teva's CEO from September 2017 through Present	J. Fonti	254
Apr. 19, 2021	Gerald Lieberman	Teva Board of Directors and Audit Committee member from September 2015 through Present	J. Fonti	356
Apr. 21-22, 2021	Eyal Desheh (Israel)	Individual Defendant; Teva's CFO from July 2008 to June 2017	J. Fonti	452
Apr. 26-27, 2021	Arik Reizner (Israel)	PwC Israel's Rule 30(b)(6) Witness	E. Kubota	314
May 3-4, 2021	John Hassler	Teva's Rule 30(b)(6) Witness	E. Kubota	508
May 5, 2021	Sharon Dror (Israel)	VP, Corporate Controller, Teva	T. Stoddard	228

140. Class Counsel's 23 fact depositions yielded over 7,000 pages of testimony, much of which was likely to be trial testimony. In addition, Class Counsel marked 535 exhibits during fact depositions.

141. This record provided important factual support for the Class's claims. For example, Defendants Vigodman, Desheh, Olafsson, Griffin, and other senior Teva executives testified about their public statements, the SEC filings that they signed or approved, and Teva's generic drug pricing and price erosion; Mayra Avila and Gilad Shadur testified about Teva's internal tracking and reporting of generic drug pricing and price erosion; and Kevin Mannix testified about Teva's share price declines and the alleged corrective disclosures. In addition, the Rule 30(b)(6) representative of Barclays Capital Inc. testified about the Offering Materials, and PwC Israel's

Rule 30(b)(6) representative testified about Teva's SEC filings, PwC Israel's audits, and the applicable disclosure requirements. Several key admissions from the fact depositions were featured in Class Representatives' summary judgment and *Daubert* papers.

142. Importantly, Class Counsel also leveraged the fact depositions to uncover and obtain additional key documents. For example, Teva's Rule 30(b)(6) representative was prepared through numerous meetings with other Teva personnel, and received a lengthy outline of notes from these meetings, among other materials. Defendants initially withheld many of these documents, asserting privilege and work-product protection, but eventually agreed to produce them.

143. Similarly, Class Counsel identified production deficiencies and obtained additional documents based on the deposition testimony of Deborah Griffin (Teva's Chief Accounting Officer during the Class Period). As a result of these efforts, Defendants eventually produced documents concerning Teva's preparation of its SEC filings, Sarbanes-Oxley Act certifications and sub-certifications and a related internal database, and additional reports tracking Teva's price erosion. (*See, e.g.*, ECF 762 at 5.)

144. Finally, at the time of settlement, Class Representatives were prepared to take the limited-scope deposition of Cavanaugh (discussed below) and pursue the remaining "out of time" depositions that had been placed on hold due to the pending criminal matter.

F. Class Representatives Pursued Evidence of Potential Spoliation

145. As document discovery and fact depositions progressed, Class Counsel discovered evidence of over 2,000 text messages that appeared highly relevant to the Class's allegations of collusion and price-fixing between Teva and its competitors. These texts were exchanged both among Teva employees and between Teva personnel and their counterparts at other generic drug manufacturers.

146. Despite two years of litigation on the issue, Defendants never located—much less produced—these texts. Defendants also resisted providing any explanation for the text messages' disappearance. Class Counsel vigorously pursued this issue, and at the time of settlement were on the eve of deposing Maureen Cavanaugh (former SVP, Chief Commercial Officer, Teva North America) regarding the missing text messages.

147. Class Counsel's multi-year pursuit of these text messages began with their October 2019 Requests for Production explicitly targeting relevant text messages, chats, and internal messaging. On January 27, 2020, Class Counsel served a subpoena *duces tecum* on Cavanaugh seeking relevant electronically stored information, including text messages.

148. For the next several months, while Class Counsel pursued Defendants' document production, they also pressed for meet and confer conferences regarding: (a) Teva's efforts (if any) to preserve these types of electronic communications; (b) the status and preservation of Teva employees' mobile devices; and (c) Cavanaugh's mobile devices and text messages.

149. Teva reluctantly provided only limited information concerning certain mobile devices of individual custodians. Meanwhile, Cavanaugh—represented by the same counsel as Teva—refused to provide any specific information about her mobile devices or produce any documents responsive to the subpoena served on her.

150. In summer 2020, Class Counsel made two significant discoveries. First, Class Counsel learned that Teva possessed an electronic image of one of Cavanaugh's mobile phones. Second, Class Counsel secured Teva's production of detailed telephone records regarding communications between Teva-issued mobile devices and those of Teva's competitors. (ECF 509 (Aug. 3, 2020 Tr.) at 67-68.) These telephone records, which had been obtained by the State AGs through subpoenas to third-party phone carriers and produced to Teva in the

Generics MDL action, were voluminous (124,000 pages) and required careful analysis to correlate specific communications with the phone numbers of the Teva-issued devices. Class Counsel were able to use these records to conclusively demonstrate that several former and current Teva employees (including Cavanaugh) had exchanged over 2,000 text messages with each other and/or their counterparts at competing drug manufacturers. Nonetheless, hundreds, and potentially thousands, of highly relevant text messages had not been produced in this case, and neither Teva nor Cavanaugh had any explanation for their absence.

151. After Class Representatives brought these concerns to the Court's attention (ECF 515), the Court noted at the August 11, 2020 status conference that "[w]e're not going to move forward in this case without figuring out what happened to these text messages." (ECF 525 (Aug. 11, 2020 Tr.) at 14:18-20.) The Court thus ordered that "[i]f Cavanaugh or the Defendants have relevant text messages within their possession, custody, or control, those text messages must be produced." (ECF 521 at 4.)

152. While Defendants subsequently produced a limited number of previously withheld text messages, this only confirmed significant discrepancies, including substantial gaps in time where text messages remained missing. For example, neither Teva nor Cavanaugh produced any of her text messages before March 5, 2016, even though the phone records confirmed their existence. Defendants also refused to explain what had happened to these missing text messages. Class Representatives raised these issues at the September 16, 2020 status conference and the Court requested full briefing. (ECF 543, 549.)

153. Class Representatives then moved to compel production of the text messages of Cavanaugh and five other key Teva custodians. (ECF 554, 555, 556.) The motion was necessitated by Class Counsel's discovery of additional missing texts, including Cavanaugh's texts for the

period from July 2016 to April 2017, and Defendants' continued refusal to provide any explanation. (ECF 555 at 4 of 20.) Similar gaps existed as to the text messages of the five other Teva personnel (David Rekenthaler, Nisha Patel, Teri Coward, Kevin Galownia, and Christine Baeder). (*Id*. at 7-8 of 20.)

154. At an October 1, 2020 hearing, the Court found that the "gaps" in Cavanaugh's text messages "are puzzling, to say the least" and ordered a forensic examination of Cavanaugh's mobile devices. (ECF 569 at 4.) The Court further ordered production of (i) full message threads between the six custodians and any individual identified by name or initial in the State AGs' complaint as someone with whom these six custodians communicated; and (ii) all text messages between the six custodians or among these custodians and the Individual Defendants. (*Id.* at 4-5.)

155. The forensic examination, conducted by Stroz Friedberg, was unable to locate any of the missing text messages on Cavanaugh's devices. (*See* ECF 723 at 3.)

156. Over the next six months (from October 2020 through March 2021), Class Counsel continued to press Teva and Cavanaugh to locate and produce the missing text messages or explain how they disappeared. These efforts included serving 119 requests for admission and 11 interrogatories on January 27, 2021, many of which focused on issues related to the missing texts.

157. On March 1, 2021, Class Representatives renewed their September 2020 motion to compel Defendants to produce the missing text messages or explain what happened to them, including a detailed description of any preservation efforts. (ECF 718.) The Court ordered the parties to meet and confer (ECF 729 at 4), and later ordered Defendants "to produce a detailed affidavit setting forth Teva's preservation efforts with respect to the missing text messages from

January 1, 2013 until the present." (ECF 751 at 3-4.) That declaration turned out to be deficient in many respects. (*See* ECF 778-4 (sealed).)

158. At the April 16, 2021 status conference, the Court ordered Defendants to produce additional telephone records and text messages related to potential collusion with Sandoz Inc. (ECF 762 at 5.) During that same conference, Class Counsel suggested that they would pursue information regarding Teva's preservation efforts by deposing Teva's corporate representative under Rule 30(b)(6). (*Id.* at 5-6.) Unfortunately, Teva's designee possessed limited knowledge beyond the deficient declaration. (*See* ECF 813 at 9:21-10:3.)

159. Turning to other avenues, Class Counsel made important discoveries through close scrutiny of Teva's privilege logs, locating evidence (including litigation holds by Teva's legal department) indicating that, contrary to Defendants' position, Teva's preservation duty arose well before the apparent loss or destruction of texts and other evidence. (*See* ECF 778 at 5-6 of 14.) At the May 25, 2021 status conference, the Court ordered the production of "(1) all litigation holds directed to the relevant six custodians . . . between January 1, 2013 and June 30, 2016, and (2) all litigation holds that were issued in general in connection with the matters referenced in the 2014-2016 communications identified by the Plaintiffs in Exhibit B of their pre-conference submission." (ECF 796 at 5.)

160. Despite the Court's order to produce holds through June 30, 2016, Defendants refused to produce a litigation hold issued on June 21, 2016 in response to the DOJ subpoena to Teva. Class Representatives were again forced to seek relief from the Court to obtain the hold. (*See* ECF 829 at 5-6; ECF 847 (Order).)

161. With evidence that the text messages had once existed and facts indicating that Teva was subject to a duty to preserve, the one missing piece was uncovering what had actually happened to the text messages.

162. To get to the bottom of this issue, Class Representatives sought a limited deposition of Cavanaugh regarding spoliation. At the July 15, 2021 status conference, the Court indicated its inclination to allow the deposition and requested further briefing. (ECF 848 (July 15, 2021 Tr.) at 19:20-25); *see also* ECF 838 (Conference Memorandum and Order) at 5.)

163. Further, in August 2021, Class Counsel discovered important new information: a recent filing in the Teva criminal matter disclosed for the first time that DOJ had contacted an unnamed Teva employee as early as spring 2015 as part of DOJ's criminal investigation into generic drug pricing, confirming Teva's duty to preserve and underscoring the need for Cavanaugh's deposition on spoliation. (ECF 885 at 1-6.)

164. Class Representatives brought all of this information to the Court's attention at the September 15, 2021 conference. The Court again indicated its inclination to permit a two-hour deposition of Cavanaugh limited to the spoliation issue, but deferred a formal ruling in order to permit Cavanaugh to file a motion to quash. (ECF 892.) No such motion was ever filed.

165. Class Counsel then negotiated with Cavanaugh's counsel and were prepared to depose Cavanaugh in December 2021. The parties reached agreement on the proposed settlement shortly before the deposition was to be taken.

G. Class Representatives Pursued Other Avenues for Evidence of Collusion

166. Faced with the apparent spoliation of direct communications between Teva and its competitors, Class Representatives pursued other avenues to obtain evidence of collusion. In particular, Class Representatives sought (i) testimonial evidence from Teva's co-conspirator

generics manufacturers and (ii) the memoranda of FBI interviews taken during the DOJ's investigation of Teva's collusive conduct.

a. Declarations from Teva's Co-Conspirators

167. Class Representatives served Rule 30(b)(6) subpoenas on three of Teva's co-conspirators (Apotex Corp., Sandoz, Inc., and Taro Pharmaceuticals USA) to obtain deposition testimony regarding price-fixing with Teva. Ultimately, Class Representatives agreed to accept declarations rather than deposition testimony, thereby avoiding a potential motion by the DOJ to stay those depositions in light of its pending criminal action against Teva and ongoing investigation of the generic drug industry. Each manufacturer's declaration contained testimony that, among other things, confirmed the admissions of price-fixing in their respective Deferred Prosecution Agreements ("DPAs") with the DOJ, and explicitly named Teva as a co-conspirator on specific drugs identified in the DPAs that were also at issue in this class action. Class Counsel also obtained each manufacturer's agreement to testify at trial in this action. (*See* ECF 718 at 2-3.) These declarations provided critical evidence regarding Teva's alleged price-fixing, demonstrating that three of Teva's most significant competitors colluded with Teva employees to fix the prices of, and allocate markets for, generic drugs.

b. The FBI Forms FD-302

168. As a result of carefully tracking events in the *Generics MDL* and the Teva criminal antitrust case, Class Counsel gleaned important information relevant to this securities action. In addition to discovering DOJ's 2015 contact with Teva (described above), Class Counsel discovered that Teva had obtained 200 FBI Forms FD-302 documenting witness interviews in the criminal case, some of which had been accessed by Teva's in-house counsel and certain outside counsel representing Teva in this action.

169. Concerned that Teva's unilateral access to these witness interview memoranda had given defense counsel an unfair strategic advantage in this civil action, Class Representatives moved to compel production of a subset of the FD-302s. (ECF 770-2.)

170. At the April 16, 2021 conference and in its subsequent order, the Court noted concern about defense counsel obtaining an unfair advantage if they had access to the FBI interview memoranda. (*See* ECF 764 (Apr. 16, 2021 Tr.) at 15:10-15; 9:11-13; ECF 762 at 4.) The Court also ordered further briefing (ECF 762 at 3-4), which was completed in June 2021. (*See* ECF 800, 810, 814.)

171. On July 15, 2021, the Court denied the motion without prejudice to renew after conclusion of the criminal case or closer to trial in this class action. (ECF 838 at 4.) Defendants were also ordered "to submit a list of all counsel (both private and in-house) who have worked on this case and who may have, at any time, had access to the relevant FBI 302s" because it was "still important to know how important the information contained in the relevant FBI 302s might have already been in this case." (ECF 838 at 5.) Defendants filed the list on July 29, 2021. (ECF 849.)

H. Class Representatives Responded to Defendants' Class-Wide Merits Discovery Requests

172. On January 27, 2021, as Class Counsel were conducting fact depositions, Defendants served Class Representatives with 57 requests for admission and 18 interrogatories, several of which were contention interrogatories seeking all facts supporting various allegations.

173. On February 26, 2021, Class Representatives served responses and objections to Defendants' requests for admission and initial responses and objections to Defendants' interrogatories.

174. In addition, on October 4, 2021, Class Representatives served comprehensive supplemental responses to certain contention interrogatories. Months of effort were required to

compile the key documentary and testimonial evidence Class Counsel developed over the prior two years of discovery. Class Counsel combed through millions of pages of produced documents, 7,000 pages of fact witness testimony, 600 pages of expert reports, and over 3,000 pages of expert testimony.

175. Class Representatives' supplemental interrogatory responses totaled more than 220 pages and addressed key elements of the Class's claims, including the falsity and materiality of the alleged misstatements and omissions. These responses detailed Class Representatives' extensive proof as to key factual issues, such as:

- The extent of Teva's generic drug price increases and the profits Teva earned from those price increases based on documentary evidence and expert analysis;
- Teva's generic drug price erosion rates throughout the Class Period;
- Information provided (or available) to Teva executives regarding Teva's price increases, their financial impact, and price erosion;
- The adequacy of Teva's disclosure controls and procedures required by SEC regulations; and
- Potential spoliation of key evidence, including text messages and other documents and communications.

I. Class Representatives Obtain Class Certification over Defendants' Vigorous Opposition and Persistent Requests for Additional Discovery

176. Simultaneously with pursuing document discovery and preparing for fact depositions, Class Representatives successfully achieved certification of the Class.

177. Class certification was complex and heavily contested, involving nearly 200 pages of briefs (including a *Daubert* motion against the Class's expert), over 300 pages of expert reports (with more than 400 pages of exhibits), and over 1,400 pages of expert deposition testimony. The primary dispute focused on market efficiency, which Defendants vigorously contested. Demonstrating market efficiency was particularly complex due to, among other things, the eight

Teva Securities at issue (including equity (the ADS), the Preferred Shares, and debt securities (the six Notes)); the length of the Class Period (over five years); and the large amount of Teva-related news released during that time.

178. Further, although Class Counsel had secured Defendants' agreement in December 2019 not to challenge Class Representatives' standing, typicality, or adequacy, Defendants repeatedly sought discovery on those issues, both before and after class certification was granted. While Class Representatives agreed to provide limited documents and testimony, Defendants' persistent demands ultimately required a ruling from the Court, which concluded that "individual discovery" was not "relevant to the class-wide issue of materiality or to a class-wide rebuttal of reliance." (ECF 796 at 4 of 6.)

1. Before Class Certification, Defendants Demanded Documents from Class Representatives and Moved to Compel Production, Including with Respect to Class Representatives' Trading in Teva Securities

179. Class Counsel worked with Class Representatives to determine the locations of potentially relevant documents, including through in-person meetings and custodial interviews, and put in place preservation efforts, including on-site forensic collections from Class Representatives in Ontario, Canada and Anchorage, Alaska.

180. On January 29, 2020, Defendants served Class Representatives with 44 requests for production of documents. Class Representatives served their responses and objections on February 28, 2020. Among other things, Class Representatives objected to Defendants' broad requests seeking investment and trading records in light of Defendants' agreement not to contest Class Representatives' standing, typicality, or adequacy. Class Representatives also objected on privilege and work-product grounds to Defendants' requests regarding former employees who

provided information, and work performed by Class Representatives' consulting expert, in connection with Class Representatives' allegations.

181. On June 2, 2020, Defendants moved to compel Class Representatives' production of a broad set of documents, including various trading records and documents regarding the former employees and consulting expert. (ECF 412.) Class Representatives opposed, arguing (among other things) that trading-related documents were not relevant in light of Defendants' agreement not to challenge Ontario Teachers' or Anchorage's standing, typicality, or adequacy. (*See* ECF 413 at 7 of 37.) Nonetheless, Class Representatives offered to produce documents sufficient to show their transactions in the Teva Securities at issue to avoid an unnecessary dispute. (*Id*.)

182. On June 23, 2020, the Court held a hearing on Defendants' motion to compel. Noting the lack of relevance of plaintiffs' actual detailed investment records, the Court suggested that Defendants should accept Class Representatives' offer. (ECF 432 (June 23, 2020 Tr.) at 21:23-22:4.) The Court also indicated that it was inclined to deny the other aspects of Defendants' motion (*see id.* at 32:4-8, 26:15-19).

183. On July 2, 2020, Defendants filed a notice acknowledging that "Defendants have agreed not to further pursue their Motion to Compel, reserving their rights to do so in the event the Court denies Plaintiffs' Motion for Class Certification" (ECF 442 at 1), which Class Representatives had filed on June 19, 2020 (ECF 419). Later on July 2, Class Representatives produced documents sufficient to show their transactions during the Class Period in the Teva ADS, Preferred Shares, and Notes at issue. Nonetheless, Defendants later persisted in seeking additional discovery concerning Class Representatives' transactions, as described further below.

2. Class Certification Motion, Briefs, and Expert Analysis

184. In support of their motion for class certification, Class Representatives filed a 37-page brief on June 19, 2020 (ECF 419-1). Class Representatives also submitted declarations from Sharon Chilcott, currently Ontario Teachers' Chief of Staff, and formerly Managing Director and Associate General Counsel, Employment Law & Litigation, and Edward Jarvis, Director of Anchorage, confirming Ontario Teachers' and Anchorage's adequacy to represent the proposed class and detailing their active oversight of Class Counsel, participation in strategic decisions, and commitment to actively prosecuting the action in the best interest of the Class. (ECF 419-2, 419-3.)

185. In addition, Class Representatives submitted a detailed expert report from David Tabak, Ph.D. addressing market efficiency and a class-wide damages methodology, which was 253 pages (including exhibits). (ECF 419-5.) To analyze market efficiency, as the Court will recall, Dr. Tabak conducted multiple statistical tests:

- First, Dr. Tabak isolated the Teva-specific price movements of the ADS, Preferred Shares, and Notes during the Class Period by controlling for the effect of market and industry factors.
- Second, Dr. Tabak performed tests (known as the Z-test and Kolmogorov-Smirnov test) to determine the difference in proportions of statistically significant price movements on (i) Teva earnings dates or other dates with Teva-related news, and (ii) dates without such news. Dr. Tabak concluded that the extent of this difference demonstrated that the Teva Securities' prices tended to react to news, supporting market efficiency under the so-called "*Cammer* 5" factor derived from *Cammer v. Bloom*, 711 F. Supp. 1264, 1286-87 (D.N.J. 1989).
- Dr. Tabak also fully analyzed the other factors that are routinely utilized to assess market efficiency, which are derived from *Cammer* and *Krogman v. Sterritt*, 202 F.R.D. 467, 474 (N.D. Tex. 2001).

Finally, Dr. Tabak detailed a proposed methodology for calculating damages on a class-wide basis.

186. On August 8, 2020, Defendants filed their 40-page opposition to class certification (ECF 508) and submitted three expert reports (totaling 165 pages excluding exhibits). Two of

Defendants' experts, Dr. Mukesh Bajaj and Dr. John McConnell, disputed whether the Teva ADS, Preferred Shares and Notes traded in efficient markets and offered numerous highly technical criticisms of Dr. Tabak's analysis. (ECF 508-2, 508-3.) Defendants' third expert, Dr. Christopher James, claimed that public information disclosed Teva's generic drug pricing and further opined that the action involved "multiple theories of injury" that foreclosed a class-wide damages methodology. (ECF 508-4 at 44 of 110.)

187. On December 4, 2020, in the midst of preparing for fact depositions, Class Representatives filed their 40-page reply brief in further support of class certification (ECF 656), accompanied by a detailed reply report from Dr. Tabak (94 pages, plus 120 pages of exhibits). Dr. Tabak's reply report described extensive additional statistical testing he performed to refute the criticisms of Defendants' experts.

188. In connection with class certification, Class Counsel took or defended five expert depositions (with Dr. Tabak being deposed twice), yielding over 1,400 pages of testimony, as set forth below. Each deposition entailed immersion in the technical details of the expert's sources, statistical analysis, and conclusions, with further complexity arising from the fact that Defendants offered three experts with partially overlapping opinions. To ensure efficiency, all of these expert depositions were taken or defended by me or Mr. Kubota, who was primarily responsible for the class certification briefing.

DATE	DEPONENT	DEPONENT'S ROLE	Taking/Defending Attorney (T/D)	Tr. Pages
July 28, 2020	David Tabak	Plaintiffs' Class Certification Expert	J. Fonti - D	319
Oct. 27, 2020	Mukesh Bajaj	Defendants' Class Certification Expert	J. Fonti - T	188
Oct. 30, 2020	Christopher James	Defendants' Class Certification Expert	E. Kubota - T	314
Nov. 6, 2020	John McConnell	Defendants' Class Certification Expert	E. Kubota - T	292

DATE	DEPONENT	DEPONENT'S ROLE	Taking/Defending Attorney (T/D)	Tr. Pages
Dec. 18, 2020	David Tabak	Plaintiffs' Class Certification Expert	J. Fonti - D	297

189. The depositions of Defendants' class certification experts yielded valuable admissions that were featured in Class Representatives' reply papers and Dr. Tabak's reply report. (*See, e.g.*, ECF 656-10 (Tabak Reply Report) at 3, 18, 26, 33, 34, 48, 52, 83, 85, 88, 91.)

3. Defendants' Sur-Reply and *Daubert* Motion

190. On December 30, 2020, Defendants filed a motion to exclude Dr. Tabak's opinions under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), arguing at length that Dr. Tabak's analysis of market efficiency was unreliable and inadmissible (ECF 678). Defendants' papers included an additional 25-page "declaration" from their expert Dr. Bajaj. On January 20, 2021, Class Representatives filed their 30-page opposition to Defendants' *Daubert* motion. (ECF 686.) On January 27, 2021, Defendants filed their 10-page reply. (ECF 696.)

4. The January 29, 2021 Hearing on Class Certification and Defendants' *Daubert* Motion

191. The Court scheduled argument for January 29, 2021 on both Class Representatives' motion for class certification and Defendants' *Daubert* motion. Underscoring the extent of the parties' disputes at class certification, Defendants sought to call all four experts to testify live, and initially proposed that the hearing should last seven-and-a-half hours. Class Representatives disagreed, as did the Court. The hearing ultimately lasted three hours. In addition to outside counsel, Sharon Chilcott and Tara Rosenblatt of Ontario Teachers' attended remotely. The Court took both motions under advisement and raised a choice-of-law issue as to the Class's state-law claims, which the parties resolved by stipulation on February 12, 2021. (ECF 706.)

5. Defendants Seek to Stay the Court's Ruling

192. After the January 29, 2021 hearing, prompted by a decision in an unrelated action (*Endo*) criticizing BFA and its client in that case, Defendants sought further discovery concerning Class Representatives' transactions in Teva securities. While Class Representatives voluntarily produced additional information regarding their transactions in Teva securities in February 2021, Defendants continued to seek additional discovery.

193. The parties addressed the issue in simultaneous submissions on March 1, 2021. (ECF 718 & 720.) Defendants sought an additional two months of discovery and delay of the Court's class certification decision. (ECF 720 at 2.) Class Counsel explained their strong disagreement with the *Endo* decision, and that the requested discovery was irrelevant to class certification in light of Defendants' stipulation not to contest Ontario Teachers' and Anchorage's standing, typicality, or adequacy at any stage of the litigation. (ECF 718.)

194. At the March 3, 2021 conference, the Court denied Defendants' requests (ECF 729), and subsequently explained that "none of the information [Defendants raised] gives me pause or warrants halting this case's progress to delve into tangentially related topics (at best) that the Defendants either long ago conceded or abandoned" (ECF 735 at 8). The Court further found that Defendants' arguments were "belated, specious, and, in several cases, irrelevant" (*id.* at 4), and that the decision Defendants cited "is virtually irrelevant. So far as I can tell, BFA's written and oral representations to me in this case have been truthful and candid: I do not share the *Endo* Court's concerns regarding BFA." (*Id.* at 7.)

6. The Court's March 9, 2021 Class Certification Decision and Defendants' Rule 23(f) Petition

195. On March 9, 2021, the Court entered an 88-page ruling and order certifying the Class and denying Defendants' motion to exclude Dr. Tabak. (ECF 736; *In re Teva Sec. Litig.*,

2021 WL 872156 (D. Conn. Mar. 9, 2021).) The Court exhaustively addressed each of Defendants' arguments, including with respect to the design of Dr. Tabak's tests; the importance of peer review; directionality; highly technical issues of "reverse causality"; Dr. Tabak's methodology for classifying "news days"; and Defendants' challenges to Dr. Tabak's proposed class-wide damages methodology. (*See id.*)

196. Defendants continued to aggressively litigate class certification, and on March 23, 2021, filed a petition in the United States Court of Appeals for the Second Circuit pursuant to Rule 23(f) of the Federal Rules of Civil Procedure. Defendants' petition argued that the Court "erroneously certifie[d] a class in one of the largest pending securities class actions in the country, where Plaintiffs are seeking billions of dollars in damages." (No. 21-661 (2d Cir.), ECF 1 at 1.) On April 2, 2021, Class Representatives opposed Defendants' Rule 23(f) petition. (*Id.* ECF 17.) On April 9, 2021, Defendants filed a motion for leave to reply. (*Id.* ECF 22.)

197. On June 22, 2021, the Second Circuit denied Defendants' Rule 23(f) petition. (*Id.* ECF 35.)

7. After Class Certification Is Granted, Defendants Persist in Seeking Broad Discovery from Class Representatives

a. The Court Bifurcates Discovery and Trial (and Limits the Scope of Class Representatives' Depositions)

198. On March 10, 2021, the day after the Court granted class certification, Defendants issued thirteen notices of deposition and subpoenas (including to Class Representatives, their current and former personnel, and third-party investment managers) seeking further discovery regarding Class Representatives' investments in Teva securities. Defendants refused to withdraw these notices and subpoenas, and rejected Class Representatives' offer to produce Rule 30(b)(6) witnesses to testify on the topics of Class Representatives' ownership of the Teva Securities at

issue in the case and their profits and losses as a result of that ownership. (*See* ECF 745 at 13; ECF 752 at 19:24-20:6.)

199. On March 29, 2021, Class Representatives informed the Court of Defendants' renewed discovery efforts and opposed the requests. (ECF 745.)

200. At a March 31, 2021 status conference, the Court limited Defendants to a Rule 30(b)(6) deposition of each Class Representative on the issues of their "ownership of the Teva securities at issue in this case and the lead and named plaintiffs' profits and losses as a result of that ownership." (ECF 751.)

201. The Court also permitted additional briefing on Defendants' request for further discovery regarding Class Representatives' individual investment decisions and strategies, and on April 14, 2021, Defendants filed a motion to compel. (ECF 758.) On April 28, 2021, Class Representatives opposed. (ECF 766.) Defendants filed their reply on May 10, 2021. (ECF 774.)

202. On May 25, 2021, the Court held a hearing on Defendants' motion. On May 27, 2021, the Court entered an order denying Defendants' motion without prejudice and ordering that:

> [B]oth discovery and trial shall be bifurcated into two phases. The first phase will regard class-wide issues (*i.e.*, liability), and the second phase will regard individual issues. . . . I disagree with the Defendants' contentions that individual discovery—even of a Class Representative—is relevant to the class-wide issue of materiality or to a class-wide rebuttal of reliance.

(ECF 796 at 4 of 6.) The Court also reiterated its earlier ruling that the scope of permissible discovery was limited to Class Representatives' "ownership of the Teva securities at issue in this case" and "profits and losses as a result of that ownership." (ECF 796 at 3-4.)

b. Defendants Depose Class Representatives' Rule 30(b)(6) Witnesses and Persist in Seeking Further Discovery

203. In the midst of taking and defending merits expert depositions, Class Counsel prepared Class Representatives' Rule 30(b)(6) designees for deposition. Edward Jarvis, Anchorage's Director, was deposed on July 21, 2021, and Jeffrey Davis, Ontario Teachers' Chief Legal and Corporate Affairs Officer, was deposed on August 25, 2021.

204. Although Messrs. Jarvis and Davis properly answered Defendants' questions regarding Class Representatives' ownership of Teva Securities and losses resulting from that ownership, Defendants continued to seek further discovery. On September 2, 2021, Defendants requested that Ontario Teachers' produce another witness to testify regarding the domesticity of Ontario Teachers' purchases of Preferred Shares. Ontario Teachers' objected to the request as outside the scope of the permitted topics and addressed the issue in a September 13, 2021 submission to the Court. (ECF 885.)

205. During the September 15, 2021 status conference, the Court denied Defendants' request for further testimony and directed Ontario Teachers' to provide documentation regarding the domesticity of Ontario Teachers' purchases of Preferred Shares (ECF 892 at 5 of 5), which Ontario Teachers' provided by declaration on October 21, 2021.

J. Expert Discovery

206. In addition to the extensive documentary evidence and fact witness testimony, the highly technical issues in this case required detailed expert analysis for purposes of summary judgment and trial. Specifically, the fluctuating prices and sales volumes of hundreds of Teva's generic drugs over a multi-year period, coupled with the multiple securities and corrective events at issue, demanded a commensurately high level of investment of time and resources to present the most rigorous analysis and most compelling proof.

207. To that end, Class Counsel engaged four leading economics and disclosure experts to opine on damages, loss causation, generic drug pricing and competition, accounting and disclosure controls, SEC disclosure requirements, and materiality. These experts issued 10 merits expert reports (totaling 626 pages, excluding exhibits), and responded to seven reports from Defendants' four experts. Expert discovery—which was the product of months of preparation during fact discovery—closely followed the May 5, 2021 completion of fact depositions, with the parties exchanging opening expert reports on May 28, 2021; rebuttal reports on August 6, 2021; and reply reports on September 20, 2021. Class Counsel also took and defended 10 merits expert depositions from June to September 2021.

208. By investing substantial time and resources to advance this action through the completion of expert discovery, Class Representatives and Class Counsel demonstrated their preparation and willingness to take this case to trial. Had litigation continued, the Class's experts would have relayed their rigorous analyses to the Court and jury to demonstrate the impact of Teva's generics price increases and Defendants' alleged disclosure violations and omissions.

1. The Class's Experts

209. The Class's four experts served 10 reports at the merits stage:

a. David Tabak (four reports): Materiality, loss causation and damages, and rebuttal reports on negative causation

b. David Bradford (two reports): Generic drug pricing and competition; calculation of Teva's excess profits from price increases

c. D. Paul Regan (two reports): Whether Teva's Management Discussion and Analysis ("MD&A") disclosures complied with SEC rules; financial impact of Teva's price increases

d. Lynn Turner (two reports): SEC disclosure requirements and materiality

210. These reports totaled 626 pages, with 749 additional pages of exhibits and appendices.

a. David Tabak, Ph.D.

211. Class Counsel retained Dr. Tabak to opine on loss causation, damages, and materiality. The Court is familiar with Dr. Tabak from his analysis of market efficiency at the class certification stage. A Managing Director at NERA and recognized leader in the securities field, Dr. Tabak holds Bachelor's degrees in Physics and in Economics from the Massachusetts Institute of Technology, and a Master's degree and a Ph.D. in Economics from Harvard University.

212. At the merits stage, Dr. Tabak submitted four reports, totaling 125 pages (plus 135 pages of exhibits).

213. First, on May 28, 2021, Dr. Tabak submitted a 31-page expert report (plus 89 pages of exhibits) on loss causation, damages, and materiality.

214. Dr. Tabak analyzed all eight Teva Securities (ADS, Preferred Shares, and six Notes) and twelve alleged corrective disclosures to quantify per-share damages for each Teva Security during the Class Period. To do so, Dr. Tabak applied the statistical model he had employed at class certification to perform a series of event studies. After excluding market and industry factors, Dr. Tabak concluded that the Teva ADS and Preferred Shares had statistically significant price declines on eight dates that allegedly revealed new information related to Defendants' alleged misstatements and omissions. Dr. Tabak concluded that these price reactions represented responses to new, unexpected information, and thus used them to determine artificial inflation in the prices of Teva ADS and Preferred Shares during the Class Period.

215. Dr. Tabak provided four Exchange Act damages scenarios, depending on (a) the start date for inflation tied to Teva's acquisition of Actavis, and (b) the amount of inflation tied to Teva's August 3, 2017 disclosure, which included disappointing financial results, a $6.1 billion

goodwill impairment charge in its U.S. Generics business, a cut to Teva's dividend, and reduced earnings guidance.

216. Dr. Tabak also explained the analytical basis for his approach to damages, including his focus on the disclosures revealing a change to a different regime in which profits from price increases and collusion would be eliminated going forward, with an associated impact on market participants' views of the value of Teva and its securities, including reputational effects from the revelation of the concealed misconduct. Finally, Dr. Tabak provided opinions on loss causation and calculated Securities Act damages under the statutory formula.

217. Second, also on September 20, 2021, Dr. Tabak submitted a 45-page reply report (plus 30 pages of exhibits) in response to Dr. James's criticisms of Dr. Tabak regarding Exchange Act damages, discussed below. In this report, Dr. Tabak advanced technical critiques of Dr. James's event study, responded to Dr. James's various other criticisms, and presented several alternative damages analyses that accounted for certain of Dr. James's arguments.

218. Third, Dr. Tabak submitted two reports rebutting Defendants' expert Dr. James on Securities Act negative causation. Initially, Dr. James served a report on negative causation on May 28, 2021. Dr. Tabak responded in a 22-page report (plus 3 pages of exhibits), dated August 4, 2021. This report critiqued Dr. James's arguments and criticized inconsistencies and errors in his analysis, including his use of an unreliable model to assess the statistical significance of price movements.

219. Finally, in response to a "Supplemental" report on negative causation from Dr. James that Defendants served on August 6, 2021, Dr. Tabak submitted an additional rebuttal report of 27 pages (plus 13 pages of exhibits) on September 20, 2021. This report refined Dr. Tabak's technical critiques of Dr. James's event study and rebutted, among other things,

Dr. James's improper assumption of negative causation for any statistically insignificant price movements.

b. W. David Bradford, Ph.D.

220. Class Counsel retained Dr. Bradford, the George D. Busbee Chair of Public Policy and Professor in the Department of Public Administration and Policy at the University of Georgia, to provide an expert opinion on generic drug pricing and competition. Dr. Bradford is a health economist who has studied the generic drug industry for over 30 years and published over 80 articles in peer-reviewed publications.

221. Dr. Bradford submitted two expert reports totaling 171 pages (plus 191 pages of appendices and exhibits).

222. First, on May 28, 2021, Dr. Bradford submitted a 94-page expert report (plus 177 pages of appendices and exhibits) that explained the characteristics of U.S. generic drug markets, including the role of competition, and described his comprehensive empirical analysis of Teva's generic drug pricing.

223. Specifically, Dr. Bradford analyzed Teva's entire generics portfolio using Teva's internal pricing and sales data to quantify the extent to which price increases that cannot be explained by legitimate market factors resulted in profits above the levels expected in a normally functioning competitive market. To do so, Dr. Bradford used rigorous techniques to identify unusual price changes. Dr. Bradford then excluded any price increases with apparent market-based explanations (such as active ingredient shortages). For the remaining price increases, using a robust model based on academic literature, Dr. Bradford calculated Teva's excess profits, meaning profits above the level that Teva would have earned on the same drugs in normally functioning competitive markets. Finally, Dr. Bradford identified evidence consistent with collusion by Teva with respect to several drugs identified through his analysis.

224. Second, on September 20, 2021, Dr. Bradford submitted a 77-page reply report (plus 14 pages of appendices), responding at length to criticisms from Defendants' competition economist, Dr. Gaier (discussed below), including by opining that Dr. Gaier's opinions did not explain Teva's actual pricing; that Dr. Gaier's critiques contained various other defects; and that certain of Dr. Gaier's opinions were misleading and did not respond to Dr. Bradford's opinions.

c. D. Paul Regan

225. To opine on the complex disclosure issues in this case, Class Counsel engaged Mr. Regan, a highly experienced accounting expert and CPA with more than 50 years of experience who has provided accounting and/or auditing consulting services on more than 750 litigation matters on behalf of the U.S. Securities and Exchange Commission, DOJ, other law enforcement agencies, and private and public companies.

226. On May 28, 2021, Mr. Regan submitted a 102-page opening report with 275 pages of appendices and exhibits. Mr. Regan's opinions were informed by his decades of experience and thorough review of numerous internal Teva documents and other evidence, including the deposition testimony of 23 fact witnesses, Teva's SEC filings, transcripts of Teva earnings calls and investor presentations, Teva's correspondence with the SEC on disclosure issues, and the relevant disclosure standards.

227. Based on this exhaustive and granular review, Mr. Regan concluded that Teva had violated the governing requirements for the Management's Discussion and Analysis (MD&A) section of its SEC filings by failing to disclose the material revenue and profits generated by Teva's price increases in the U.S. Generics business. Mr. Regan's conclusion was the product of his detailed independent analysis—supported by extensive citations to internal Teva documents and over 250 pages of detailed schedules, including drug-by-drug profit breakdowns—to assess

generic drug price increases' quantitative and qualitative impact on Teva's reported financial results.

228. Based this analysis, Mr. Regan concluded that Teva's Class Period MD&A was materially false and misleading, and that Teva lacked effective disclosure controls and procedures, as required by SEC rules. Further, Mr. Regan opined that Teva's reduced ability to make and sustain price increases in 2016 and 2017 contributed to two goodwill impairment charges in Teva's U.S. Generics business.

229. On September 20, 2021, Mr. Regan issued a 106-page reply report (with a one-page appendix) primarily responding to Defendants' experts Professor Solomon and Mr. Scheck. Mr. Regan emphasized, among other things: (a) management's responsibility for MD&A disclosure; (b) the objective standards for disclosure and materiality issues, which are assessed based on whether information would be significant to a reasonable investor; (c) Mr. Regan's conclusion that Teva violated disclosure requirements; and (d) disclosure controls and procedures.

d. Lynn Turner

230. Class Counsel retained Lynn Turner, a former Chief Accountant of the SEC, to provide expert testimony regarding the responsibility of management and SEC registrants to comply with the applicable disclosure requirements; MD&A disclosure standards; the SEC comment letter process; and the applicable requirements concerning disclosure controls.

231. Mr. Turner has 45 years of business, regulatory, and academic experience, including five years in the Office of the Chief Accountant of the SEC. As the Chief Accountant of the SEC from July 1998 to August 2001, Mr. Turner was the principal advisor to the SEC Chairman and Commission on auditing, financial reporting, disclosures, and related corporate governance matters for publicly traded companies. He oversaw the development of generally accepted accounting principles and generally accepted auditing standards in the United States.

Mr. Turner was also among the principal authors of SEC Staff Accounting Bulletin No. 99, *Materiality*, and Staff Accounting Bulletin No. 101, *Revenue Recognition in Financial Statements*, and involved in drafting the Sarbanes-Oxley Act of 2002 in the wake of corporate scandals like Enron.

232. On May 28, 2021, Mr. Turner submitted a 66-page expert report with 131 pages of exhibits, in which he opined (among other things) that: (a) company management is responsible for ensuring that SEC filings are accurate, adequate, and comply with the applicable SEC rules and regulations; (b) SEC rules (Item 303 of Regulation S-K and Item 5 of Form 20-F) require management to disclose the reasons for material changes in revenue, including material changes attributable to changes in pricing and volume, and an analysis of the reasons and factors contributing to the increase or decrease; and (c) materiality for MD&A is assessed based on the definition established by the SEC, courts, and the perspective of a reasonable investor.

233. On September 20, 2021, Mr. Turner submitted a 56-page reply report (with 16 pages of appendices and exhibits) reiterating his opinions and countering the opinions of Defendants' experts Professor Solomon and Mr. Scheck about the governing disclosure and materiality standards, the documentation of materiality determinations, the SEC comment letter process, and disclosure controls and procedures.

2. Defendants' Experts

234. Defendants responded with four experts who vigorously contested the opinions of the Class's experts, as summarized below.

235. Christopher James, Ph.D.: Dr. James—an economist and professor at the University of Florida—issued four reports on damages, loss causation, and Securities Act negative causation, totaling 354 pages (plus 679 pages of appendices and exhibits). Dr. James's 124-page report on Exchange Act damages and loss causation, served on August 6, 2021, vigorously

disputed the reliability of Dr. Tabak's event studies and other analyses. Dr. James also issued three reports on Securities Act negative causation served on May 28, August 6, and September 20, 2021 (147, 36, and 47 pages, respectively), opining that Defendants' alleged misstatements and omissions did not cause the majority of the price declines in Teva's offered ADS, Preferred Shares, and Notes.

236. Eric Gaier, Ph.D.: Dr. Gaier—an economist at an expert consulting firm—issued a report of 116 pages, plus 54 pages of appendices and exhibits, served on August 6, 2021. In response to Dr. Bradford, Dr. Gaier addressed generic drug pricing and competition, criticizing certain aspects of Dr. Bradford's analysis based on economic theory, addressing Defendants' statements about Teva's price erosion, and analyzing the excess profits Dr. Bradford identified relative to Teva's overall economic performance.

237. Steven Solomon, J.D.: Professor Solomon is an attorney and law professor at the University of California, Berkeley. In his 170-page report served on August 6, 2021, plus 69 pages of appendices and exhibits, Professor Solomon primarily addressed SEC disclosure "custom and practices" of large foreign issuers like Teva and criticized the opinions of the Class's experts Mr. Regan and Mr. Turner on materiality, the applicable disclosure requirements, and other topics.

238. Howard Scheck, J.D.: Mr. Scheck—an attorney and former Chief Accountant in the SEC Division of Enforcement—issued a 57-page report (plus 17 pages of appendices and exhibits) served on August 6, 2021. Similar to Professor Solomon, Mr. Scheck responded to Mr. Regan and Mr. Turner with regard to SEC disclosure practices, the SEC comment letter process, and related topics.

3. Merits Expert Depositions

239. Given the highly technical nature of the Class's claims and allegations, Class Counsel prioritized targeted, effective depositions of Defendants' four experts to obtain

valuable admissions and other testimony for use at summary judgment and trial. From the outset, Class Counsel prepared for each deposition of Defendants' experts with the goal of challenging their most vulnerable positions and supporting *Daubert* motions. To that end, Class Counsel spent hours dissecting the defense experts' reports and voluminous supporting materials (which totaled over 1,500 pages), carefully reviewing their underlying analyses, data, and cited authority for any flaws or inconsistencies, and researching each expert's prior publications and history of exclusion. This effort required immersion into technical issues of MD&A disclosure requirements, generic drug pricing, econometrics, and statistics.

240. From June to September 2021, Class Counsel took five depositions of Defendants' merits experts, deposing Dr. James twice (first on negative causation, and then on Exchange Act loss causation and damages). All five of these depositions were conducted by me or Mr. Kubota (who was primarily responsible for the *Daubert* motions), ensuring a consistent, coordinated approach. In parallel, we defended five depositions of the Class's four experts, which also entailed extensive preparation, including multiple meetings with each expert and review of all relevant materials.

Date	Expert	Taking ("T")/ Defending ("D") Attorney	Tr. Pages
June 15, 2021	Lynn Turner	J. Fonti - D	326
June 22, 2021	David Tabak	E. Kubota - D	372
June 28, 2021	Christopher James	E. Kubota - T	332
July 1, 2021	David Bradford	J. Fonti - D	391
July 8, 2021	Paul Regan	J. Fonti - D	341
Aug. 24, 2021	Steven D. Solomon	E. Kubota - T	374
Aug. 27, 2021	Eric Gaier	E. Kubota - T	319
Aug. 30, 2021	Christopher James	J. Fonti - T	244
Sept. 1, 2021	David Tabak	J. Fonti - D	211
Sept. 14, 2021	Howard Scheck	J. Fonti - T	193

241. In total, the parties exchanged 17 merits expert reports, and Class Counsel took or defended 10 merits expert depositions. Class Counsel's extensive work in expert discovery

provided insight into Defendants' likely arguments and defenses, helped develop arguments for *Daubert* motions against Defendants' experts, yielded impeachment material, and significantly advanced the Class's proof toward summary judgment and trial.

K. Motions for Partial Summary Judgment and to Exclude Defendants' Experts

242. Preparation for summary judgment and *Daubert* motions started months before the completion of expert discovery in September 2021. To organize and synthesize the most compelling evidence Class Counsel had developed since 2019, Class Counsel created a comprehensive order of proof analyzing key portions of the evidentiary record supporting each element of the claims that Class Counsel would be required to prove at trial. The preparation of this detailed order of proof entailed Class Counsel's review of all fact witness testimony, deposition exhibits, and the factual chronology discussed above.

1. Class Counsel Prepare an Affirmative Summary Judgment Motion

243. It is unusual for securities class plaintiffs to move for summary judgment. Empirical analysis by NERA indicates that plaintiffs make affirmative motions for summary judgment in only 1.9% of all securities cases filed and resolved from 2000 to 2018 (versus 7.1% for motions by defendants). (Ex. 10 (Stefan Boettrich and Svetlana Starykh, NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review (Jan. 29, 2019) ("NERA 2018 Report")), at 19.)[9]

244. Here, Class Counsel prepared an affirmative motion for partial summary judgment focused on targeted issues of undisputed law and facts. The motion was supported by a 39-page

[9] Since the 1990s, NERA has conducted independent empirical analysis of securities class actions. The NERA reports cited herein were not prepared for purposes of any specific litigation, including this case.

memorandum of law, a statement of undisputed facts, and 59 supporting exhibits. This rare affirmative motion would have increased Defendants' risk by arguing that certain arguments and defenses—including Defendants' effort to demonstrate negative causation under the Securities Act—were without legal or factual support.

245. If successful, the Class's summary judgment motion would have narrowed the issues, increased focus on the crucial issues of falsity, materiality, and scienter, and streamlined proof at trial. However, success under Rule 56's demanding standard was by no means assured. Had litigation continued, Defendants would likely have advanced substantial responses to many aspects of the motion, including complex legal and economic arguments regarding Securities Act negative causation and damages, supported by expert opinions from Dr. James.

246. Further, Defendants would have filed their own summary judgment motion seeking the partial or complete dismissal of this action (and had obtained the Court's permission to file a 90-page memorandum of law and 70-page statement of undisputed material facts, *see* ECF 912). While Class Representatives and Class Counsel believe the claims are meritorious and would have vigorously opposed such a motion—and had prepared extensively to do so—if a plenary summary judgment motion by Defendants were to succeed, the Class would recover nothing.

2. Class Counsel Prepare *Daubert* Motions to Exclude All of Defendants' Expert Testimony

247. In parallel with developing the Class's summary judgment motion, Class Counsel researched and drafted four *Daubert* motions to exclude the opinions and testimony of Defendants' four merits experts in their entirety.

248. The *Daubert* motions, supported by 111 pages of opening briefs, argued that each defense expert's opinions were inadmissible as unreliable, speculative, irrelevant, or otherwise improper under *Daubert* and Fed. R. Evid. 702 (requiring "scientific, technical, or other

specialized knowledge [that] will help the trier of fact to understand the evidence or to determine a fact in issue"; "sufficient facts or data"; "reliable principles and methods"; and that the expert "has reliably applied the principles and methods to the facts of the case").

249. Class Representatives' *Daubert* motions reflected significant effort and leveraged the intensive expert analysis and deposition work outlined above. If successful, these motions would have increased Defendants' risk by foreclosing expert testimony that Defendants would offer to explain their conduct and reduce or eliminate the Class's damages.

250. However, Defendants were also likely to file *Daubert* motions against all of the Class's experts. In this regard, Class Counsel recognized that *Daubert* motions pose asymmetric risk because plaintiffs bear the burden of proof on most issues. In securities cases—where key elements such as loss causation and damages often require expert analysis—successful *Daubert* motions by defendants can be case-terminating. *See In re Pfizer Inc. Sec. Litig.*, 819 F.3d 642, 645-46 (2d Cir. 2016) (in vacating dismissal, explaining that district court excluded plaintiffs' expert on loss causation and damages; "[l]eft with no testimony on these issues, Plaintiffs could not sustain key elements of their claims, and the district court granted Pfizer's motion for summary judgment").

251. Class Representatives' summary judgment motion and four *Daubert* motions were complete and ready to be filed on December 2, 2021 when, just hours before the filing deadline, the parties agreed to the proposed settlement.

IV. RISKS FACED

252. Throughout the five years of litigation, Class Representatives and Class Counsel faced significant risks that could materially reduce or eliminate any recovery for the Class. Indeed, this action is a case study in the factors that heighten the risk of a litigation and require extraordinary resources, effort, and skill to secure a favorable resolution.

253. To begin, securities litigation is inherently risky; as an independent NERA report indicates, over half of cases are dismissed outright. (*See* ¶¶259-68 below.) Moreover, the recent increased-risk environment and overall economic uncertainty have made it more difficult to reach resolution. Since the start of the pandemic over two years ago, settlement values in securities cases have generally declined. For example, NERA has reported that among securities settlements, "[t]he median annual settlement value for 2021 [$8 million] is approximately 40% lower than the inflation-adjusted median value observed in 2018, 2019, and 2020. For 2021, the median settlement value was $8 million, the lowest recorded median value since 2017." (Ex. 11 (Janeen McIntosh and Svetlana Starykh, NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review (Jan. 25, 2022) ("NERA 2021 Report")), at 20.)

254. In this pandemic environment, only a handful of large securities settlements have been negotiated and finalized. For 2020 and 2021, excluding three settlements reached pre-pandemic,[10] the largest securities settlement granted final approval was only $154.7 million (Ex. 11 (NERA 2021 Report) at 21), while an $809.5 million settlement was announced in *In re Twitter Securities Litigation* on September 20, 2021, but has not yet received preliminary approval.

255. As for this case specifically, the Class and Class Counsel faced significant risks at each phase of the litigation, as described below. These case-specific risks were compounded by Teva's willingness to follow a highly litigious path even when the consequences of losing are high

[10] In *ARCP*, a $1.025 billion settlement received final approval in January 2020, before the pandemic. *In re American Realty Cap. Props., Inc. Litig.*, No. 1:15-mc-00040 (S.D.N.Y. Jan. 22, 2020), ECF 1309 (Order and Final Judgment). In *First Solar*, a $350 million settlement was reached in February 2020 and received final approval in June 2020. *Smilovits v. First Solar, Inc.*, No. 2:12-cv-00555 (D. Ariz.), ECF 730 (Order and Final Judgment). In *Valeant*, a $1.21 billion settlement was reached in 2019 and received final approval from the special master in June 2020, which the Court adopted in January 2021. *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658 (D.N.J. Jan. 31, 2021), ECF 575 (Special Master Report and Recommendation) & 657 (Order).

(as demonstrated through its strategy of taking opioid cases to trial after many other defendants chose to settle). Absent the proposed settlement, the Class would face a long road—potentially lasting several years—before realizing any recovery.

256. Moreover, this case did not feature many of the "plus factors" that reduce risk for plaintiffs and tend to precipitate larger settlements earlier in a case. For example, this action did not arise from a financial restatement (*i.e.*, a company's revision of its SEC filings to correct admittedly material misstatements), an SEC enforcement action alleging securities law violations, or proof of wrongdoing such as a criminal conviction. Without such "plus factors," Class Representatives and Class Counsel would have to prove every element of the claims—including materiality, falsity, and scienter—from scratch. The technically complex and expert-intensive allegations added additional risk.

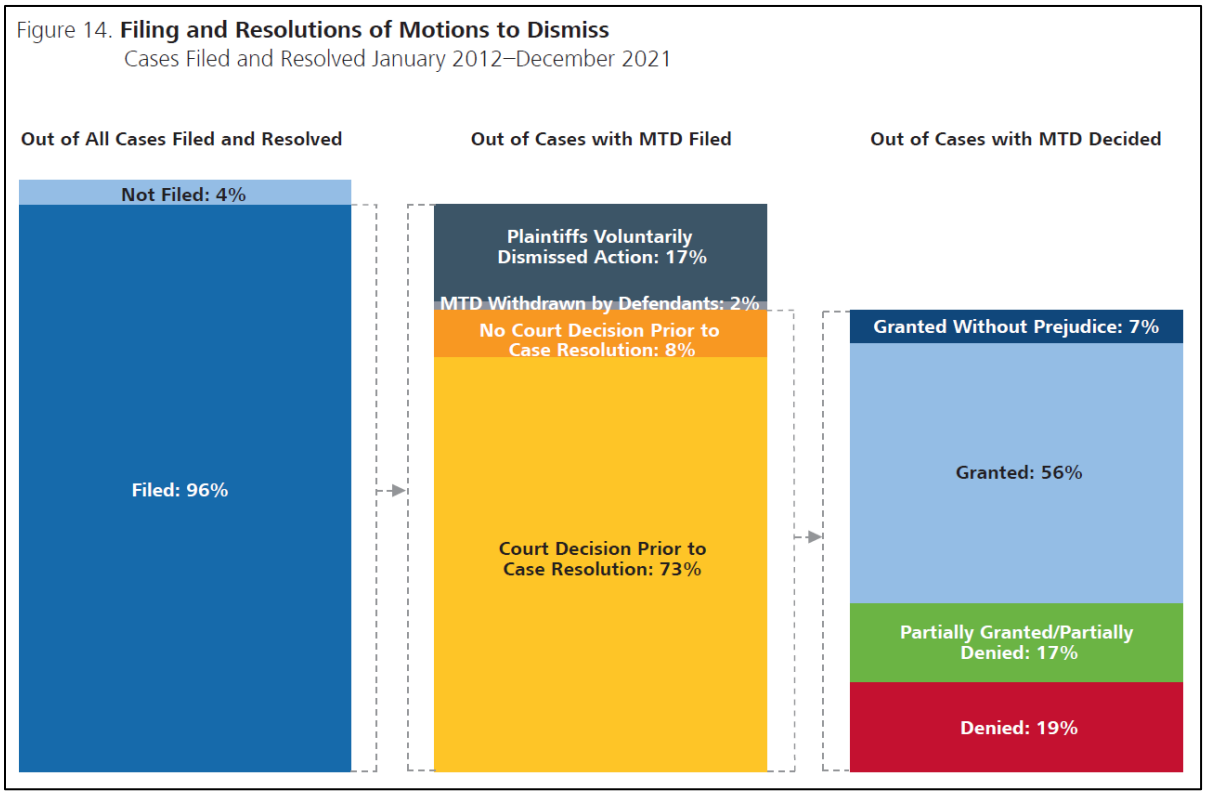
257. Finally, even if the Class were to prevail at trial (and in the inevitable appeals that would follow from a favorable verdict), Teva's financial condition would constrain any recovery the Class might achieve. With material exposures to opioids and other unresolved litigation, more than $20 billion in outstanding debt, and a market capitalization below $10 billion at the time the parties entered the proposed settlement, there is a serious risk that Teva would be unable to pay a judgment in excess of the proposed settlement.

258. Class Representatives and Class Counsel were required to assess and navigate all of these risks and dynamics to secure the $420 million settlement and achieve an immediate, certain, and substantial benefit for the Settlement Class.

A. Over Half of Securities Class Actions Are Dismissed Outright; Those Cases that Survive Dismissal Still Face Substantial Risks at Class Certification and Summary Judgment

259. As the Court is aware, the PSLRA imposes stringent pleading standards on securities class actions and stays discovery during the pendency of a motion to dismiss, limiting

the ability to obtain internal company documents and non-public facts to defeat the motion. As illustrated below, independent empirical research by NERA has shown that defendants move to dismiss in nearly every securities class action filed and resolved over the last decade, with more than half of such motions that reach decision—56%—granted with prejudice. (Ex. 11 (NERA 2021 Report) at 14.)



260. Notably, dismissal rates today are significantly higher than before the PSLRA. For example, NERA has found that "[d]ismissal rates have doubled since [the] PSLRA" was enacted in 1995. (Ex. 12 (Ronald I. Miller, Ph.D., Todd Foster, and Elaine Buckberg, Ph.D., NERA Economic Consulting, Recent Trends in Shareholder Class Action Litigation: Beyond the Mega-Settlements, is Stabilization Ahead? (April 2006)), at 4; *see also id.* at 3 ("Probability of Dismissal" rose from 19.4% in 1993-1995 (pre-PSLRA) to 40.3% in 2003-2005 (post-PSLRA), a 107.7% increase).)

261. The instant action was filed in 2016. Regarding the group of securities class actions filed in that year, NERA found that as of December 31, 2021, 42% had been dismissed and 23% remained pending, while only 35% have settled. (Ex. 11 (NERA 2021 Report) at 12.) These statistics and the dismissal rates cited above confirm that many securities cases fail.

262. Class certification presents another meaningful risk. To begin, 84% of securities cases are either dismissed or settled before a class certification motion is even filed: "A motion for class certification was filed in less than 20% of the securities class action suits filed and resolved between 1 January 2012 and 31 December 2021. This is partly due to the fact that a substantial number of cases are either dismissed or settled before the class-certification stage of the case is reached." (Ex. 11 (NERA 2021 Report) at 15.)

263. In the minority of securities cases that do reach the class certification stage, the resolution of class certification may significantly drive the case's value. From a defense perspective, defeating class certification is a highly significant victory that can effectively terminate the litigation. (*See, e.g.*, ECF 300 at 24:16-23.)

264. Class certification may be denied for a variety of reasons, including the failure to show market efficiency, foreclosing the fraud-on-the-market presumption of reliance necessary to show that common issues predominate under Rule 23(b)(3). Here, as the Court is aware, Defendants vigorously contested market efficiency, deploying voluminous briefing, three experts, and a *Daubert* motion. Indeed, Defendants' counsel at Morgan Lewis had successfully defeated class certification with similar arguments in another securities class action, *Ohio Pub. Emps. Ret. Sys. v. Fed. Home Loan Mortgage Corp.*, No. 4:08-cv-0160, 2018 WL 3861840 (N.D. Ohio Aug. 14, 2018). Here, the risk of proving market efficiency was heightened by the eight securities at issue (including six debt securities). While the Court ultimately issued a thorough 88-page

class certification opinion finding that all of the Teva Securities traded in efficient markets, Defendants' arguments nonetheless posed significant risks.

265. Class certification may also be defeated on Rule 23(a) grounds, including by finding that the proposed class representatives are atypical or inadequate. Here, although Defendants stipulated to Class Representatives' typicality and adequacy, they later sought substantial discovery and requested that the Court stay its decision on class certification in order to probe such topics, as set forth above.

266. Even where class certification is granted, it has become routine for securities defendants to seek immediate reversal by filing a Rule 23(f) petition with the Court of Appeals. Defendants did so here, and their Rule 23(f) petition—though defeated—created further risk and uncertainty for the Class. For example, class certification has been contested for nearly four years in *Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc.* ("*ATRS*"), with three decisions from the Second Circuit, a ruling from the U.S. Supreme Court, *see* 11 F.4th 138, 140-42 (2d Cir. 2021) (summarizing procedural history), and the Second Circuit's grant of yet another Rule 23(f) petition on March 9, 2022 (No. 21-3105 (2d Cir.), ECF 102).

267. Beyond class certification, it is uncommon for securities cases to reach the summary judgment stage. NERA has calculated that summary judgment motions are filed in just 9% of resolved cases. (Ex. 10 (NERA 2018 Report) at 19.) And in the cases that do reach this stage, summary judgment presents its own set of unique, substantial risks. For example, in *In re Xerox Corp. Sec. Litig.*, 935 F. Supp. 2d 448 (D. Conn. 2013), Judge Thompson—five years after certifying the class—granted the defendants' summary judgment motion in its entirety, and the Second Circuit affirmed, 766 F.3d 172 (2d Cir. 2014). As a result, the class obtained no recovery

whatsoever.[11] Here, the parties were on the brink of litigating summary judgment and *Daubert* motions, and both sides had prepared extensive sets of motions, presenting a very real risk to the parties.

268. Finally, securities cases that survive motions to dismiss, class certification, and summary judgment face significant risks at trial. Even a jury verdict in plaintiffs' favor does not ensure a recovery given the prospect of a directed verdict or reversal on appeal. *See, e.g.*, *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605, at *6, *38 (S.D. Fla. Apr. 25, 2011) (after plaintiffs obtained partially favorable jury verdict, district court granted defendants' motion for judgment as a matter of law), *aff'd sub nom. Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 725 (11th Cir. 2012).

B. Class Representatives Faced Substantial Merits Risks Here

269. While Class Representatives and Class Counsel have pursued the Class's claims with tenacity and skill, significant risks remained in continuing to litigate this action through summary judgment and trial. The Class's Exchange Act claims require proof that Defendants (1) made material misstatements or omissions, (2) with scienter, (3) in connection with the purchase or sale of securities, (4) upon which the Class relied, (5) economic loss, and (6) that the Class's reliance caused its losses. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). The Class's Securities Act claims require proof of a material misstatement or omission. As detailed below, the elements of falsity, materiality, scienter, and loss causation, as well as the measurement of damages, all presented significant risks in this case.

[11] A prior, unrelated case against Xerox resulted in a $750 million settlement. *See Carlson v. Xerox Corp.*, No. 3:00-cv-1621 (AWT) (D. Conn. Jan. 14, 2009), ECF 528.

270. Importantly, Teva has not issued a financial restatement, an event at the heart of many large securities cases (such as *WorldCom*) that substantially streamlines proof of a material misstatement or omission. Nor have Defendants admitted any fraud or price-fixing; to the contrary, while other pharmaceutical companies have entered criminal antitrust settlements, Teva has refused (and faced indictment as a result). Moreover, while it is sometimes said that corporate defendants are unwilling to take securities cases to trial, Teva regularly tries large, high-risk cases, compounding the risks of its financial constraints, as discussed below.

271. For all of these reasons, there was no assurance of any pre-trial resolution, or of a favorable outcome for the Class. Instead, Class Representatives and Class Counsel expected that the action would continue moving toward trial, and were prepared to prove the entire case—including every element of each claim—from scratch.

1. Risks of Proving Liability

a. Falsity and Materiality

272. One of the most significant litigation risks arose from Defendants' arguments that the challenged statements and omissions were non-actionable and/or immaterial. While the Court largely denied Defendants' motions to dismiss and found falsity and materiality to be adequately alleged at the pleading stage, Defendants would vigorously contest both elements at summary judgment, at trial, and on appeal from any favorable verdict. Because both Exchange Act and Securities Act claims require falsity and materiality, if Defendants could defeat either element, the entire case would be lost and the Class would recover nothing.

273. Defendants' attacks on falsity and materiality likely would take several forms.

274. First, and most notably, Defendants would assert a "truth on the market" defense arguing that Teva's generics price increases and related profits were disclosed and publicly known, and therefore could not have resulted in any misstatements, omissions, or losses to investors.

Defendants' experts argued this position at length. For example, Defendants' damages expert, Dr. James, argued at class certification that during the Class Period "investors had access to a wealth of public information" about Teva's generic drug pricing (ECF 508-4 at 21), and repeated similar arguments at the merits stage. Defendants' disclosure expert, Professor Solomon, advanced similar arguments. While Class Representatives and their experts had strong responses, Defendants' "truth on the market" argument was a significant obstacle to proving liability.

275. Second, Defendants likely would argue that the challenged statements about Teva's sources of financial performance were truthful and not misleading because Teva's disclosed sources of performance (such as new product launches) were in fact larger contributors than any impact from generic drug price increases. Indeed, many Individual Defendants testified to that effect at their depositions, and Defendants presented detailed expert reports on the issue. While Class Representatives again had strong responses, including based on Teva's internal documents and robust expert analysis, such arguments created significant risk and uncertainty as to the falsity and materiality of the statements at the foundation of this action.

276. Third, Defendants likely would argue that many challenged statements were non-actionable because Teva in fact earned the revenues and profits it publicly reported. In this regard, Defendants would also continue to argue that Teva's independent auditor approved its SEC filings, and that Teva (unlike other companies accused of securities law violations) never restated its financial statements filed with the SEC or faced an SEC enforcement action alleging disclosure violations. While Class Representatives believe that such arguments are incorrect and irrelevant, Defendants' assertions could prove persuasive to a jury.

277. Fourth, Defendants likely would argue that any financial impact from Teva's price increases was simply too small to be material, including because Teva's prices on other drugs were

steadily declining, such that Teva's generic drug portfolio as a whole had declining prices. While Class Representatives had strong factual and legal responses, any finding that Teva's price increases were immaterial could negate liability entirely.

278. Fifth, Defendants likely would argue that the regulations forming the basis for the Class's omissions claims—Item 303 of SEC Regulation S-K and Item 5 of SEC Form 20-F—did not require disclosure of the impact of Teva's price increases or pricing trends. While Class Representatives again had strong responses (including an expert report from a former Chief Accountant of the SEC, Mr. Turner, and detailed expert analysis from Mr. Regan), Defendants' argument threatened to eliminate any omissions-based claims.

b. Scienter

279. Class Representatives also faced significant risks in proving scienter: that Defendants knew or recklessly disregarded the true facts at the time of their alleged misstatements and omissions.

280. Defendants vigorously disputed scienter and would continue to do so at summary judgment and trial. For example, Defendants likely would argue that every Teva executive who was deposed categorically denied making any intentional false statements, and that Teva's price increases on certain generic drugs were understood to be an ordinary business activity that merely offset declining prices on other drugs. Further, the Individual Defendants likely would argue that they had global responsibilities, and would not have focused on U.S. generic drug pricing or known of any alleged non-competitive activity, particularly with respect to more junior employees. Defendants also likely would focus on the absence of insider trading allegations to show that the Individual Defendants had no motive to profit from the alleged fraud. Defendants likely would further argue that the challenged statements were reviewed and approved by in-house and outside counsel, as well as Teva's outside auditor, negating an inference of scienter.

281. In response, Class Representatives would present evidence of relevant internal reports and communications among senior executives bearing on Defendants' knowledge, Teva's responses to comment letters from the SEC indicating the company's awareness of the controlling disclosure requirements, and other evidence. Class Representatives would further argue that Teva's management is solely responsible for the MD&A in Teva's SEC filings.

282. Notwithstanding Class Representatives' strong responses, it was far from certain how the issue of scienter would have been determined at summary judgment or trial. If Defendants were to persuade the Court or a jury that scienter was absent, it would eliminate any recovery under the Exchange Act and eliminate the majority of the Class's damages.

c. Proof of Collusion

283. Class Representatives faced additional risk with respect to proving that Teva was aware of and/or participated in collusive conduct regarding generic drugs.

284. To begin, Teva's U.S. subsidiary (Teva USA) continues to fight the criminal antitrust charges against it, recently seeking grand jury evidence as a prelude to moving to dismiss the indictment or arguing that there has been a "constructive amendment" in violation of Teva USA's constitutional rights. *See United States v. Teva Pharm. USA, Inc.*, No. 2:20-cr-200-RBS (E.D. Pa. filed Apr. 1, 2022), ECF 153 at 14-15. Further, in light of DOJ's ongoing criminal investigation and the pending criminal prosecution, it is unlikely that many key Teva witnesses with first-hand knowledge of allegedly collusive activity would be available to testify at trial here.

285. Aware of these risks, Class Counsel creatively pursued other means to secure proof of collusion, including by obtaining phone records to prove interfirm calls and text messages involving Teva executives and obtaining declarations from Teva's co-conspirators regarding collusion.

286. Nonetheless, Defendants would likely contest the admissibility of this evidence, and in all events, the proof of collusion would remain largely circumstantial. As the Court is aware, Class Counsel sought to address this evidentiary gap by meticulously probing whether text messages and other relevant documents were destroyed, culminating in a scheduled deposition of Ms. Cavanaugh. However, there was no guarantee that Ms. Cavanaugh's testimony would lead to a finding of intentional destruction, much less a mandatory adverse inference under Rule 37(e)(2) that the missing evidence indicated collusion.

287. Finally, Defendants' expert Dr. Gaier would likely testify about purported justifications for Teva's generics pricing as a matter of economic theory. While Class Representatives would have moved to exclude these opinions and testimony in full—and the Class's expert Dr. Bradford had strong substantive responses—such arguments heightened the risk that a jury could conclude Teva was not involved in collusive activity.

d. Jury and *Daubert* Risk

288. Class Representatives also faced practical and procedural risks to proving liability.

289. For example, this action did not involve a whistleblower or single "star witness" who would explicitly accuse Defendants of wrongdoing or fraud. Instead, Class Representatives would need to prove much of the case through adverse witnesses, including Individual Defendants Olafsson, Desheh, Vigodman, and Griffin. All of these witnesses vigorously disputed Class Representatives' allegations.

290. Moreover, while the broad topic of generic drug price increases may have significant public interest, the securities claims at issue involve inherently complicated and highly technical subject matter, including: (a) the opaque nature of generic drug pricing; (b) the framework governing the regulatory approval, production, and sale of generic drugs in the U.S.; (c) competing testimony from economic experts; (d) the granular pricing of hundreds of Teva's

generic drugs over a multi-year period; (e) the use of econometric models to determine whether and to what extent Teva's price increases generated supra-competitive profits; and (f) technical issues regarding materiality and the governing disclosure requirements.

291. While these and other complex issues led Class Counsel to invest heavily in leading experts, Defendants likely would have moved to exclude each of the Class's experts, as the parties were on the verge of filing *Daubert* motions when the proposed settlement was reached. And even if the Class defeated such motions, Defendants' four competing experts would attempt to persuade the jury that Teva's pricing conduct was justified and competitive, and that Defendants' public statements were true and not misleading. This would likely result in an inherently unpredictable "battle of the experts" at trial.

2. Risks of Proving Loss Causation and Damages

292. In addition to the numerous risks in proving liability, Class Representatives faced significant challenges in (1) proving loss causation and damages for the Class's Exchange Act claims, and (2) overcoming Defendants' "negative causation" defense under the Securities Act.

293. For example, as to the Exchange Act, Defendants' expert Dr. James argued that the Class's expert Dr. Tabak failed to show loss causation or any damages and employed unreliable methodologies.

294. Dr. James also asserted that each of the eight corrective events that supported Dr. Tabak's Exchange Act damages opinion was not corrective, included so-called "confounding" (non-fraud-related) information, and/or was the materialization of previously disclosed (rather than concealed) risks. Dr. James' expert report devoted over 80 pages to this issue.

295. While Class Representatives had strong responses to each of Dr. James's Exchange Act arguments, if accepted by the Court or a jury, they would substantially reduce or eliminate Exchange Act damages, which account for the majority of the Class's potential damages.

296. Further, Defendants were likely to make a *Daubert* motion to exclude Dr. Tabak's opinions in their entirety. While the Court accepted Dr. Tabak's market efficiency opinions at class certification, there remained a risk that Dr. Tabak's opinions on loss causation, materiality, and damages could be excluded at the merits stage. Although Class Representatives would have vigorously opposed any *Daubert* motion, if Dr. Tabak's merits opinions were excluded, it could foreclose any recovery under the Exchange Act.

297. As to the Securities Act, Defendants invoked a negative causation defense to reduce or eliminate damages with respect to the offered ADS, Preferred Shares, and Notes. The Securities Act provides that "if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from [the] part of the registration statement . . . [that contains the material misstatement or omission], such portion of or all such damages shall not be recoverable." 15 U.S.C. § 77k(e); *see also* 15 U.S.C. § 77l(b). In support of Defendants' negative causation arguments, Defendants' expert Dr. James submitted three expert reports totaling 893 pages (including exhibits), which argued that the price declines in the offered Teva Securities were largely caused by factors other than the alleged misstatements.

298. Class Representatives were fully prepared to mount strong responses to Defendants' negative causation arguments, including by a *Daubert* motion to exclude Dr. James's opinions. However, if litigation had continued, Defendants' negative causation arguments posed a risk of substantially reducing the Class's Securities Act damages.

C. Risk of DOJ's Intervention

299. An additional layer of risk arose from DOJ's intervention in this matter. In August 2020, nearly a year after discovery had commenced here, Teva's U.S. subsidiary was indicted. In September 2020, DOJ moved to intervene, arguing that "continued litigation of this action will likely result in the disclosure of information that will harm the United States' ongoing

investigation and pending criminal antitrust cases." (ECF 550-1.) At the time, fact depositions had yet to commence.

300. DOJ's intervention in a civil case can pose a material risk of a stay or other delay, as has occurred in the *Generics MDL*, where key depositions have been stayed since 2017, and the court recently granted DOJ's motion to continue the stay of 47 depositions to July 17, 2022. *In re Generics Pharmaceuticals Pricing Antitrust Litig.*, 2:16-md-02724 (E.D. Pa.), ECF 2045 at 1, 4.

301. Aware of these risks, Class Representatives opposed DOJ's motion to intervene, while continuing to confer in good faith with DOJ about its concerns. (*See* ECF 564 at 6.) On October 20, 2020, the Court allowed DOJ to intervene only "for the limited purposes of seeking to stay certain depositions and requesting that it be served simultaneously with any future written discovery requests." (ECF 584 at 8.)

302. Thereafter, by careful negotiation and pursuing alternatives to potentially sensitive depositions—including the co-conspirator declarations discussed above—Class Representatives completed fact and expert discovery without causing DOJ to seek a stay or affecting the case schedule. Nonetheless, DOJ's intervention threatened to derail this action and impede development of the merits.

D. Financial Risks

303. Even if Class Representatives prevailed on every contested issue of liability and damages, Teva's financial condition posed substantial—and potentially catastrophic—risks throughout this litigation, and seriously constrained any potential recovery. During the first several years of this litigation, Teva's financial condition materially worsened. Teva ADS prices peaked at $72.00 per share in July 2015. However, following the November 3, 2016 publication of the *Bloomberg* article and the November 6, 2016 filing of the first securities action, the Teva ADS traded at approximately $40 per share. As this litigation proceeded, Teva continued to announce

new, negative information, including a total of $16.5 billion in permanent goodwill impairment charges disclosed in August 2017 and February 2018. By the end of the Class Period in May 2019, Teva ADS had dropped to $12.23, and by the time discovery commenced on September 25, 2019, the ADS had plummeted to $6.96. The factors that drove these declines have not abated, and Teva's financial condition today is distressed, with little prospect of a meaningful recovery.

304. First, Teva is saddled with over $20 billion in outstanding debt (much of which was raised from Class Members in the Notes Offering). The debt is currently rated Ba2 (commonly known as "junk") by Moody's, which noted last year that "Teva's credit profile is constrained by its high financial leverage." (Ex. 13 (Moody's August 31, 2021 Credit Opinion Regarding Teva Pharmaceutical Industries Ltd.) at 1.)

305. Compounding Teva's high leverage are operational issues and weak growth. For example, Moody's stated that it is "not forecasting meaningful revenue growth" in Teva's generics business, and "Teva's branded pipeline is weak." (*Id.* at 4.)

306. These factors are reflected in Teva's share price. Far from their Class Period peak of $72.00, Teva's ADS traded within a range of $7.90-$10.14 in the three months before the parties entered the settlement. Likewise, Teva's market capitalization peaked at over $52 billion during the Class Period, but was below $10 billion when the parties entered the proposed settlement. There is a serious risk that Teva, with over $20 billion in outstanding debt, would be unable to pay a judgment in excess of the proposed settlement.

307. Second, Teva faces unresolved, material exposures to opioids litigation. Teva's 2021 10-K explains that "[s]ince May 2014, more than 3,500 complaints have been filed with respect to opioid sales and distribution against various Teva affiliates . . . ." (Ex. 14 (Excerpted Teva 2021 Form 10-K at 140 (filed February 9, 2022)).)

308. Four opioids cases involving Teva have recently reached trial. In December 2021, Teva lost a jury trial in New York,[12] with damages to be determined in further proceedings. (Ex. 14 (Excerpted Teva 2021 Form 10-K) at 141.) Teva also faces opioids-related indemnification claims from Allergan (the entity that sold Actavis to Teva during the Class Period). (*Id*.) While it prevailed in an opioids bench trial in California (also in December 2021), Teva has stated that "absent resolutions, additional trials are expected to proceed in several states in 2022." (*Id*.) Indeed, opioids trials against Teva recently commenced in West Virginia state court, as well as in a federal MDL.[13] The numerous opioids trials (and future determination of damages in New York) present a significant financial threat to Teva. Indeed, opioids exposure has forced some pharmaceutical companies into bankruptcy,[14] a tactic that even financially stronger drug companies have recently used to escape billions of dollars in other products liability.[15]

[12] *See In re Opioid Litigation*, No. 400000/2017 (N.Y. Sup. Ct., Suffolk Cty.); *County of Suffolk v. Purdue Pharma LP et al.*, No. 400001/2017 (N.Y. Sup. Ct., Suffolk Cty.); *County of Nassau v. Purdue Pharma LP et al.*, No. 400008/2017 (N.Y. Sup. Ct., Suffolk Cty.); *State of New York v. Purdue Pharma LP et al.*, No. 400016/2018 (N.Y. Sup. Ct., Suffolk Cty.); *see also Attorney General James Victorious in New York's Opioid Trial*, NY ATTORNEY GENERAL (Dec. 30, 2021), https://ag.ny.gov/press-release/2021/attorney-general-james-victorious-new-yorks-opioid-trial.

[13] *In re Opioid Litig.*, No. 21-C-9000 MFR (W. Va. Cir. Ct. Kanawha Cty.); *City and County of San Francisco v. Purdue Pharma LP et al.*, No. 3:18-cv-07591 (N.D. Cal.).

[14] *See* Maria Chutchian, *Mallinckrodt Makes Final Plea for Approval of Bankruptcy Opioid Deal*, REUTERS (Jan. 6, 2022), *available at* https://www.reuters.com/legal/transactional/mallinckrodt-makes-final-plea-approval-bankruptcy-opioid-deal-2022-01-06/ ("Mallinckrodt filed for bankruptcy in October 2020 to resolve widespread litigation brought by states, local governments and private individuals accusing it of deceptive marketing practices with respect to the sale of its opioids, including downplaying the risks of addiction and abuse.").

[15] *See* Kevin Dunleavy, *Judge backs Johnson & Johnson in bankruptcy ploy for talc litigation, clears way for settlement*, FIERCE PHARMA (Feb. 25, 2022), *available at* https://www.fiercepharma.com/pharma/judge-backs-johnson-johnson-bankruptcy-ploy-talc-litigation-clears-way-settlement.

309. Teva itself has warned that an "adverse resolution of any of [the opioids-related] lawsuits or investigations may involve large monetary penalties, damages, and/or other forms of monetary and non-monetary relief and could have a material and adverse effect on Teva's reputation, business, results of operations and cash flows." (Ex. 14 (Excerpted Teva 2021 Form 10-K) at 142.) More explicitly, Teva has stated that "[t]he loss or settlement of any such claims related to opioids could have a material adverse impact on our liquidity." (*Id.* at 43.)

310. Despite the large number of outstanding opioids litigations and Teva's material exposure, Teva—in contrast to better-capitalized companies—has been unable to achieve a global settlement of these matters. In October 2019, Teva—together with Johnson & Johnson and the distributors AmerisourceBergen, Cardinal Health, and McKesson—announced a proposed opioid settlement. In October 2020, however, the distributors and Johnson & Johnson announced updated terms that did not include Teva, and this global settlement without Teva has advanced toward final approval.[16]

311. Third, Teva faces the risk of a material, adverse financial impact of a conviction or guilty plea in the pending criminal antitrust prosecution. Teva has disclosed that the indictment of its U.S. subsidiary could have a "material adverse effect" on its business. As Teva's 2021 10-K explained (Ex. 14 at 44):

> We are subject to a DOJ civil investigation and a criminal indictment charging Teva USA with criminal felony Sherman Act violations, that, if resulting in a conviction or guilty plea, could have a material adverse effect on our business, including monetary penalties,

[16] *See* Press Release, Distributors Approve Opioid Settlement Agreement (Feb. 25, 2022), *available at* https://www.mckesson.com/About-McKesson/Newsroom/Press-Releases/2022/Distributors-Approve-Opioid-Settlement-Agreement/; Nate Raymond, *Drug distributors, J&J agree to finalize $26 bln opioid settlement*, REUTERS (Feb. 25, 2022), *available at* https://www.reuters.com/legal/litigation/drug-distributors-agree-finalize-opioid-settlement-2022-02-25/ ("Other drugmakers like Israel-based Teva Pharmaceutical Industries Ltd [] as well as major pharmacy chains remain in litigation.").

debarment from federally funded health care programs and reputational harm.

312. Anything short of an acquittal in the criminal case could further impair Teva's ability to satisfy a judgment in this action. As the criminal case proceeded, this material risk—which the Class already shouldered for a lengthy period—would only increase. Even if Teva eventually reaches a negotiated settlement with DOJ, the financial consequences may be material. For example, Sandoz was required to pay a total of $380 million to resolve its criminal and civil antitrust liability.[17]

V. MEDIATION AND SETTLEMENT

313. The proposed settlement follows three formal mediation sessions with the Honorable Layn R. Phillips (Ret.) and extensive related calls and videoconferences. As detailed in Judge Phillips's Declaration (Exhibit 1) and below, the parties' arm's-length settlement negotiations were hard-fought, and importantly, the proposed settlement is the product of Judge Phillips's recommendation. Class Representatives were fully and actively involved throughout the mediation process and attended all three formal sessions, as well as further presentations and numerous meetings regarding settlement demands, offers, and Judge Phillips's recommendation.

314. From the outset, Class Counsel's litigation strategy did not assume a consensual resolution would occur, and Class Representatives and Class Counsel strongly believed in fully

[17] See Department of Justice Press Release, "Major Generic Pharmaceutical Company Admits to Antitrust Crimes," (March 2, 2020), *available at* https://www.justice.gov/opa/pr/major-generic-pharmaceutical-company-admits-antitrust-crimes; Department of Justice Press Release, "Pharmaceutical Companies Pay Over $400 Million to Resolve Alleged False Claims Act Liability for Price-Fixing of Generic Drugs," (Oct. 1, 2021), *available at* https://www.justice.gov/opa/pr/pharmaceutical-companies-pay-over-400-million-resolve-alleged-false-claims-act-liability.

developing the merits to maximize the value of the Class's claims. Thus, in parallel to the mediation sessions, Class Counsel continued vigorously prosecuting the action, ultimately achieving class certification and completing fact and expert discovery to develop the strongest proof on behalf of the Class. These efforts allowed Class Representatives to present a true threat of trial, overcome Teva's minimal incentive to resolve cases, and achieve a substantial settlement.

315. Class Counsel's work to develop the merits also provided a clear understanding of the risks of continued litigation. As outlined above, many of those risks related to the merits, but the Class also faced independent risks, including due to Teva's financial condition and material exposures to other unresolved litigation. To that end, Class Counsel worked closely with a consulting expert to analyze Teva's financial condition to support negotiation strategy. Finally, Class Counsel worked with consulting experts at NERA to analyze aggregate damages.

A. The July 2020 Mediation

316. The first mediation session occurred on July 13, 2020. In advance, Judge Phillips met with Class Counsel, the parties submitted and exchanged extensive written submissions on July 6, 2020, and Teva presented on its financial condition on July 7, 2020. The participants in the July 13, 2020 session with Judge Phillips (held remotely by videoconference) included Class Counsel; Class Representatives; Defendants' counsel; in-house counsel from Teva; and representatives from Defendants' various insurance carriers. Each side made detailed presentations on July 13 to supplement the prior written submissions.

317. The July 13, 2020 mediation ended without progress, and the parties did not exchange any settlement demands or offers. Importantly, at this point, Defendants were only in the early stages of document production, no fact depositions had occurred, and Class Representatives had recently moved for class certification. Recognizing that the merits were not yet fully developed, Class Representatives and Class Counsel—though presented with lower

risk and lower investment in the case—declined to pursue a settlement. Instead, Class Counsel continued investing heavily and working diligently to develop the merits and strengthen the Class's position.

B. The September 17 and 27, 2021 Mediation

318. The parties resumed mediating in September 2021, after the Court had certified the Class. Full-day mediation sessions (by videoconference) occurred on September 17, 2021 and September 27, 2021. By this point, fact and expert discovery had been completed (the parties exchanged expert reply reports on September 20, 2021).

319. In advance of these sessions, Class Counsel developed extensive submissions and presentations based on the large body of evidence amassed in nearly two years of discovery; Defendants likewise submitted and exchanged an updated mediation statement with supporting exhibits. In addition, Class Counsel's consulting experts updated their damages analysis in view of the completed discovery and refined their analysis of Teva's financial condition based on recent developments, including Teva's current debt burden, the ongoing opioid litigations, and the August 2020 indictment of Teva's U.S. subsidiary. The parties also submitted and exchanged discrete information about the assumptions and methodologies used in their respective aggregate damages calculations. Finally, Class Counsel prepared detailed presentations to Judge Phillips—equivalent to trial demonstratives—on liability, damages, and financial condition issues, which included video and audio clips of testimony from Defendants' fact and expert witnesses.

320. The participants in the September 17, 2021 mediation session included Class Counsel; Class Representatives; Defendants' counsel; in-house counsel from Teva; and representatives from Defendants' insurance carriers. Significantly, Teva's insurance tower was complex and required the presence of numerous carrier representatives at the mediation.

321. For the first time after over four years of litigation, on September 17, 2021, the parties exchanged settlement demands and offers. Negotiations continued until after 8:30 PM in New York (and later for participants in the United Kingdom and Israel). While some progress was made, the parties' positions remained far apart.

322. On September 24, 2021, Class Counsel and their consulting expert delivered an additional presentation to Judge Phillips focused on financial issues.

323. Mediation continued on September 27, 2021, and this session again included Class Counsel; Class Representatives; Defendants' counsel; in-house counsel from Teva; and representatives from Defendants' insurance carriers. During this session, Class Counsel engaged in substantive discussions with Judge Phillips, and the parties exchanged several rounds of settlement demands and offers. Negotiations again continued well into the night (until after 10:30 PM in New York) and although the parties continued to make progress, they were again unable to reach a resolution.

C. Extensive Further Negotiations Through November 2021

324. On September 30, 2021, Class Counsel delivered another presentation to Judge Phillips focused on merits issues, including the key evidence obtained from discovery.

325. Thereafter, the parties continued to negotiate, and Class Counsel engaged in multiple follow-up calls and communications with Judge Phillips. These negotiations were protracted and continued throughout October 2021 and into November 2021; during this period, Judge Phillips participated in numerous discussions with each side, and the parties exchanged 11 further rounds of settlement demands and offers. In parallel, Class Counsel finalized the summary judgment and *Daubert* motions described above.

326. Ultimately, on November 14, 2021, Judge Phillips issued a mediator's recommendation to settle the action for a cash payment of $420,000,000.

D. The Parties Consider and Accept the Mediator's Recommendation Hours Before Summary Judgment and *Daubert* Motions Are Due

327. While Class Representatives and Class Counsel carefully considered Judge Phillips's recommendation, until the end, it was far from clear that all parties would accept.

328. The deadline for the parties to respond to the recommendation was initially November 22, 2021, which the parties agreed to extend to November 26, again to November 29, and finally to December 2. To facilitate mediation discussions, Class Representatives also agreed to extend the deadline for summary judgment and *Daubert* motions from November 15, 2021 to November 30, and then to December 2, with filings to commence at 3:00 p.m. ET. (*See* ECF 916.)

329. Finally, on December 2, 2021, Judge Phillips advised that the recommendation had been accepted by all parties. This occurred just hours before the 3:00 p.m. deadline, as Class Counsel were preparing to file their summary judgment and *Daubert* motions.

E. Negotiation of the Term Sheet and Settlement Papers

330. The parties then engaged in two weeks of extensive negotiations to prepare a term sheet outlining the material terms of the settlement, which was executed on December 16, 2021.

331. With the term sheet signed, Class Counsel drafted and negotiated the Stipulation of Settlement and its exhibits, including the Notice, Proof of Claim and Release, Long-Form Notice, and Summary Notice, and developing the Plan of Allocation with expert assistance.

332. The settlement documents and preliminary approval motion were finalized and filed on January 18, 2022. (*See* ECF 919.)

F. Preliminary Approval

333. On January 26, 2022, the Court held a status conference and discussed certain revisions to Exhibits A-1, A-2, A-3, and A-4 to the Stipulation of Settlement. On January 27,

2022, Class Representatives filed revised versions of these exhibits (ECF 928-2, 928-3, 928-4, and 928-5), and the Court entered the Preliminary Approval Order. (ECF 929.)

VI. PLAN OF ALLOCATION

334. The Plan of Allocation, contained in the Long-Form Notice, is designed to achieve the fair, equitable, and reasonable distribution of the Net Settlement Fund to Authorized Claimants based on estimates of their recognized losses in transactions in Teva Securities during the Class Period.

335. Specifically, the Plan of Allocation (developed by Class Counsel with Dr. Tabak's expert assistance) calculates a "Recognized Loss Amount" for each purchase or acquisition of Teva Securities during the Class Period listed on the Proof of Claim and Release for which the claimant provides adequate documentation.

336. Transactions in Teva ADS may result in Exchange Act Recognized Loss Amounts, with the calculation depending on when the claimant purchased and/or sold the ADS and whether the claimant held the ADS through the statutory 90-day look-back period after the end of the Class Period. *See* 15 U.S.C. § 78u-4(e). The estimates of artificial inflation for the ADS are consistent with Dr. Tabak's expert opinions regarding artificial inflation during the prosecution of the action.

337. Transactions in Teva Preferred Shares and Notes (and ADS purchased in the ADS Offering) may result in Securities Act Recognized Loss Amounts. To avoid double-counting, the Plan of Allocation does not provide Exchange Act Recognized Loss Amounts for these securities, since Exchange Act damages for these transactions are subsumed by larger Securities Act damages for the same transactions. The calculation of Securities Act Recognized Loss Amounts generally reflects the statutory damages formula and depends on the amount paid for each of these Teva Securities (not to exceed their offering price) and the security's price or

value at the time of suit or the time of sale. *See* 15 U.S.C. § 78k(e). This approach is consistent with Dr. Tabak's expert opinions during the prosecution of the action.

338. A claimant's "Recognized Claim" will be the sum of the claimant's Recognized Loss Amounts. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on their Recognized Claims in proportion to all Recognized Claims, as determined by the Court-approved Claims Administrator.

339. In sum, the proposed Plan of Allocation, developed in consultation with the Class's damages expert, Dr. Tabak, was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants based on estimates of recognized losses calculated using the amounts, prices, and dates of their transactions, and appropriately recognizes the different methods to calculate damages under the Securities Act and the Exchange Act. Accordingly, Class Counsel respectfully submit that the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved.

VII. COMPLIANCE WITH PRELIMINARY APPROVAL ORDER AND NOTICE PROGRAM

340. At Class Counsel's direction, immediately after entry of the Preliminary Approval Order, the Court-appointed notice and claims administrator, Epiq, began implementing the Court-approved notice program, including preparing to deliver the Notice to Settlement Class Members and nominees by mail and developing a settlement-specific website, www.TevaSecuritiesLitigation.com. Class Counsel continue to work closely with Epiq and has received regular updates concerning the notice and claims process.

341. On February 16, 2022, in accordance with the Preliminary Approval Order (ECF 929 ¶8), Epiq began mailing Notices directly to the Teva investors identified in the transfer

lists provided by Defendants on January 24 and 26, 2022 and to each entity included on a proprietary list of more than 1,000 nominees. (*See* Ex. 2 (McGuinness Decl.) ¶¶3-4.)

342. On February 21, 2022, Epiq also caused the Notice and related materials to be published by the Depository Trust Corporation ("DTC") on the DTC Legal Notice System ("LENS"), which enables participating banks and brokers to review the Notice and directly contact Epiq to obtain copies of the Notice for clients who may be Settlement Class Members. (*Id.* ¶6.)

343. On February 16, 2022, ahead of the Court-ordered schedule, Epiq activated the Settlement Website (www.TevaSecuritiesLitigation.com). The Settlement Website provides investors with complete access to the Notice, Long-Form Notice, Proof of Claim and Release Forms, FAQs, and instructions for how to submit claims, opt-out from the settlement, or submit an objection. The Settlement Website is available in English and Hebrew and provides the Summary Notice, Notice, Long-Form Notice, and Proof of Claim and Release Form in English and Hebrew versions. Epiq has determined that 32,492 unique visitors have visited the Settlement Website as of April 27, 2022. (*Id*. ¶¶16-20)

344. The Court-approved Summary Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire* on February 21, 2022, and published in *The Wall Street Journal* on February 22, 2022. A Hebrew translation of the Summary Notice was published in the *Globes* business newspaper in Israel on February 23, 2022. (*Id.* ¶14.)

345. At Class Counsel's direction, Epiq also delivered copies of the Notice to potential Settlement Class Members who had contacted Class Counsel throughout the pendency of the litigation, and to other potentially interested parties, including counsel for each of the Direct Action Plaintiffs and the counsel for plaintiffs in the actions that were consolidated. (*Id.* ¶7.)

346. Epiq also took additional steps to ensure nominees and brokers provided necessary information to identify and provide notice to Settlement Class Members. Specifically, Epiq followed up with nominees and brokers to ensure that they had received the Notice, and that they were following the Notice's specific instructions to nominees/brokers to provide beneficial owner information or request copies of the Notice for forwarding to beneficial owners. Epiq has received beneficial owner information or requests for copies of the Notice with respect to 939,219 potential Settlement Class Members as of April 27, 2022. (*See id.* ¶¶9-10.)

347. Overall, Epiq has sent 942,255 Notices, including Notices sent directly to investors identified by nominees and those provided to nominees at their request for transmission to investors. (*Id.* ¶11.)

348. Defendants' counsel have advised that on January 21, 2022, Defendants served the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 (2005) *et seq*.

349. The Escrow Agents (The Huntington National Bank and Esquire Bank, National Association) have received the full $420 million Settlement Amount. Pursuant to the Stipulation, the full amount has been invested in United States Agency or Treasury securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the Federal Deposit Insurance Corporation ("FDIC") or the United States Government or an Agency thereof.

350. Epiq is prepared to complete the claims administration process expeditiously if the Court approves the proposed settlement. In this regard, Lead Counsel has engaged an independent third party, The JNL Firm, LLC ("JNL"), to provide further assurance that the process is conducted in accordance with industry standards and consistent with the Plan of Allocation. JNL will provide a written submission to the Court concerning the results of the administration, and JNL's fees and

expenses (net of a $5,000 retainer, and not to exceed $50,000 absent further Court approval) will be submitted to the Court in connection with distribution of the Net Settlement Fund.

VIII. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE IN LIGHT OF THE POTENTIAL RECOVERY IN THE ACTION

351. The $420 million settlement is an outstanding result that provides the Settlement Class with a significant, immediate cash recovery. It is also a favorable result relative to the range of potential recovery at trial. As discussed below, potential damages are a broad range that is largely theoretical in light of Teva's limited ability to pay, confirming that the $420 million settlement is a particularly favorable result.

A. The Proposed Settlement Recovers a Reasonable Range of Potential Damages

352. Damages that could be proven at trial in this action depend heavily on three variables: (1) whether scienter is proven under the Exchange Act; (2) whether, if scienter is proven, the number of alleged Exchange Act corrective events for which loss causation is proven; and (3) whether and to what extent Defendants prove their negative causation defense under the Securities Act. Each variable has a substantial impact on damages, resulting in a broad range of potential damages if Class Representatives were to prevail at trial.

353. First, the majority of potential damages arise under the Exchange Act, which requires proof of scienter. Without such proof, the Class would be limited to significantly lower damages under the Securities Act.

354. Under the Securities Act, if Defendants proved negative causation to the full extent articulated in Dr. James's reports, and established that the Securities Act damages formula should use Teva ADS and Preferred Shares' market prices on August 2, 2017, estimated damages would be approximately $576 million. In that scenario, the proposed settlement would amount to a 73% recovery.

355. Maximum Securities Act damages are estimated as approximately $2.97 billion if Class Representatives were to (a) defeat Defendants' negative causation defense and (b) establish that the Securities Act damages formula should use the Teva ADS and Preferred Shares' value at the time of suit. Under this scenario, the proposed settlement would amount to a 14.1% recovery.

356. Second, even if scienter were proven, the full amount of potential Exchange Act damages would require proving loss causation for each of eight corrective events. If the Court or jury were to conclude that certain of these events did not cause any losses on the Teva Securities, Exchange Act damages could be reduced significantly. For example, if two corrective events (the departures of Defendants Vigodman and Olafsson) were eliminated and damages for a third event (Teva's January 6, 2017 guidance reduction) were reduced, estimated damages for all claims would be approximately $7.44 billion.[18] Under this scenario, the proposed settlement represents a 5.6% recovery.

357. Third, if scienter were proven, the Class demonstrated loss causation for each corrective event, and the Class fully defeated Defendants' negative causation argument, Class Representatives would have argued that estimated realistically provable damages for all claims are approximately $12.22 billion.[19] Crucially, this scenario is subject to numerous risks and uncertainties. Among other things, it would require: (a) proving scienter; (b) proving loss causation for all eight corrective events that form the basis of Dr. Tabak's Exchange Act damages analysis; (c) the acceptance of Dr. Tabak's methodology regarding Exchange Act damages; and (d) as to the Securities Act, both (i) defeating Defendants' negative causation defense in its entirety

[18] This estimate assumes negative causation for the Securities Act claims and uses the Teva ADS and Preferred Shares' prices as their values at the time of suit.

[19] This estimate uses the per-share inflation figures from Dr. Tabak's report and the Plan of Allocation.

and (ii) establishing that the Teva ADS and Preferred Shares' value at the time of suit should be used in the Securities Act's statutory damages formula. Under this scenario—which requires the Class to prevail on every contested issue of liability and damages for all claims—the proposed settlement represents 3.4% of potential damages.

358. Thus, depending on the variables outlined above, the $420 million settlement represents from 3.4% to 73% of the Class's estimated potential damages.[20]

359. Importantly, the percentage recoveries above are theoretical and should not be considered in isolation given Teva's financial constraints (discussed herein). Nonetheless, they are above average in securities class actions. For over a decade, the economics consulting firm NERA has independently performed empirical analysis of securities class settlements relative to its proprietary measure of losses. While this measurement is not equivalent to provable damages in a given case, it can provide a relative benchmark and illustrate trends. Overall, for cases with $10 billion or greater in "NERA-Defined Investor Losses," NERA has found historical median settlement values of 0.5%. (*See* Ex. 11 (NERA 2021 Report) at 23.)[21] This analysis further confirms that the $420 million settlement is fair, reasonable, and adequate.

[20] In addition, the dollar amounts and percentages above reflect the conditions under the proposed Plan of Allocation and estimates from a trading model. Any actual recovery after trial would depend on the actual claims submitted; if actual claims were below the model's estimate, actual damages would be lower—and the Class's percentage of recovery would be higher—than stated herein.

[21] NERA has found median settlement values of 1.3% for cases with $1 billion to $4.99 billion in NERA-Defined Investor Losses, and 1.0% for cases between $5 billion and $9.99 billion in NERA-Defined Investor Losses. (*Id.*)

B. The Settlement Recovery Is Reasonable in Light of Teva's Ability to Pay

360. The proposed settlement is a particularly exceptional recovery because there is a serious risk that Teva would be unable to pay a judgment larger than the $420 million settlement amount. As summarized above, Teva today is dramatically weaker than at its Class Period peak, including in light of the company's large amount of outstanding debt and material exposures to opioids, the pending criminal antitrust case, and other unresolved litigation.

361. Because the estimated damages in this case reflect a time when Teva was a much larger company, they far outstrip Teva's current ability to pay. The largest realistically provable damages could exceed Teva's entire market capitalization. Even estimated Securities Act damages alone (up to $2.97 billion) could approach one-third of Teva's market capitalization at the time of settlement and exhaust Teva's free cash flow for over a year.[22] Teva could not realistically pay a judgment of such magnitude. Instead, Teva's management could simply place the company into bankruptcy. Despite these financial constraints, Class Representatives and Class Counsel obtained a substantial $420 million settlement funded by both insurance proceeds and a cash contribution from Teva. Moreover, the proposed settlement provides Settlement Class Members with a prompt, certain recovery, eliminating the risk that Teva's current financial and litigation risks further reduce Teva's ability to pay any settlement or judgment.

362. In these circumstances, the $420 million settlement is an exceptional result that is fair, reasonable, adequate, and in the best interests of the Settlement Class.

[22] *See* Press Release, Teva Reports Fourth Quarter and Full Year 2021 Financial Results, February 9, 2022, *available at* https://s24.q4cdn.com/720828402/files/doc_financials/2021/q4/Press-Release-Q4-2021v2.pdf (reporting Teva's $2.2 billion free cash flow for 2021).

IX. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES

363. In addition to seeking final approval of the settlement and Plan of Allocation, Lead Counsel is applying for a fee award of 23.70% of the Settlement Fund to be allocated among Class Counsel. Class Representatives carefully determined the fee that Class Counsel could request, and set forth their reasoning in their respective declarations. (*See* Ex. 3 (Davis Decl.) ¶¶26-36; Ex. 4 (Jarvis Decl.) ¶¶26-35.) In addition, the Droney and Miller Declarations provide relevant empirical data and analysis to inform the Court's assessment of the requested fee. (*See* Ex. 5 (Droney Decl.); Ex. 6 (Miller Decl.).)

364. In particular, Judge Droney analyzed relevant fee awards from this Circuit and District, empirical studies of attorneys' fees in class action settlements (including studies specific to securities class actions), and fee awards in large class settlements around the country. (Ex. 5 (Droney Decl.) ¶¶8-22.) Within the Second Circuit, Judge Droney identified six procedurally advanced securities class actions that settled between $200 million and $500 million as comparable, and found that fee awards in four of the six cases were in the mid-20% range. (*Id.* ¶¶9, 11-12.) Within this District, Judge Droney identified as comparable *In re U.S. Foodservice, Inc. Pricing Litig.*, a $297 million RICO and contract class action where Judge Thompson approved a fee of 33.3%, or $99 million, reflecting a 2.23 multiplier of counsel's lodestar. No. 3:07-md-1894 (AWT), 2014 WL 12862264, at *1, *3 (D. Conn., Dec. 9, 2014). (Ex. 5 (Droney Decl.) ¶12.) Nationally, Judge Droney considered a study by NERA that found a median fee award of 24.5% in securities settlements between $100 million and $500 million from 2012 to 2021 (*id.* ¶¶15, 18; Ex. 11 (NERA 2021 Report) at 27). Based on these authorities (and academic research by Professor Miller and co-authors, as discussed below), Judge Droney concluded that "the requested

percentage and lodestar multiplier are within statistical trends of securities litigation class actions" and consistent with "national data for similar awards." (Ex. 5 (Droney Decl.) ¶¶18, 22.)[23]

365. Judge Droney also considered a summary of Class Counsel's time records and BFA's underlying time detail to assess Class Counsel's work, staffing, and efficiency. (Ex. 5 (Droney Decl.) ¶23.) In this regard, Judge Droney concluded that Class Counsel's "number of hours" worked was "justified by their billing summaries and the course of this litigation"; that Class Counsel's hourly rates were "within the appropriate ranges" relative to similar class actions within this Circuit and a national securities bar; and that "Class Counsel worked efficiently," with tasks "properly allocated to the level of experience and competence" of individual attorneys. (*Id*. ¶¶56-57, 65, 67.) Finally, Judge Droney concluded that the requested expenses appear "justified and reasonable" and were "largely a result of the extensive expert analysis and assistance necessary for this action." (*Id*. ¶70.)

366. Similarly, Professor Geoffrey Miller of New York University Law School, a leading scholar on class action fee awards, surveyed extensive empirical research and concluded that the requested fee is reasonable and supported by data regarding fee percentages, lodestar multipliers, and hourly rates. (*See, e.g.*, Ex. 6 (Miller Decl.) ¶¶10-11.)[24] For example, Professor Miller's academic research has found average percentage fees of 22.3% and an average lodestar multiplier of 2.72 in the top decile of class settlements (which exceed $67.5 million)

[23] *See also* Ex. 5 (Droney Decl.) ¶¶16-18 (citing Ex. 15 (Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937 (2017)) and Ex. 16 (Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUDIES 248 (2010))).

[24] *See also* Exs. 15, 16, and 17 (Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUDIES 811 (2010)) (each cited in Ex. 6 (Miller Decl.)).

nationwide, supporting Professor Miller's conclusion that Class Counsel's 2.17 multiplier is "well within the range of reason." (*Id.* ¶¶54, 56, 69.) With respect to hourly rates, Professor Miller evaluated Class Counsel's rates within the nationwide market for attorneys in large-scale, complex class litigation and determined they are reasonable in that context. (*Id.* ¶¶35-51.) Professor Miller also addressed the "scaling effect" by which average percentage fees decline in larger settlements. He concluded that the fee requested here is reasonable after accounting for this effect. (*Id.* ¶70.) He further concluded that this action does not present the factors—such as low risk, an early settlement achieved with minimal effort, or an excessively high multiplier—that can raise concerns about the percentage fee in some large cases. (*Id.* ¶¶11, 71-80.)

367. The primary factual bases for the request are summarized below.

A. The Risks and Complexity of This Litigation

368. Class Counsel devoted more than five years to litigating this action, overcoming numerous challenges and substantial risks. As set forth in detail in Section IV above, ¶¶252-312, those risks included significant uncertainty in proving Defendants' liability, loss causation, and damages, as well as the risks posed by *Daubert* motions in this expert-intensive case, DOJ's intervention, and the current litigation environment. Moreover, Teva's distressed financial condition limited and threatened to foreclose any potential recovery for the Class. These case-specific risks compound the more typical risks accompanying securities litigation, such as the fact that this prosecution was undertaken on a fully contingent basis.

369. In that regard, at all points in this case, we have understood that that we were embarking on a difficult, expensive, and lengthy litigation with no guarantee of being compensated fully (or at all) for the substantial investment of time and money the case would require. Nonetheless, we ensured that sufficient resources were dedicated to the prosecution of this action, and that funds were available to compensate staff and to cover the considerable expenses necessary

to litigate this matter effectively, including numerous outside experts and consultants and vendors. The financial burden on my firm as contingent-fee counsel has been far greater than on a firm that is paid on an ongoing basis, particularly where five years of vigorous effort was necessary to achieve the best possible result.

B. Class Counsel's Time and Labor Expended

370. In total, Class Counsel devoted 77,090.70 hours of work to this action through April 14, 2022. As set forth in detail above, this work included:

a. Extensive investigation of the allegations and securing Ontario Teachers' appointment as lead plaintiff (*see supra* ¶¶28-38);

b. Pleading the Complaint and Amended Complaint (*see supra* ¶¶39-44, 53-58);

c. Opposing two rounds of motions to dismiss, which together involved over 500 pages of briefing (*see supra* ¶¶45-52, 59-71);

d. Achieving consolidation (*see supra* ¶¶75-80);

e. Opposing DOJ's intervention motion (*see supra* ¶¶81-83);

f. Achieving class certification over Defendants' vigorous opposition, which entailed nearly 200 pages of briefing, the exchange of six expert reports, five expert depositions (yielding over 1,400 pages of testimony), and Rule 23(f) filings with the Second Circuit (*see supra* ¶¶176-178, 184-197);

g. Extensive document discovery, with Class Representatives serving 116 requests for production and subpoenas on 49 third parties, ultimately yielding over 8.2 million pages of documents, obtained in part through:

   i. Filing three motions to compel;

   ii. Commencing an enforcement proceeding against a third party; and

   iii. Participating in twenty discovery hearings and conferences with the Court (*see supra* ¶¶84-131, 145-165, 168-171);

h. Detailed written discovery, including serving 13 interrogatories and 119 requests for admission and responding to Defendants' 18 interrogatories and 57 requests for admission (*see supra* ¶¶84, 156, 172-175);

i. Discovery from Class Representatives, including two Rule 30(b)(6) depositions and opposing Defendants' two motions to compel (*see supra* ¶¶179-183, 198-205);

j. Taking 23 fact depositions of Teva and third-party witnesses, yielding over 7,000 pages of testimony (*see supra* ¶¶132-144);

k. Exchanging 17 merits expert reports with Defendants and conducting 10 merits expert depositions (*see supra* ¶¶206-241);

l. Completing summary judgment and four *Daubert* motions, supported by 150 pages in briefing (*see supra* ¶¶242-251); and

m. Engaging in a hard-fought and protracted mediation process, including three in-person sessions and numerous further conferences over more than 16 months (*see supra* ¶¶313-332).

371. To provide further information about the work Class Counsel performed in this case, the following table presents Class Counsel's time and lodestar in 10 categories based on time periods:

Category	Date Range	Hours	Lodestar	Starting and Ending Events
Category 1	11/6/16 – 9/11/17	4,509.90	$3,119,374.25	Case inception through filing the Complaint (ECF 141)
Category 2	9/12/17 – 4/3/18	6,736.60	$4,576,107.75	Filing the Complaint (ECF 141) through oral argument on first motions to dismiss
Category 3	4/4/18 – 6/22/18	3,760.50	$2,497,234.00	Oral argument on first motions to dismiss through filing of the Amended Complaint (ECF 226)
Category 4	6/23/18 – 9/25/19	6,474.20	$4,282,374.75	Filing of the Amended Complaint (ECF 226) through the Court's Opinion and Order regarding Defendants' second motions to dismiss (ECF 283)
Category 5	9/26/19 – 6/19/20	11,172.85	$6,886,886.25	The Court's Opinion and Order regarding Defendants' second motions to dismiss (ECF 283) through filing the class certification motion (ECF 419)
Category 6	6/20/20 – 12/7/20	12,980.25	$6,685,739.50	Filing the class certification motion (ECF 419) through the day before fact depositions commenced
Category 7	12/8/20 – 5/5/21	15,333.55	$8,001,323.50	Commencement through completion of deposing defense and third-party fact witnesses

Category	Date Range	Hours	Lodestar	Starting and Ending Events
Category 8	5/6/21 – 9/20/21	11,340.50	$6,569,254.00	Completion of defense and third-party fact witnesses through completion of expert discovery
Category 9	9/21/21 – 12/2/21	3,386.20	$2,221,394.75	Completion of expert discovery through parties' acceptance of Judge Phillips's settlement recommendation
Category 10	12/3/21 – 4/14/22	1,396.15	$997,672.25	Parties' acceptance of Judge Phillips's settlement recommendation through April 14, 2022

372. **Category 1**: This category commences with the inception of the case and continues through the date on which Class Representatives filed the Complaint (ECF 141). During this time frame, Class Counsel briefed the lead plaintiff motions, investigated the conduct alleged, worked with a consulting expert to analyze Teva's generic drug price increases and resulting profits, prepared two Securities Act complaints, and drafted and filed the Complaint (ECF 141). Class Counsel devoted 4,509.90 hours to this phase of the case, resulting in lodestar of $3,119,374.25.

373. **Category 2**: This category commences the day after filing the Complaint and continues through the April 3, 2018 oral argument on the first motions to dismiss (where the Court dismissed the Complaint without prejudice). During this time, Class Counsel conducted factual and legal research, drafted oppositions to five motions to dismiss, and prepared for and presented oral argument. Class Counsel devoted 6,736.60 hours to this phase of the case, resulting in lodestar of $4,576,107.75.

374. **Category 3**: This category commences the day after the April 3, 2018 hearing and continues through the June 22, 2018 filing of the Amended Complaint. (ECF 226.) During this period, Class Counsel drafted the Amended Complaint to clarify that Defendants' alleged misstatements and omissions were false for two distinct reasons and further investigated Defendants' alleged misconduct, including by expanding the consulting expert's analysis of

Teva's generic drug portfolio and by engaging an investigative firm to locate and interview former Teva employees. Class Counsel devoted 3,760.50 hours to this phase of the case, resulting in lodestar of $2,497,234.00.

375. **Category 4**: This category begins the day after Class Representatives filed the Amended Complaint and continues through the Court's September 25, 2019 Opinion and Order denying in substantial part Defendants' motions to dismiss the Amended Complaint. (ECF 283.) During this time, Class Counsel performed additional legal and factual research, drafted oppositions to Defendants' three motions to dismiss, presented oral argument on the motions, filed two notices of supplemental authority, and prepared for fact discovery, including by drafting discovery requests. Class Counsel devoted 6,474.20 hours to this phase of the case, resulting in lodestar of $4,282,374.75.

376. **Category 5**: This category commences the day after the Court's September 25, 2019 Opinion and Order and continues through June 19, 2020, the date on which Class Representatives filed their motion to certify the Class. (ECF 419.) During this time, Class Counsel prepared for and attended the Rule 16 conference; prepared and filed the SAC and successfully pursued consolidation of related class and individual actions; served discovery requests on Defendants and subpoenas on dozens of third parties; negotiated search terms and litigated the structure and timing of Defendants' document productions, including by preparing submissions and arguing at three status conferences; prepared Class Counsel's review team to efficiently analyze incoming discovery; moved to compel discovery from Defendants regarding generic drug pricing, sales, and profits; opposed Defendants' motion to compel discovery from Class Representatives regarding their transactions in Teva Securities; commenced a subpoena enforcement proceeding against Sandoz; and prepared and filed Class Representatives'

class certification motion, accompanied by Dr. Tabak's detailed expert report. Class Counsel devoted 11,172.85 hours to this phase of the case, resulting in lodestar of $6,886,886.25.

377. **Category 6**: This category commences the day after the class certification motion was filed and continues through December 7, 2020, the day before fact depositions commenced. This category includes Class Counsel's work to analyze Defendants' opposition to class certification and three expert reports, take and defend five expert depositions on class certification, research and draft the reply brief, and work with Dr. Tabak regarding his reply report; analyze millions of pages of documents produced by Defendants and third parties and prepare for extensive fact depositions; oppose DOJ's intervention and conduct related negotiations; and prepare submissions and argue at eight status conferences with the Court. These conferences addressed numerous discovery disputes, including Defendants' production of generic drug pricing, sales, and profit data, Class Representatives' motion to compel Defendants' production of text messages, the effort to compel Sandoz's production of documents, and deficiencies in Defendants' privilege logs. Class Counsel also prepared for and attended the July 2020 mediation. Class Counsel devoted 12,980.25 hours to this phase of the case, resulting in lodestar of $6,685,739.50.

378. **Category 7**: This category begins with the commencement of fact depositions on December 8, 2020, and continues through the conclusion of defense and third-party fact depositions on May 5, 2021. During this time, Class Counsel prepared for and took 23 fact depositions, including of all seven Individual Defendants and Rule 30(b)(6) depositions of Teva and Teva Finance, PwC Israel, and Barclays, and secured declarations from three of Teva's co-conspirators. Class Counsel also opposed Defendants' *Daubert* motion to exclude the opinions and testimony of Dr. Tabak in connection with class certification; argued the class certification motion at a three-hour hearing on January 29, 2021; opposed Defendants' effort to stay a decision

on class certification; and, after class certification was granted, opposed Defendants' Rule 23(f) petition to the Second Circuit. Class Counsel also prepared submissions and argued at four status conferences with the Court regarding discovery disputes, including Defendants' continued effort to pursue broad discovery from Class Representatives and their investment managers, Sandoz's production of text messages, Teva's access to FBI Forms FD-302, and issues regarding potential spoliation. Class Counsel devoted 15,333.55 hours to this phase of the case, resulting in lodestar of $8,001,323.50.

379. **Category 8**: This category commences the day after the completion of defense and third-party fact depositions and continues through September 20, 2021, when the parties exchanged expert reply reports and completed expert discovery. During this period, Class Counsel worked extensively with the Class's experts to prepare four opening reports and six reply and rebuttal reports in response to Defendants' four merits experts; conducted ten merits expert depositions; defended Rule 30(b)(6) depositions of both Class Representatives; and prepared submissions and argued at four status conferences regarding various remaining discovery disputes, including regarding text messages between Teva and Sandoz personnel, the FBI Forms FD-302, Defendants' continued demands for broad discovery from Class Representatives and their investment managers, and a limited-scope deposition of Maureen Cavanaugh regarding spoliation. In addition, Class Counsel prepared for the September 2021 mediation and attended the full-day mediation session on September 17, 2021. Class Counsel devoted 11,340.50 hours to this phase of the case, resulting in lodestar of $6,569,254.00.

380. **Category 9**: This category begins the day after the completion of expert discovery and continues through December 2, 2021, when the parties agreed to Judge Phillips's settlement recommendation. During this period, Class Counsel prepared and served more than 200 pages of

supplemental interrogatory responses that detailed the factual bases for Defendants' liability and continued to pursue Cavanaugh's deposition regarding spoliation. Class Counsel also drafted and finalized a motion for partial summary judgment and accompanying Rule 56.1 statement, as well as four detailed *Daubert* motions to exclude the opinions and testimony of Defendants' experts in their entirety, which were ready to be filed at the time Judge Phillips's recommendation was accepted. In addition, Class Counsel prepared for and participated in the September 27, 2021 mediation session and extensive further negotiations under the auspices of Judge Phillips. Class Counsel devoted 3,386.20 hours to this phase of the case, resulting in lodestar of $2,221,394.75.

381. **Category 10**: This category commences on December 3, 2021 and continues through April 14, 2022. During this time, Class Counsel negotiated with Defendants to finalize the terms of the Stipulation of Settlement and Notice, Summary Notice, Long-Form Notice (including the Plan of Allocation), and Proof of Claim and Release Form, and drafted the preliminary approval motion filed on January 18, 2022 (ECF 919). Class Counsel also monitored the funding of the Escrow Accounts and investment of the Settlement Amount; supervised the administration of the notice program and attended to inquiries from potential Settlement Class Members and nominees; and prepared Class Representatives' papers in support of final approval of the settlement. Class Counsel devoted 1,396.15 hours to this phase of the case, resulting in lodestar of $997,672.25.[25]

382. While the complexity and magnitude of this action necessarily required significant effort over a prolonged period, I ensured that our team litigated as efficiently as possible. To that

[25] This category (and all of Class Counsel's submissions) exclude all time and lodestar related to Lead Counsel's motion for awards of attorneys' fees, litigation expenses, and reasonable costs and expenses to Class Representatives.

end, our work was concentrated among a core team of seven attorneys (Joseph Fonti, Susan Podolsky, Wilson Meeks, Evan Kubota, Benjamin Burry, Thayne Stoddard, and Mathew Hough) who at various points over the last five years dedicated the majority of their time to this action, developed the pleadings, handled all briefs, took and defended all depositions, and prepared for summary judgment. This core team accounts for 40.6% of Class Counsel's hours and 52.9% of Class Counsel's lodestar.

383. Tasks were appropriately allocated based on seniority. I oversaw the day-to-day prosecution of the action, presented all oral argument for the Class, took or defended 17 depositions (including four of the seven Individual Defendants), and led the mediation strategy and settlement negotiations. Ms. Podolsky contributed strategic advice, drafted submissions, and led negotiations with DOJ and opposing counsel. Mr. Meeks was extensively involved in drafting the lead plaintiff motion, complaints, and oppositions to Defendants' motions to dismiss prior to his departure from BFA in July 2019. Mr. Kubota, who joined BFA in August 2019, was primarily responsible for drafting complex briefs and motions (including class certification), discovery strategy, depositions, and working with experts.

384. Associates focused on discovery litigation and expert work, among other tasks. Mr. Burry, who joined BFA in January 2020, drafted discovery requests and responses, conducted discovery meet-and-confers and certain depositions, and led third-party discovery. Mr. Stoddard, who joined BFA in February 2018, was heavily involved in researching and drafting the Amended Complaint and opposition to Defendants' motion to dismiss, led the review team's work (discussed herein), focused on discovery from Class Representatives, and conducted certain depositions. Mr. Hough, who joined BFA in August 2020, supported the document discovery and numerous depositions, contributed legal research, and supported expert work.

385. An experienced, focused team of at most 14 attorneys focused on discovery analysis (using technology to focus and streamline work, as detailed above), researched substantive factual issues, prepared initial deposition outlines and related materials, and developed the detailed factual chronology described above.

386. Attached hereto as Exhibits 7-9 are declarations from Joseph Fonti on behalf of BFA and BFA Canada, Marc Kurzman on behalf of Carmody, and Susan R. Podolsky on behalf of The Law Offices of Susan R. Podolsky, respectively, in support of the request for an award of attorneys' fees and litigation expenses. Included with these declarations are schedules that summarize the hours and lodestar of each firm in this action, as well as the expenses incurred by category (the "Fee and Expense Schedules"). The attached declarations and the Fee and Expense Schedules indicate the amount of time spent by each attorney and professional support staff on the case, and the lodestar calculations based on their current billing rates.

387. BFA's and BFA Canada's hourly billing rates for the attorneys involved in this matter (using current rates for current attorneys, and the rate in the final year of employment for attorneys no longer employed by BFA) range from $740 to $985 for partners, $780 for Special Counsel and Of Counsel, $510 to $690 for associates, $415 to $495 for project attorneys, and $360 to $450 for staff associates and staff attorneys. (Exs. 7-C, 7-E.) The billing rates at the Carmody and Podolsky firms range from $225 to $650, as set forth in the respective declarations from Mr. Kurzman and Ms. Podolsky. (Exs. 8-C, 9-B.) The Droney and Miller Declarations provide further empirical data and analysis regarding billing rates. For example, Judge Droney observed that securities class actions tend to be litigated by members of a national securities bar principally based in New York or California. (Ex. 5 (Droney Decl.) ¶65.) After evaluating Class Counsel's rates relative to fee submissions in complex class actions in this District and Circuit, Judge Droney

concluded that Class Counsel's rates are appropriate within the context of a national securities bar. (*Id.* ¶¶66-67.) Professor Miller found that all of Class Counsel's partner rates are below the median 2020 billing rates for the top 50 U.S. law firms, that all of Class Counsel's partner and associate rates are below average rates among New York firms as reported in a 2021 study, and that many leading national firms had average partner rates above $1,100/hour as of 2017. (Ex. 6 (Miller Decl.) ¶¶46-50.)

388. The following chart presents Class Counsel's lodestar numbers:

Firm	Hours	Lodestar
Bleichmar Fonti & Auld LLP	71,604.00	$42,541,475.00
Bleichmar Fonti & Auld Canada	74.50	$73,382.50
The Law Offices of Susan R. Podolsky	3,910.50	$2,541,825.00
Carmody Torrance Sandak & Hennessey LLP	1,501.70	$680,678.50
TOTAL	**77,090.70**	**$45,837,361.00**

C. Quality of Representation

389. Class Counsel are highly experienced and skilled in the securities litigation field and have a long and successful track record in such cases. (*See* Ex. 7-A (BFA Firm Resume).) Class Counsel also have experience representing Ontario Teachers' and Anchorage in prior matters in which they served or sought to serve as representative plaintiffs or class representatives.

390. The $420 million settlement achieved through over five years of unrelenting effort confirms the quality of Class Counsel's representation. By our calculation, the proposed settlement is the second-largest class settlement in the District.[26] Nationally, it is the fifth-largest securities settlement against a pharmaceutical company, and the sixth-largest against a foreign

[26] *See Carlson v. Xerox*, No. 3:00-cv-01621-AWT (D. Conn. Jan. 14, 2009), ECF 528 (approving $750 million settlement).

issuer.[27] It is also the fourth-largest in this Circuit not involving a restatement or the 2008-2009 financial crisis,[28] and among the top 21 securities settlements in this Circuit (and top 43 nationwide) since the passage of the PSLRA.

391. In addition, below are examples of specific litigation decisions that I believe reflect Class Counsel's determination, creativity, and skill in litigating this action:

a. Pursuing independent grounds for falsity: A crucial strategic decision was clarifying that, regardless of any collusion, Defendants' misstatements and omissions were actionable based on the financial impact of Teva's price increases alone. While the 2017 Complaint alleged independent grounds for falsity, the Court's guidance at the first motion to dismiss hearing prompted Class Counsel to clarify the allegations in June 2018. (*See supra* ¶¶53-58.) By doing so, we expressly decoupled the Class's securities claims from the need to plead or prove

[27] The four larger settlements against pharmaceutical companies are *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658 (D.N.J. Jan. 31, 2021), ECF 575 & 657 (approving $1.21 billion settlement); *In re Merck & Co. Sec. Litig.*, No. 2:05-cv-01151 (D.N.J. June 28, 2016), ECF 896 (approving $1.062 billion settlement); *In re Pfizer, Inc. Sec. Litig.*, No. 1:04-cv-9866 (S.D.N.Y. Dec. 21, 2016), ECF 728 (approving $486 million settlement); and *In re Schering-Plough Corp. / Enhance Sec. Litig.*, No. 2:08-cv-00397 (D.N.J. Oct. 1, 2013), ECF 440 (approving $473 million settlement).

The five larger settlements against foreign issuers are *In re Petrobras Sec. Litig.*, No. 1:14-cv-09662 (S.D.N.Y. July 2, 2018), ECF 838 (approving $3 billion settlement); *Valeant*, No. 3:15-cv-07658; *In re Nortel Networks Corp. Sec. Litig.*, No. 1:01-cv-1855 (S.D.N.Y. Jan. 29, 2007), ECF 194 (approving $1,142,775,308 settlement) ("*Nortel I*"); *In re Royal Ahold N.V. Sec. Litig.*, No. 1:03-md-1539 (D. Md. June 21, 2006), ECF 765 (approving $1.1 billion settlement); and *In re Nortel Networks Corp. Sec. Litig.*, No. 1:04-cv-02115 (S.D.N.Y. Dec. 26, 2006), ECF 177 (approving $1,074,265,298 settlement) ("*Nortel II*").

[28] The three larger settlements in this category are *Petrobras*, No. 1:14-cv-09662; *In re Initial Public Offering Sec. Litig.*, No. 1:21-mc-00092 (S.D.N.Y. Oct. 6, 2009), ECF 5861 (approving $586 million settlement); and *Pfizer*, No. 1:04-cv-9866.

unlawful price-fixing and minimized the impact of DOJ's subsequent intervention on fact discovery.

b. Emphasis on omissions: By alleging that Defendants violated SEC regulations that impose specific affirmative disclosure requirements (Item 303 and Item 5), Class Counsel ensured that material omissions, if proven, would support liability and trigger substantial Securities Act damages.

c. Consolidation and amendment: Class Counsel secured Defendants' agreement to consolidation and the filing of the SAC to ensure that the full Class Period, and all allegations arising from Defendants' common course of conduct, would be litigated in this action. (*See supra* ¶¶75-80.) While the motion prompted opposition, it benefitted the Class by securing the full scope of conduct and damages in a single action under common leadership.

d. Fully developing the merits to maximize the Settlement Class's recovery: When the parties initially mediated in July 2020, many of the riskiest and most resource-intensive stages of the case had yet to occur. (*See supra* ¶¶316-17.) Instead of further pursuing mediation at this earlier stage, Class Counsel fully developed the Class's proof, investing heavily in time and resources to complete fact and expert discovery and drive the $420 million recovery.

e. Class certification: Class Counsel and Dr. Tabak presented extensive high-quality empirical analysis and submissions based on the most recent and persuasive authority. (*See supra* ¶¶176-178, 184-197.)

f. Developing the documentary record:

i. The Court's guidance and Class Counsel's insistence on a rigorous document production schedule overcame Defendants' initial delays and cleared the path for Class Counsel to complete numerous fact depositions efficiently. (*See supra* ¶¶87-96.)

ii. Class Counsel also pursued targeted discovery disputes on key issues, such as to obtain data for Teva's full generic drug portfolio and discovery concerning the missing text messages, as outlined above. (*See supra* ¶¶97-102, 145-165.)

g. Approach to fact depositions:

iii. From the outset, Class Counsel meticulously analyzed the documentary evidence and approached depositions with the expectation that this action would reach trial, with senior attorneys devoting substantial time and effort to each witness. (*See supra* ¶¶103-119, 132-144.)

iv. Class Counsel conducted a full Rule 30(b)(6) deposition, going beyond document collection and preservation, to bind Teva and Teva Finance on merits issues. The deposition lasted two days and yielded nearly 500 pages of testimony. (*See supra* ¶¶133, 139, 142.)

v. In lieu of deposing three Teva co-conspirators, Class Counsel obtained declarations (with agreements to appear at trial), efficiently securing valuable evidence before summary judgment. (*See supra* ¶167.)

h. Substantial investment in experts: Class Counsel engaged four leading experts to deliver reports that rigorously analyzed Teva's actual price increases, the resulting

profits, and Defendants' statements and omissions, as well as issues pertinent to class certification and class-wide damages. (*See supra* ¶¶185, 187, 209-233.)

i. Affirmative summary judgment and *Daubert* motions: Class Counsel completed and were prepared to file a detailed motion for partial summary judgment and *Daubert* motions against all four of Defendants' experts. (*See supra* ¶¶242-251.) Such motions are uncommon for securities plaintiffs,[29] and their preparation confirms Class Counsel's high-quality advocacy in this case.

D. Class Representatives, as Fiduciaries Experienced with PSLRA Securities Actions, Approve the Requested Fee

392. Finally, the requested fee is the product of BFA's arm's-length negotiation with Class Representatives, informed by independent analysis and empirical research, and has their full support.

393. Significantly, both Ontario Teachers' and Anchorage are experienced fiduciaries, both as class representatives in PSLRA actions and with respect to their own beneficiaries. Ontario Teachers' manages more than C$220 billion in net assets on behalf of approximately 331,000 active and retired teachers in Ontario, and has secured nearly $2.4 billion in recoveries for investors in this and other securities actions in which it has served as lead plaintiff. Anchorage manages more than $390 million on behalf of its beneficiaries, and has recovered more than $600 million in this and other securities actions in which it has served as lead plaintiff or class representative.

[29] For example, NERA has found that plaintiffs make affirmative motions for summary judgment in only 1.9% of securities cases (versus 7.1% for motions by defendants). (Ex. 10 (NERA 2018 Report) at 19.)

394. Understanding that any fee award would be subject to the Court's approval, Class Representatives carefully determined the fee that Class Counsel could request based on their assessment of Class Counsel's work and the result. Specifically, Class Representatives undertook an extensive and rigorous process to carefully consider the relevant facts, circumstances, and empirical data in authorizing Lead Counsel to request a fee of 23.70%.

395. It was important to ensure that Ontario Teachers' and Anchorage were fully informed to make this assessment and that the process include a review independent of BFA. To that end, Class Representatives authorized Judge Droney's independent analysis of Class Counsel's time and effort, including our time records, and analysis of academic research and empirical data from fee awards in other complex settlements in the District, the Second Circuit, and nationally. In addition, as described in their respective declarations, Class Representatives have actively participated in all phases of this litigation and are thus intimately familiar with Class Counsel's work here. (*See* Ex. 3 (Davis Decl.); Ex. 4 (Jarvis Decl.).)

396. Based on their analysis and review, Class Representatives support the requested fee. (Ex. 3 (Davis Decl.) ¶34; Ex. 4 (Jarvis Decl.) ¶33.) Their support is significant and recognizes the quality of Class Counsel's work and the substantial result achieved. (*See* Ex. 3 (Davis Decl.) ¶¶26-36; Ex. 4 (Jarvis Decl.) ¶¶26-35.)

X. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF EXPENSES IS REASONABLE AND SHOULD BE APPROVED

A. Counsel Seek Reasonable and Necessary Litigation Expenses

397. Lead Counsel also requests an award from the Settlement Fund of Class Counsel's litigation expenses incurred in connection with the investigation, prosecution, and resolution of

the action, in the amount of $9,717,887.47. This amount is below the $11,000,000 maximum expense amount that the Settlement Class was advised could be requested.[30]

398. Class Counsel's expenses of $9,717,887.47 are itemized in the Fee and Expense Schedules referenced above, with each category of expense set forth in detail. By firm, those expenses are as follows:

CATEGORY	BFA	BFA Canada	Podolsky	Carmody	CATEGORY TOTAL
Computer Research	$45,011.81			$951.83	$45,963.64
Court Reporter Services and Transcript Fees	$222,736.94			$2,257.40	$224,994.34
Expert Fees	$7,269,761.31				$7,269,761.31
Litigation Support Vendor Fees	$1,789,846.78				$1,789,846.78
Outside Counsel	$99,693.37				$99,693.37
Mediation Fees	$118,989.75				$118,989.75
External Photocopies	$18,129.51		$270.64		$18,400.15
Postage & Overnight Mail	$16,193.32			$124.26	$16,317.58
Service and Filing Fees	$7,891.10			$1,250.00	$9,141.10
Accommodations	$43,062.63		$11,349.71		$54,412.34
Meals	$17,017.75	$110.00	$1,090.00	$70.68	$18,288.43
Local Transportation	$20,966.46	$157.99	$798.60		$21,923.05
Out-of-Town Transportation	$15,537.71	$949.87	$8,584.40	$83.65	$25,155.63
The JNL Firm, LLC	$5,000.00				$5,000.00
TOTAL	**$9,689,838.44**	**$1,217.86**	**$22,093.35**	**$4,737.82**	**$9,717,887.47**

(Exs. 7-D, 7-E, 8-D, and 9-C.)

[30] In addition to the expenses described herein, up to $1,750,000 of Notice and Administration Expenses are payable from the Settlement Fund before the Effective Date (ECF 919-2 ¶2.11), while any additional amount will be presented to the Court after the Effective Date.

399. Importantly, because this action was prosecuted on a contingent-fee basis, with no guarantee of any recovery of expenses, Class Counsel were motivated to proceed efficiently and limited expenses to those necessary to effectively and vigorously pursue the action.

400. Notably, of the total expenses, $7,269,761.31, or 74.8%, related to testifying and consulting experts. These experts' work—including the provision of 12 reports and testifying at seven depositions—was essential to the successful prosecution and resolution of this case. For example, Dr. Tabak's analysis was instrumental in achieving class certification. Dr. Tabak provided a total of six expert reports (in addition to extensive deposition testimony) to analyze market efficiency at class certification and damages and loss causation at the merits stage. Dr. Tabak's team at NERA also provided consulting expert work on aggregate damages, supporting Class Counsel's mediation efforts, and with respect to the Plan of Allocation. In addition, Class Counsel retained Dr. Bradford to opine on Teva's generic drug price increases and the resulting profits, and retained Mr. Regan and Mr. Turner to provide opinions on materiality and disclosure issues at the heart of this action—all key merits issues necessary to prove liability and present a true threat of trial.

401. Class Counsel also incurred significant expenses for the services of litigation support vendors, totaling $1,789,846.78, of which the majority related to establishing and maintaining an electronic discovery database for document review and production. This service was necessary in light of the large volume of electronic discovery in this case—including over 8.2 million pages of documents produced by Defendants and third parties—and the duration of discovery, which lasted more than two years. Class Counsel's discovery vendor also provided advanced analytics tools that streamlined discovery analysis, as detailed above.

402. Another component of Class Counsel's expenses, totaling $99,693.37, relates to outside counsel engaged: (i) to represent former Teva employees who provided information to BFA's investigator; (ii) to provide advice regarding antitrust issues; (iii) as local counsel for purposes of filing an opposition to consolidation in the Eastern District of Pennsylvania; (iv) to assist with matters in Israel; and (v) to represent former Ontario Teachers' employees upon whom Defendants served deposition subpoenas.

403. Additionally, Class Counsel incurred expenses of $224,994.34 in connection with court reporter services and transcript fees, including for the 40 fact and expert depositions taken, and to obtain transcripts of numerous status conferences and hearings.

404. Class Counsel's expenses for travel consist of local transportation ($21,923.05), out-of-town transportation ($25,155.63), accommodations ($54,412.34), and business meals ($18,288.43). Class Counsel also utilized outside vendors to print and bind certain documents, including demonstratives for hearings, deposition exhibits for witnesses outside the United States, and other materials, resulting in an expense of $18,400.15.

405. Class Counsel's remaining expenses are the types of expenses that are necessarily incurred in litigation and normally charged to fee-paying clients. These expenses include, among others, court fees, computer research, and postage and delivery expenses (including for overnight and expedited international delivery, such as shipment of deposition exhibits for remote depositions).

406. All of Class Counsel's litigation expenses were necessary for the successful investigation, prosecution, and resolution of this action. Lead Counsel's application for an award of Class Counsel's expenses has been approved by Class Representatives. (*See* Ex. 3 (Davis Decl.) ¶35; Ex. 4 (Jarvis Decl.) ¶34.)

B. An Award of Class Representatives' Costs and Expenses Is Fair and Reasonable

407. Class Representatives Ontario Teachers' and Anchorage also seek awards, pursuant to 15 U.S.C. § 78u-4(a)(4), of their costs and expenses directly related to their representation of the Class. As detailed in the Davis and Jarvis Declarations (Exhibits 3 and 4), based on Class Representatives' time devoted to this action in place of their regular duties, as well as out-of-pocket expenses, Ontario Teachers' seeks an award of $49,213.02 and Anchorage seeks an award of $7,080.00. These amounts, totaling $56,293.02, are below the maximum amount of $100,000 that the Settlement Class was advised could be requested.

408. We respectfully submit that these awards are fully consistent with Congress's intent, as expressed in the PSLRA, of encouraging institutional investors to take active roles in bringing and supervising securities actions. As set forth herein and in the Davis and Jarvis Declarations, Ontario Teachers' and Anchorage have been fully committed to pursuing this action, actively participated and supervised Class Counsel throughout the litigation, and provided discovery, including Rule 30(b)(6) deposition testimony.

409. Both Class Representatives have diligently and effectively fulfilled their obligations as representatives of the Class, and we respectfully submit that their substantial efforts and contributions in this action merit the requested awards.

XI. THE REACTION OF THE SETTLEMENT CLASS

410. As described above, pursuant to the Preliminary Approval Order, 942,255 Notices were mailed to potential Settlement Class Members advising them of the Settlement, the Plan of Allocation, and that Lead Counsel would seek an award of attorneys' fees not to exceed 23.75% of the Settlement Fund, and expenses in an amount not greater than $11,000,000. (*See* Ex. 2 (McGuinness Decl.) ¶11.) The Notice also advised of the deadlines to submit claims, as well as

the May 2, 2022 deadline to seek exclusion from the Settlement Class and the May 12, 2022 deadline to file objections to the Settlement, the Plan of Allocation, and/or the requested fees and expenses.

411. As set forth in the Preliminary Approval Order, Settlement Class Members seeking to exclude themselves from the Settlement Class must be submitted or postmarked "no later than May 2, 2022." (ECF 929 ¶13.) Any objections "must be received or filed, not simply postmarked, on or before May 12, 2022." (*Id.* ¶17.) As of April 27, 2022, Epiq has received 39 potential requests for exclusion and no objections. (Ex. 2 (McGuinness Decl.) ¶¶30, 32.)

412. In addition, pursuant to the Preliminary Approval Order, Direct Action Plaintiffs who wish to participate in the settlement must "(a) dismiss their action and (b) postmark or electronically submit Proof of Claim and Release forms . . . with simultaneous copies emailed to Class Counsel" by "[n]o later than May 2, 2022." (ECF 929 ¶14.) As of April 27, 2022, Class Counsel have not received any Proof of Claim and Release Forms from Direct Action Plaintiffs.

413. As of April 27, 2022, Epiq has received 16,628 Proof of Claim and Release Forms. (Ex. 2 (McGuinness Decl.) ¶26.)

414. Class Representatives and Lead Counsel will report on all exclusion requests and any objections that are received in reply papers due on May 19, 2022.

XII. CONCLUSION

415. In view of the significant recovery to the Settlement Class, the advanced stage of the proceedings and completion of fact and expert discovery, the substantial risks of this litigation, the reaction of the Settlement Class, and other relevant factors, as described above and in the accompanying memorandum of law, I respectfully submit that (a) the settlement should be

approved as fair, reasonable, and adequate, and (b) the proposed Plan of Allocation should be approved as fair, reasonable, and adequate.

416. Additionally, in view of the risks, complexity and magnitude of this litigation, the significant recovery achieved, the extent and quality of Class Counsel's work over more than five years, the contingent nature of the fee, Class Representatives' support, and the other factors addressed above, in the accompanying memorandum of law, and in the Davis, Jarvis, Droney, and Miller Declarations, I respectfully submit that attorneys' fees of 23.70% of the Settlement Fund should be awarded, that litigation expenses in the amount of $9,717,887.47 should be awarded, and that Class Representatives should be awarded reasonable costs and expenses in the amounts of $49,213.02 for Ontario Teachers' and $7,080.00 for Anchorage.

Dated: New York, New York
April 28, 2022

By: */s/ Joseph A. Fonti*
Joseph A. Fonti

APPENDIX – INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION
Exhibit 1	Declaration of Layn R. Phillips in Support of Final Approval of Class Settlement ("Phillips Decl.")
Exhibit 2	Declaration of Michael McGuinness Regarding (I) Mailing of Notice; (II) Publication of Summary Notice; (III) Settlement Website and Contact Center Services; (IV) Claim Filing; and (V) Requests for Exclusion and Objections Received to Date ("McGuinness Decl.") Exhibit A: Notice of Proposed Settlement of Class Action Exhibit B: Proof of Publication of Summary Notice
Exhibit 3	Declaration of Jeffrey Davis, Ontario Teachers' Pension Plan Board, in Support of Final Approval of Class Settlement and Approval of Plan of Allocation, Awards of Attorneys' Fees and Litigation Expenses, and Awards of Reasonable Costs and Expenses to Class Representatives ("Davis Decl.")
Exhibit 4	Declaration of Edward Jarvis, Anchorage Police & Fire Retirement System, in Support of Final Approval of Class Settlement and Approval of Plan of Allocation, Awards of Attorneys' Fees and Litigation Expenses, and Awards of Reasonable Costs and Expenses to Class Representatives ("Jarvis Decl.")
Exhibit 5	Declaration of Judge Christopher F. Droney (Ret.) ("Droney Decl.")
Exhibit 6	Declaration of Professor Geoffrey Parsons Miller ("Miller Decl.")
Exhibit 7	Declaration of Joseph A. Fonti in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of Bleichmar Fonti & Auld LLP and Bleichmar Fonti & Auld Canada ("Fonti F&E Decl.") Exhibit A: BFA Firm Resume Exhibit B: Summary of BFA Timekeeper Qualifications, Experience, and Role in the Action Exhibit C: BFA Timekeeper Lodestar Summary Exhibit D: BFA Expense Summary Exhibit E: BFA Canada Summaries of Timekeeper Qualifications, Experience, and Role in the Action, Lodestar, and Expense
Exhibit 8	Declaration of Marc Kurzman in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of Carmody Torrance Sandak & Hennessey LLP ("Carmody F&E Decl.") Exhibit A: Carmody Firm Litigation Resume Exhibit B: Summary of Carmody Timekeeper Qualifications, Experience, and Role in the Action Exhibit C: Carmody Timekeeper Lodestar Summary Exhibit D: Carmody Expense Summary
Exhibit 9	Declaration of Susan R. Podolsky in Support of Lead Counsel's Motion for Awards of Attorneys' Fees and Litigation Expenses, Filed on Behalf of The Law Offices of Susan R. Podolsky ("Podolsky F&E Decl.") Exhibit A: The Law Offices of Susan R. Podolsky Firm Resume Exhibit B: The Law Offices of Susan R. Podolsky Lodestar Summary Exhibit C: The Law Offices of Susan R. Podolsky Expense Summary

EXHIBIT	DESCRIPTION
Exhibit 10	Stefan Boettrich and Svetlana Starykh, NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review (Jan. 29, 2019) ("NERA 2018 Report")
Exhibit 11	Janeen McIntosh and Svetlana Starykh, NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review (Jan. 25, 2022) ("NERA 2021 Report")
Exhibit 12	Ronald I. Miller, Ph.D., Todd Foster, and Elaine Buckberg, Ph.D., NERA Economic Consulting, Recent Trends in Shareholder Class Action Litigation: Beyond the Mega-Settlements, is Stabilization Ahead? (April 2006)
Exhibit 13	Moody's August 31, 2021 Credit Opinion
Exhibit 14	Excerpted Teva 2021 Form 10-K
Exhibit 15	Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937 (2017)
Exhibit 16	Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUDIES 248 (2010)
Exhibit 17	Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUDIES 811 (2010)

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2022, a copy of the foregoing was filed electronically with the Clerk of Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

/s/ Joseph A. Fonti
Joseph A. Fonti