

Exhibit 5

**Declaration of Judge Christopher F. Droney
(Ret.)**

**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 JUDGE CHRISTOPHER F. DRONEY (Ret.)

I, Christopher F. Droney, declare as follows:

I. INTRODUCTION

1. I submit this declaration in support of Lead Counsel Bleichmar Fonti & Auld LLP's ("BFA's") request for attorneys' fees and expenses to be paid from the common fund that is part of the proposed settlement of this action. In my view, the requested attorneys' fees, including the percentage multiplier of the lodestar amount and the percentage of the common fund, are reasonable and justified. I provide my reasons for that opinion below.

2. My professional background as an attorney and judge includes fourteen years as a United States District Judge for the District of Connecticut and eight years as a Judge on the United States Court of Appeals for the Second Circuit. I also served as the United States Attorney for the District of Connecticut and was a private litigator involved in both civil and criminal litigation in the state and federal trial and appellate courts. As a federal judge, I reviewed and ruled on many requests for attorneys' fees in different types of litigation, both at the trial and appeals levels. I believe that extensive experience in reviewing fee requests similar to the one in this case assists me in arriving at my opinion here. My resume is attached as Exhibit A.

3. I have organized my declaration into various parts. First, I provide some more detail on my experience in reviewing similar fee requests, and then I provide what I believe are the guideposts set by the United States Court of Appeals for the Second Circuit for District Courts reviewing fee requests in this context, as well as academic and empirical studies and information concerning similar requests in other courts. I then review the work of Class Counsel here, and finally, present my opinion on the justification for the fees and expenses request.¹

II. PRIOR RELEVANT EXPERIENCE

4. As a United States District Judge, I reviewed and ruled on many requests for attorney's fees in many contexts, including under the civil rights acts, Title VII, ERISA, federal environmental statutes, The Individuals with Disabilities Education Act, state statutes, private agreements, and common funds in federal securities class actions. My experience in the federal securities matters seems most relevant here, and I ruled on a number of such requests. *See, e.g., In re EIS Int'l, Inc. Sec. Litig.*, No. 3:97-cv-00813-CFD (D. Conn. 2006); *In re Flight Safety Techs. Inc., Sec. Litig.*, No. 3:04-cv-01175-CFD (D. Conn. 2008); *In re PE Corp. Sec. Litig.*, No. 3:00-cv-00705-CFD (D. Conn. 2010); *see also Collins v. Olin Corp.*, No. 3:03-cv-945-CFD (D. Conn. 2010) (applying environmental statutes). In doing so, I applied the factors approved by the United States Court of Appeals for the Second Circuit that I have set forth below, including the percentage of the fund and lodestar cross-check approaches, consideration of multipliers, and the *Goldberger* Factors. On the United States Court of Appeals for the Second Circuit, I also reviewed the application of those factors by the District Courts throughout the Second Circuit. *See, e.g., In re Tremont Sec.*, 699 F. Appx. 8 (2d Cir. 2017) (summary order). I also presided over other similar complex class actions that were not

¹ "Class Counsel" refers to BFA; Bleichmar Fonti & Auld Canada; The Law Offices of Susan R. Podolsky; and Carmody Torrance Sandak & Hennessey LLP.

completely resolved at the time I was elevated to the Second Circuit, *e.g.*, *In re U.S. Foodservice Pricing Litig.*, No. 3:07-md-01894-AWT (D. Conn. 2014). I have also had considerable experience in analyzing issues of federal securities law in the class action context, including authoring opinions for the Second Circuit in that area. *See, e.g.*, *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017) (preponderance of evidence required to rebut presumption from *Basic Inc. v. Levinson*, 485 U.S. 224 (1988)); *Roach v. T.L. Cannon Corp.*, 778 F. 3d 401 (2d Cir. 2015) (standard for damages at class certification stage).

5. I believe that experience is helpful in not only reviewing the fee and expense request, but also in understanding the course of litigation in this case and evaluating the extent of Class Counsel's work here.

III. ANALYSIS OF FEE AWARDS IN THE SECOND CIRCUIT AND NATIONWIDE

A. Second Circuit

6. District Courts exercise considerable discretion in applying equitable principles in awarding reasonable attorneys' fees from common funds to class counsel after settlements in securities class actions. *Goldberger v. Integrated Resources*, 209 F.3d 43, 47 (2d Cir. 2000). The Second Circuit has held that either the "percentage of the fund" or "lodestar" approach is permitted, but has repeatedly stated that the "percentage of the fund" method is preferred as it reflects counsel's risk in undertaking the action and better rewards their diligence and expertise. *Fresno Cty. Emps. Retirement Ass'n v. Isaacson*, 925 F.3d 63, 68 (2d Cir. 2019) ("an unenhanced lodestar fee does not account for the contingent risk that a lawyer may assume in taking on a case"); *Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96, 121 (2d Cir. 2005) ("The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.") (internal citation and quotation marks omitted); *see also Fields v.*

Kijakazi, 24 F.4th 845, 849 (2d Cir. Jan. 28, 2022) (“A contingency fee charged in any given winning case is likely to be high in relation to the hours actually spent on the case by the lawyer. But, without contingency fees, people in need of good lawyers would often not be able to hire them.”). The lodestar method multiplies hours reasonably expended against a reasonable hourly rate. The lodestar analysis still may be a helpful crosscheck on the percentage fee to be awarded. Courts in their discretion may also increase the lodestar measurement by applying a multiplier of it based on the risks of the litigation and the quality of representation. *Goldberger*, 209 F.3d at 47. Regardless of the method employed, what have become known as the “*Goldberger* Factors” are applied to confirm the reasonableness of the award. *Goldberger*, 209 F.3d at 50. The *Goldberger* Factors are the following: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of the representation; (5) the requested fee in relation to the settlement; and, (6) public policy considerations. *Goldberger*, 209 F. 3d at 52.

7. In this case, Lead Counsel seeks an attorneys’ fee of 23.70% of the common fund of \$420 million, or \$99.54 million, which would be a multiplier of 2.17 of the lodestar amount of \$45,837,361.00. Lead Counsel also seeks payment of \$9,717,887.47 in expenses.

8. In reviewing similar decisions by District Courts in the Second Circuit, I concluded that class action settlements in the \$200 to \$500 million range are most relevant, and that settlements of securities class actions were particularly helpful guideposts, although settlements of other types of class actions with common funds were helpful to my analysis as well. The following sampling of cases from the Second Circuit and the District of Connecticut also was based on other similar factors present in the instant action, including the risks of establishing liability and damages, the extensive litigation before settlement, the number

of years those actions were pending when they were resolved, the complexity of the issues, and the quality of representation by Class Counsel.

9. Given the advanced procedural stage of this action, I believe the most relevant securities cases are those that achieved class certification and reached the stage of summary judgment filings before settlement.² The chart below identifies the six securities class action settlements within the Second Circuit in the \$200 to \$500 million range that meet these criteria, and for each provides the settlement amount, the percentage of the settlement amount the court-approved fee constituted, and the multiplier of the lodestar calculation.

² As discussed below, Class Counsel had completed extensive summary judgment and *Daubert* motions, and the parties agreed to the proposed settlement hours before those motions were to be filed.

Securities Fee Awards Within Second Circuit (Listed in Order of Settlement Amount)

Case	Settled	Judge ³	Settlement Amount	Fee (%)	Fee (\$)	Requested Fee (%)	Multiplier	Lodestar
In re Pfizer, Inc. Sec. Litig. ⁴	2016	Swain, J.	\$486,000,000	28.0%	\$136,080,000	28.0%	1.13	\$120,437,653
Jones v. Pfizer, Inc. ⁵	2015	Hellerstein, J.	\$400,000,000	15.0%	\$60,000,000	23.5%	1.01	\$59,314,844
N.J. Carpenters Health Fund v. Residential Capital, LLC ⁶	2015	Failla, J.	\$335,000,000	20.8%	\$69,512,500	20.8%	1.78	\$39,063,012
In re Oxford Health Plans Inc. Sec. Litig. ⁷	2003	Brieant, J.	\$300,000,000	28.0%	\$84,000,000	33.3%	n/a	n/a
In re Signet Jewelers Ltd Sec. Litig. ⁸	2020	McMahon, J.	\$240,000,000	25.0%	\$59,206,000	25.0%	1.98	\$29,880,618
Anwar v. Fairfield Greenwich Ltd [Madoff] ⁹	2016	Marrero, J.	\$235,250,000	28.8% (combined rate of four partial settlements)	\$67,812,500	28.8%	0.86	\$78,776,260

10. The chart below provides the same information for the two largest class action settlements in the District of Connecticut. *Xerox* was a securities case, while *U.S. Foodservice* was a RICO and contract case.¹⁰

³ Each settlement is from the Southern District of New York.

⁴ *In re Pfizer Inc. Sec. Litig.*, No. 04-cv-9866 (LTS) (HBP) (S.D.N.Y. 2016).

⁵ *Jones v. Pfizer Inc., et al.*, Civ. Act. No. 1:10-cv-03864-AKH (S.D.N.Y. 2015).

⁶ *N.J. Carpenters Health Fund, et al. v. Residential Capital, LLC, et al.*, No. 08-cv-8781 (KPF) (S.D.N.Y. 2015).

⁷ Order currently unavailable due to age.

⁸ *In re Signet Jewelers Limited Secs. Litig.*, Civ. Act. No. 1:16-cv-06728-CM-SDA (S.D.N.Y. 2020). The court awarded the requested fee of 25% net of expenses, equal to 24.7% of the settlement amount.

⁹ *Anwar v. Fairfield Greenwich Lim., et al.*, Master File No. 09-cv-118 (VM) (FM) (S.D.N.Y. 2013).

¹⁰ I am also aware that this Court has issued a number of fee award decisions in common fund class actions; I do not address them here in light of the Court's greater familiarity with the specific circumstances of each case.

District of Connecticut Fee Awards

Case	Settled	Judge	Settlement Amount	Fee (%)	Fee (\$)	Requested Fee (%)	Multiplier	Lodestar
Carlson v. Xerox ¹¹	2009	Thompson, J.	\$750,000,000	16.0%	\$120,000,000	20.0%	1.25	\$95,942,272
U.S. Foodservice ¹²	2014	Thompson, J.	\$297,000,000	33.3%	\$99,000,000	33.3%	2.23	\$44,419,419

11. As these charts show, District Courts in the Second Circuit have approved fees from 15% to 33.3% of the common fund, with several large, procedurally advanced securities cases awarding fees in the 25% to 28% range. Of course, each case is different and has different lodestar and *Goldberger* evaluations (including the amount and intensity of litigation), but it appears that a request in the mid-20% range was met with approval in a number of cases.

12. It also appears that the size of the settlement has some impact. The settlement in this matter of \$420,000,000 appears to be the second-highest settlement in the District of Connecticut. But, four of the six comparably sized securities settlements above still permitted fees at least in the mid-20% range. In addition, in *U.S. Foodservice*, a \$297 million settlement, Judge Thompson approved a fee of 33.3%, or \$99 million; the requested fee in this case is a smaller percentage of the common fund (23.70%) and similar in dollar amount (\$99.54 million).

13. With respect to multipliers, among the cases listed above, *U.S. Foodservice* reflected a 2.23 multiplier.¹³ In addition, a broader sample of all 42 securities settlements within the Second Circuit above \$200 million indicates an average multiplier of approximately 1.97.

¹¹ *Carlson v. Xerox Corp.*, 355 Fed. Appx. 523, 525 (2d Cir. 2009).

¹² *In re U.S. Foodservice, Inc. Pricing Litig.*, Case No. 3:07-md-1894 (AWT), 2014 WL 12862264, at *1 (D. Conn., Dec. 9, 2014).

¹³ *See In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-MD-1894, ECF 510-2 (joint declaration summarizing conduct of litigation); 2014 WL 12862264, at *3 (D. Conn. Dec. 9, 2014) (fee order).

Finally, as discussed further below, academic research has found an average multiplier of 2.72 for class settlements above \$67.5 million from 2009 to 2013.

B. Academic Literature and Analysis of Decisions from Other Jurisdictions

i. Academic and Empirical Studies

14. The use of empirical data and research on class action attorneys' fees has become a well-accepted feature of class action adjudication. *See, e.g., In re Heartland Payment Sys., Inc. Customer Data Security Breach Litig.*, 851 F. Supp. 2d 1040, 1080-81 (S.D. Tex. 2012) ("District courts increasingly consider empirical studies analyzing class-action settlement fee awards to set the appropriate percentage benchmark or to test the reasonableness of a given benchmark . . . Using these studies alleviates the concern that the number selected is arbitrary."). As such, I will now compare Lead Counsel's request for attorneys' fees and expenses to leading reports on the subject.

15. The NERA Economic Consulting group's 2021 report¹⁴ on securities class action litigation indicates that between 2012 to 2021—for those such actions that settled for between \$100 million and \$500 million—the median attorneys' fee percentage of a settlement fund was 24.5% (page 27 of the report). Out of the top ten securities settlements in 2021, the average attorneys' fee was 24.2% (page 21 of the report).

16. A leading academic study of class action settlements and attorneys' fees by Theodore Eisenberg, Geoffrey Miller, and Roy Germano arrived at similar conclusions. Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937 (2017). In analyzing 458 cases between 2009 and 2013, the study concluded that the average attorneys' fee percentage was between 25% and 30%

¹⁴ Janeen McIntosh and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review," NERA, January 25, 2022, Figure 11 at 11.

(averaging 27%) of the gross recovery. *Id.* at 947. Specific to the Second Circuit Court of Appeals, the mean fee percentage was 28%, with a median of 30%. *Id.* at Table 3, at 951. The mean lodestar multiplier in the Second Circuit was 1.93. *Id.* at Table 12, at 965. In the realm of securities litigation, the mean attorneys' fee percentage (on a national basis) was 23%, with a median fee percentage of 25%. *Id.* at Table 4, at 952.

17. Though empirical data suggests that attorneys' fees increase at a slower rate when recoveries become very large,¹⁵ the Eisenberg, Miller, and Germano study divided the cases across the nation between 2009 and 2013 "into deciles of about 45 cases each," and found that even with such a scaling effect, for cases in the top decile—those with recoveries exceeding \$67.5 million—the average fee percentage was 22.3%.¹⁶ The study also determined that "[h]igher recoveries are associated with lower percentage fees and higher lodestar multipliers," which tend to "rise with the size of class recovery."¹⁷ The study found an average multiplier of 2.72 for settlements above \$67.5 million.¹⁸ In addition, in the previous iteration of the study sampling cases from 1993 to 2008, the mean lodestar multiplier—in cases with class recoveries of more than \$175.5 million—was 3.18.¹⁹

18. In examining Lead Counsel's request for attorneys' fees, it is clear that the requested percentage and lodestar multiplier are within statistical trends of securities class actions. Lead Counsel seeks 23.70% of the gross common fund, which is less than the average percentage of 24.5% awarded for securities settlements of this size (between \$100 million and

¹⁵ McIntosh & Starykh, *supra* Figure 25, at 27.

¹⁶ Eisenberg, Miller, & Germano, *supra* at 947-48.

¹⁷ Eisenberg, Miller, & Germano, *supra* at 941, 969.

¹⁸ Eisenberg, Miller, & Germano, *supra* at 967.

¹⁹ Table 15 at 274, Theodore Eisenberg and Geoffrey Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUDIES 248 (2010).

\$500 million) from 2012 to 2021²⁰ and comparable to the 22.3% average fee that the Eisenberg, Miller, and Germano study found for class settlements above \$67.5 million nationwide.²¹ The lodestar multiplier sought (2.17) is also below the average for class settlements above \$67.5 million nationwide. As such, the empirical data suggests that the percentage sought and the lodestar multiplier applied are reasonable relative to similar awards.

ii. Decisions From Other Jurisdictions

19. Across the nation, district courts have regularly awarded attorneys' fees exceeding 25% of the common fund in sizable class action settlements. *See Schuh v. HCA Holdings, Inc.*, 3:11-cv-01033, 2016 WL 10570957, at *1 (M.D. Tenn. April 14, 2016) (total settlement amount was \$215,000,000, with attorneys' fees granted for 30% of the fund, equaling \$64,500,000); *In re Titanium Dioxide Antitrust Litig.*, Master Docket No. 10-CV-00318 (RDB), 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (total settlement amount was \$163,500,000, with attorneys' fees granted for 33.3% of the fund, equaling \$54,500,000); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-cv-01519 (D.N.J. Jan. 30, 2013) (total settlement amount was \$164,000,000, with attorneys' fees granted for 27.5% of the fund, equaling \$45,100,000); *Compsource Oklahoma et al. v. BNY Mellon*, No. 08-cv-00469, 2012 WL 6864701, at *1 (E.D. Okla. Oct. 25, 2012) (total settlement amount was \$280,000,000, with attorneys' fees granted for 25% of the fund, equaling \$70,000,000); *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 WL 1597388, at *1 (N.D. Ill. May 7, 2012) (total settlement value was \$200,000,000, with attorneys' fees granted for 27.5% of the fund, equaling \$55,000,000); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330 (S.D. Fla. 2011) (total settlement value was \$410,000,000, with attorneys' fees granted for 30% of the fund, equaling \$123,000,000).

²⁰ McIntosh and Starykh, *supra* Figure 25, at 27.

²¹ Eisenberg, Miller, & Germano, *supra* at 948.

20. Except for the D.C. Circuit, the mean class action attorneys' fee percentage across the federal circuits between 2009 and 2013 ranged from 23% (5th Circuit) to 30% (11th Circuit). Eisenberg, Miller, & Germano, *supra* Table 3, at 951. At the district court level, the ten districts with the most class action cases all saw mean attorneys' fee percentages above 24%, ranging up to 31%.²² *Id.*, Table 2, at 950.

21. Many courts have also resisted the "scaling effect," which may produce lower fee percentages for high-award cases. *See, e.g., In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 196-97 (E.D. Pa. 2000) ("This court respectfully concludes that such an approach tends to penalize attorneys who recover large settlements. More importantly, it casts doubt on the whole process by which courts award fees by creating a separate, largely unarticulated set of rules for cases in which the recovery is particularly sizable."); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011); *In re Vitamins Antitrust Litig.*, No. MISC. 99-197 (TFH), 2001 WL 34312839, at *12 (D.D.C. July 16, 2001). In *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006), the court noted that engaging in this practice is "antithetical to the percentage of the recovery method . . . the whole purpose of which is to align the interests of Class Counsel and the Class by rewarding counsel in proportion to the results obtained."

22. It thus appears that Lead Counsel's request here is supported by national data for similar awards.

²² These courts are, in order, S.D.N.Y., N.D. Cal., S.D. Cal., C.D. Cal., E.D.N.Y., E.D. Pa., D.N.J., E.D. Cal., D. Minn., and W.D. Wash.

IV. CLASS COUNSEL'S WORK IN THIS CASE, AND THE REQUESTED FEES AND EXPENSES

23. I have reviewed a detailed description of Class Counsel's work, many Court filings, summaries of expert reports and other materials exchanged in discovery, the Declaration of Joseph A. Fonti, and a summary of the time records of Class Counsel (by timekeeper and firm), and have thereby become familiar with their work throughout their representation, including the many phases of this case. I have also reviewed this information to determine whether the appropriate attorneys were utilized for the degree of difficulty for the particular tasks. In particular, I have also had access to and considered time records for BFA. I have also reviewed the biographies of all counsel to help determine whether suitable levels of experience were applied to the particular work.

24. Class action litigation in securities matters requires specialized and experienced counsel. This case required an even higher level of expertise, commitment and judgment than the typical litigation of this type because of its intensity and length (over five years), its federal antitrust aspects, and the number and different types of securities affected. Fortunately, the presiding judge was closely involved in many parts of this case and conducted numerous status conferences with his personal involvement, so he is well aware of Class Counsel's representation throughout.

25. The lodestar calculation for all Class Counsel in this matter is \$45,837,361.00 based on current rates. That is comprised of \$42,541,475.00 for BFA, \$73,382.50 for Bleichmar Fonti & Auld Canada, \$2,541,825.00 for The Law Offices of Susan R. Podolsky, and \$680,678.50 for Carmody Torrance Sandak & Hennessey LLP. The total number of hours

worked for all Class Counsel is 77,090.70. The blended rate for all Class Counsel is \$595. The current hourly rates for Class Counsel range from \$225 to \$985.²³

26. In summarizing my analysis of the time records here and their relation to the Court's docket, I have generally taken a chronological approach, as that appears the best way to evaluate Class Counsel's work. In light of the Court's extensive involvement in and familiarity with many facets of the litigation, I also endeavor to describe Class Counsel's substantial work on fact and expert discovery that was not presented to the Court, but laid the foundation for summary judgment and trial.

A. Lead Plaintiff Appointment

27. The first stage of Class Counsel's involvement was BFA's initial investigation and preparation of claims assessments based on reviews of documents and other relevant information in late 2016. During that period, BFA met with Plaintiff Ontario Teachers' Pension Plan Board ("Ontario Teachers") to assess the merits of the action and, subsequently, was granted approval to seek appointment as lead plaintiff. On behalf of Ontario Teachers', BFA also opposed transfer of the action from the Central District of California to the Eastern District of Pennsylvania; ultimately, the action was transferred to the District of Connecticut.

28. Much of the first half of 2017 was spent addressing whether Ontario Teachers' was the appropriate Lead Plaintiff and dealing with opposition by competing plaintiffs to Ontario Teachers' Lead Plaintiff motion. On July 11, 2017, the Court issued a 28-page opinion appointing Ontario Teachers' as Lead Plaintiff and BFA as Lead Counsel.

²³ Bleichmar Fonti & Auld LLP hourly rates range from \$330 for a law clerk to \$985 per hour for name partners Javier Bleichmar and Joseph Fonti; Bleichmar Fonti & Auld Canada name partner Dominic Auld's hourly rate is \$985; Susan R. Podolsky's (of The Law Offices of Susan R. Podolsky) hourly rate is \$650; and Carmody Torrance Sandak & Hennessey LLP hourly rates range from \$225 for a paralegal to \$575 for partner Peter M. Nolin.

B. Preparing the Complaints, Motions to Dismiss, and Consolidation

29. For the period of July 2017 to September 2017, Class Counsel spent a considerable amount of time analyzing five years of factual support for Ontario Teachers' future allegations, including reviewing Teva investor call transcripts, analyst reports, and press coverage. BFA also reviewed the State AGs' civil antitrust complaint and U.S. Department of Justice ("DOJ") allegations concerning generic drug price fixing in violation of federal antitrust laws. That effort also involved extensive legal research, including analysis of the intersection of federal antitrust and securities laws, as well as the effect of concealing sources of financial performance. Experts were also consulted concerning the antitrust/collusion issues, disclosures, public offerings and potential damages.

30. On August 2, 2017, Class Counsel filed Ontario Teachers' Class Action Complaint for violation of the Securities Act of 1933, in part to preserve those claims and protect them from statutes of limitations attacks. Shortly after that filing, BFA advised the Court that an amended complaint would be filed and Anchorage Police & Fire Retirement System ("Anchorage" and, together with Ontario Teachers', "Class Representatives") would be joined as an additional plaintiff. On September 11, 2017, a 300-page Consolidated Class Action Complaint was filed based on the Securities Exchange Act of 1934 as well as the Securities Act of 1933.

31. Five motions to dismiss were filed in December 2017, and in January 2018, 101 pages of responses were filed by Class Counsel that dealt with such issues as the duty to disclose information concerning claimed financial success, statutes of limitations, class standing, auditor liability, claims under foreign law, and personal jurisdiction. The parties' briefs on these issues consumed 284 pages. From February to April 2018, preparation for oral argument on the five motions occurred, and on April 3, 2018, the Court granted the motions to dismiss, but

without prejudice to amending the complaint to add additional detailed allegations on concealment of the sources of Teva's purported financial success.

32. As a result of the Court's decision, BFA engaged in additional expert analysis of generic drug prices across Teva's entire portfolio, resulting in a calculation of more than \$2 billion in excess profits. Extensive comparisons were conducted of Teva's claimed metrics to the price increases' impact, as well as categorizing the false statements and omissions. An investigative firm retained by BFA contacted former Teva employees. Those employees detailed the involvement of senior Teva executives in decisions to increase prices and internal tracking of their financial impact.

33. As a result of these additional efforts by Class Counsel, Class Representatives filed an Amended Consolidated Class Action Complaint on June 22, 2018.

34. The period of July 2018 to September 2019 involved the second round of motions to dismiss. Three such motions were filed, and Class Counsel filed 96 pages of briefing in response. The parties' briefs consumed 241 pages. On September 25, 2019, the court issued a 74-page decision largely denying the motions.

35. Following the Court's decision on the motions to dismiss, a considerable effort was spent on attending to consolidation of the various class and individual actions. On December 13, 2019, the parties filed their consolidation motion and Class Counsel filed the Second Amended Consolidated Class Action Complaint, which significantly expanded the Class Period, named additional defendants, and alleged additional claims. The Court granted consolidation in March 2020.

36. In September 2020, the DOJ sought to intervene due to concerns over certain depositions proceeding during its criminal investigation. Ultimately, the Court permitted limited intervention by the DOJ.

C. Class Counsel's Extensive Efforts to Develop the Merits

37. Over the two-year period from September 2019 to September 2021, Class Counsel engaged in considerable discovery of the Defendants to obtain relevant documents, information and admissions for use at summary judgment and trial.

i. Discovery Litigation to Obtain Voluminous Documents

38. The extent of discovery litigation with the Defendants was enormous. Fortunately, the Court is well aware of it because of its continuing and deep involvement in monitoring it, resolving myriad objections, and compelling production. Some indications of the extent of the required involvement of Class Counsel in this stage of the case are the following: 116 requests for production and 119 requests for admissions were served on Defendants; Class Counsel's pursuit of the document production requests resulted in Defendants' production of more than 2.9 million pages of documents from 27 record custodians; three motions to compel discovery were filed, with later Court rulings ordering the production of pricing, sales, and profit data for Teva's entire generic drug portfolio, the production of text messages, and the identification of Defendants' attorneys who had reviewed relevant FBI reports; twenty status conferences with the Court regarding discovery scheduling and disputes; extensive litigation concerning spoliation claims; litigation concerning claims of privilege and privilege logs; and third-party discovery, including filing an action to enforce a subpoena to Sandoz Inc., yielding more than 5 million pages of documents.

39. In total, over 8.2 million pages of documents were produced by Defendants and third parties.

ii. Fact Depositions

40. With voluminous documents in hand, Class Counsel expended significant effort to efficiently and effectively analyze these documents and take depositions of 23 fact witnesses through video conference (resulting in over 7,000 pages of fact witness testimony with 535 exhibits). The majority of these depositions occurred from January through April 2021. The deponents included each Individual Defendant (including Teva's current CEO, a former CEO, and a former interim CEO); a current member of Teva's Audit Committee; other senior Teva executives; and Rule 30(b)(6) representatives of Teva and Teva Finance, Teva's auditor (PwC Israel), and a lead bank that underwrote Teva's securities offerings during the Class Period.

iii. Expert Discovery

41. Discovery of experts was also extensive and occurred principally between May and September 2021, with reports served on May 28, 2021; August 6, 2021; and September 20, 2021. Class Counsel facilitated 10 merits expert reports from four experts, involving over 600 pages (excluding exhibits), on the topics of: (i) materiality, loss causation, and damages (Dr. Tabak); (ii) generic drug pricing and competition, and calculation of Teva's profits from price increases (Dr. David Bradford); (iii) Defendants' compliance with MD&A disclosure requirements and the material financial impact of Teva's price increases (D. Paul Regan); and (iv) SEC disclosure requirements and materiality (Lynn Turner).

42. Class Counsel also analyzed, and facilitated expert responses to, seven reports from Defendants' four economics, legal and securities experts, involving over 600 pages, on topics such as materiality, loss causation, and damages; SEC disclosure requirements and practices; generic drug pricing and competition; the impact of revenue and profits generated by Teva price increases (and their justifications); and public disclosures (including SEC filings).

Class Counsel took five depositions of Defendants' experts and defended five depositions of the Class's experts (yielding thousands of pages of testimony and exhibits).

43. I have reviewed summaries of the parties' expert reports. Class Counsel committed a significant investment of time and resources to develop the merits in advance of summary judgment and trial. My review also indicates that Class Representatives faced significant risks, as Defendants' experts provided detailed opinions that vigorously disputed the claims and appeared to assert numerous defenses, including that Teva's price increases and their impact were publicly known.

iv. Preparation for Summary Judgment and *Daubert* Motions

44. After the completion of expert discovery in September 2021, Class Counsel prepared detailed supplemental responses and objections to Defendants' 18 interrogatories directed to Class Representatives. These responses were more than 200 pages in length, and compiled key documentary and testimonial evidence obtained through Class Counsel's efforts over the prior two years.

45. From September to December 2021, Class Counsel prepared a partial motion for summary judgment on selected issues, and drafted *Daubert*²⁴ motions to exclude Defendants' four merits experts. I understand that these motions were completed before settlement (though not filed, as discussed below), and were supported by 150 pages of briefing and dozens of exhibits that drew heavily on the evidence Class Counsel had developed over the course of fact and expert discovery in the preceding two years.

²⁴ Referencing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

D. Class Certification and Discovery from Class Representatives

46. Class Counsel engaged in discovery from Class Representatives and sought and achieved class certification. Much of this work occurred simultaneously with fact and expert discovery.

47. Class Counsel prepared for discovery from Class Representatives by locating potentially relevant documents and performing in-person forensic collections in Toronto and Anchorage. On January 29, 2020, Defendants served Class Representatives with 44 requests for production of documents, for which Class Counsel prepared responses and objections, and then negotiated with defense counsel over those requests. Defendants subsequently filed a Motion to Compel further discovery from Class Representatives (ECF 412); Class Counsel then secured Defendants' agreement that they would not further pursue the motion unless class certification was denied.

48. Class Counsel devoted considerable effort to seeking class certification. Class Counsel retained economist David Tabak, Ph.D. as a class certification expert. He examined the Teva-specific price movements of each of the eight Teva Securities during the Class Period. He also outlined a methodology for calculating damages on a class-wide basis. In June 2020, Class Representatives filed their motion for class certification, accompanied by Dr. Tabak's 252-page report (including exhibits) and an extensive memorandum of law.

49. Defendants filed opposition memoranda, accompanied by reports from three experts. Expert depositions included two depositions of Dr. Tabak as well as depositions of the three experts retained by Defendants. On December 4, 2020, Class Representatives filed a reply brief accompanied by Dr. Tabak's 214-page reply report (including exhibits). On December 30, 2020, Defendants filed a motion to exclude Dr. Tabak.

50. On January 29, 2021, the Court held oral argument on the class certification motion and Defendants' motion to exclude Dr. Tabak. Thereafter, Defendants renewed their requests for discovery from Class Representatives and sought to stay a ruling on class certification.

51. On March 9, 2021, the Court (a) denied Defendants' request for further discovery, and (b) granted the motion for class certification and denied the motion to exclude Dr. Tabak in an 88-page ruling. Defendants sought to appeal the class certification decision of the District Court to the United States Court of Appeals for the Second Circuit, but that Court denied the Defendants' petition to appeal.

52. On March 10, 2021, Defendants issued thirteen notices of deposition and subpoenas seeking further discovery from Class Representatives and others. From March 2021 through May 2021 Class Counsel worked to oppose Defendants' renewed discovery requests. Ultimately, with the Court's guidance, Defendants pursued limited Rule 30(b)(6) depositions of each Class Representative before pursuing their discovery requests to third parties (ECF 751), and the Court then denied Defendants' Motion to Compel, bifurcating the trial between class-wide and individual issues (ECF 796).

53. The later stages of discovery from Class Representatives ranged from June to October 2021. Class Counsel prepared for and defended Anchorage's and Ontario Teachers' Rule 30(b)(6) depositions on July 21, 2021 and August 25, 2021, respectively. Thereafter, Defendants sought additional testimony regarding the domesticity of Ontario Teachers' transactions in Preferred Shares, resulting in a declaration from Ontario Teachers' on October 21, 2021.

E. Mediation

54. In June 2020 preparation for mediation began, including damages calculations with expert assistance, and expert analysis of Teva's financial condition and models for potential settlement. The first session of mediation was on July 13, 2020, with no success. Continued mediation efforts occurred from September 2021 to December 2021, including formal sessions on September 17 and 27, 2021, requiring additional preparation, expert assistance and responses to questions presented by the mediator, a former United States District Judge. Between these sessions and in the weeks following the September 27 mediation session, Class Counsel made additional presentations to the mediator, and engaged in weeks of intensive further negotiations. These efforts resulted in a recommendation from the mediator on November 14, 2021. Class Representatives and Class Counsel then considered the recommendation over several weeks. The recommendation was accepted by all parties on December 2, 2021, hours before the deadline for filing the *Daubert* and summary judgment motions.

55. Following the agreement, Class Counsel drafted the extensive stipulation of settlement with the notice to the class and proof of claim and release; retained a claims administrator and escrow banks; filed the motion for preliminary court approval of the settlement; and prepared the motion for final approval of settlement.

V. THE REQUESTED FEE, HOURLY RATES AND MULTIPLIER

56. In my opinion, Class Counsel's number of hours of 77,090.70 is justified by their billing summaries and the course of this litigation.

57. Based on my review of Class Counsel's billing summaries, time records, and attorney biographical information, the tasks worked on by those attorneys were properly allocated to the level of experience and competence of those attorneys, as discussed below. I also found that Class Counsel worked efficiently, with particularly important litigation work

concentrated among a relatively small team of seven attorneys, which accounted for about 40.6% of total hours and 52.9% of total lodestar. This approach helped to ensure that information was shared efficiently, and that key decisions were informed by knowledge from interrelated areas of the case.

58. Partners performed appropriate tasks, such as developing high-level litigation strategy, taking and defending senior-level and complex depositions, presenting oral argument, interacting with Class Representatives, working with experts, and conducting the mediation and settlement discussions. For example, at the senior partner level, Joseph Fonti oversaw strategy and the prosecution of the action from its inception; presented all oral argument for the Class; took or defended 17 depositions (including four of the seven Individual Defendants); and led the mediation and settlement negotiations. Susan Podolsky, who contributed her extensive prior litigation, trial and securities class actions experience (including prior representations of Ontario Teachers'), was an integral part of the litigation team and negotiated with DOJ and opposing counsel; drafted submissions; and contributed strategic advice in connection with hearings, status conferences, and mediation. In addition to the core team, Javier Bleichmar was involved in important strategic decisions from the inception of the case through the mediation and settlement negotiations.

59. At the junior partner level, Wilson Meeks was extensively involved in drafting the lead plaintiff motion, drafting the complaints, and opposing Defendants' motions to dismiss. After Mr. Meeks departed BFA, Evan Kubota assumed primary responsibility for drafting complex motions (including class certification and the partial summary judgment motion

completed before settlement), developing discovery strategy, taking or defending 16 depositions (including three Individual Defendants), and working closely with experts.²⁵

60. Associate work included drafting briefs, discovery requests, and correspondence, conducting meet and confers with opposing counsel, managing the discovery team, drafting deposition outlines, taking certain depositions, and working with experts. Benjamin Burry was primarily responsible for discovery litigation, including preparing requests and responses, conducting meet-and-confers, and leading third-party discovery efforts, and took three fact depositions. Thayne Stoddard led the document review team's extensive work, focused on plaintiff-side discovery issues, and took four fact depositions. Mathew Hough supported all aspects of and second-chaired depositions, contributed legal research, and worked extensively with the Class's experts.

61. In addition, Staff Associates and Staff Attorneys performed discovery analysis (prioritizing high-value documents and custodians), investigated production deficiencies and researched numerous substantive factual issues at Associates' direction, prepared initial deposition outlines and related materials, and developed a detailed chronology of important facts and documents identified in discovery.

62. One aspect that needs particular mention is the number of hours spent by Mr. Fonti, a named partner in BFA. He had the largest number of hours: 7,845.00. This time was incurred from December 2016 to April 2022. In my opinion, Mr. Fonti's hours are appropriate and justified by his involvement in developing this case from start to finish. Mr. Fonti personally argued at each hearing and status conference in the case and was involved

²⁵ Mr. Kubota was elected a partner of BFA effective January 1, 2022, and prior to that was an associate of the firm.

in all aspects of those hearings, as well as all aspects of the investigation of the case, discovery, motions to dismiss and class certification. In addition, the intense and highly contentious nature of the litigation of so many aspects of the case required the involvement of an attorney with a high level of experience, both in litigation matters generally and in securities class actions in particular. Finally, unlike other, more straightforward securities litigations, this case involved complex and difficult legal matters as it represented the intersection of federal securities law and antitrust law.

63. My review also indicates appropriate use of attorneys from the Connecticut firm Carmody Torrance Sandak & Hennessey LLP. Among other work, Carmody attorneys were actively involved throughout the litigation, contributed to litigation strategy, legal and factual research, and merits discovery (including plaintiff-side discovery), and participated in Class Representatives' mediation efforts, particularly on complex insurance issues.

64. In addition, I understand that BFA made reductions to its lodestar in the exercise of billing judgment, including lodestar for BFA attorneys and staff who billed less than 30 hours and all lodestar associated with Lead Counsel's fee application.

65. I have compared the range of hourly rates of \$225 to \$985 here to many similar class action fees that have been approved in the Second Circuit, and they are within the appropriate ranges based on the application of the relevant factors. As indicated above, I have had considerable experience with securities class actions on the District Court and the Second Circuit. In my experience, securities class actions are highly technical and require specialized expertise; they therefore tend to be both prosecuted and defended by members of a national securities bar principally based in New York or California.

66. The instant action is consistent with this experience in that both BFA and Defendants' lead counsel at Kasowitz are based in New York. As a United States District Judge for the District of Connecticut, I observed that in complex class actions, lead counsel—for both plaintiffs and defendants—typically was located outside the District. In *U.S. Foodservice*, for example, a Connecticut firm was appointed among several lead counsel, but the majority of work was performed by attorneys in Washington, D.C., New York, and Texas.²⁶ The fee request in *U.S. Foodservice* indicated a blended hourly rate (total lodestar divided by total hours) of \$474.62 and a peak hourly rate of \$985, equal to Class Counsel's highest hourly rate here.²⁷ The rates in *U.S. Foodservice* were submitted in 2014, and I understand that rates have generally increased to the present date.

67. Within the context of a national securities bar, I believe Class Counsel's rates are appropriate. For example, as noted above, I authored the opinion for the Second Circuit affirming class certification in *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017). I understand that action settled in 2019 for \$27 million; the District Court approved a fee of 30%, and in support of the fee application, class counsel indicated a peak hourly rate of \$1,000 and a blended rate of \$639.54 per hour,²⁸ higher than Class Counsel's highest rate of \$985 and blended rate of \$595. I am also aware of authority approving fee awards based on hourly partner billing rates in the range of \$700 to \$995 as of 2017, over four years ago. See *Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *5 (S.D.N.Y. Aug. 18, 2017).

²⁶ No. 3:07-md-1894 (AWT) (D. Conn.), ECF 510-2 at 31 of 38 (lodestar by firm); ECF 510-1 at 49 of 49 (attorney locations).

²⁷ *Id.*, ECF 510-1 at 12 of 49 & ECF 510-3 at 61 of 112.

²⁸ See *Strougo v. Barclays PLC*, Case 1:14-cv-05797-VM-DCF (S.D.N.Y.), ECF 144 ¶¶69, 71; ECF 146 ¶15.

68. I believe that Class Counsel's lodestar is reasonable in view of the extensive work performed, the efficiency of the staffing among a limited number of attorneys, the complexity of the case, the result achieved, the appropriateness of their billing rates, and Class Counsel's exercise of billing judgment.

69. As to the requested multiplier of 2.17 times the lodestar of \$45,837,361.00, I also conclude that it is within the range for similar class actions with a common fund, and consistent with empirical research, as shown by my analysis. In particular, the multiplier is below the average multiplier of 2.72 for settlements around the country above \$67.5 million and below the 2.23 multiplier in *U.S. Foodservice* (a \$297 million settlement). While the requested multiplier is higher than the average of approximately 1.97 for securities cases above \$200 million within the Circuit, in my opinion, this is warranted in light of the above-average risks and challenges of this case, discussed below, as well as Class Counsel's ability to achieve a substantial settlement.

70. I have also reviewed the documents supporting Lead Counsel's request for an award of \$9,717,887.47 in expenses. By firm, those expenses are as follows: \$9,689,838.44 (Bleichmar Fonti & Auld LLP); \$1,217.86 (Bleichmar Fonti & Auld Canada); \$22,093.35 (The Law Offices of Susan R. Podolsky); and \$4,737.82 (Carmody Torrance Sandak & Hennessey LLP). I have reviewed each category of expenses. Although the expenses are considerable, it also appears that they were justified and reasonable, and the amount is largely a result of the extensive expert analysis and assistance necessary for this action. As noted above, I have also reviewed summaries of those expert reports.

VI. DISCUSSION OF THE *GOLDBERGER* FACTORS

71. I respectfully submit that all of the six *Goldberger* Factors are satisfied here. Of course, I recognize that the Court will ultimately make these determinations, and is well positioned to do so given its extensive involvement in the case. As to the time and labor

expanded by Class Counsel, their commitment was enormous, but justified by the particular circumstances of this case, including the extensive discovery litigation, the rounds of contesting the motions to dismiss, the expert witness litigation and discovery related to that (for both Class Representatives' and Defendants' experts), the class certification stage and its complexities, and the preparation of the motion for summary judgment and *Daubert* materials. The magnitude and complexities of the case were particularly significant, even in the context of securities class actions. This action not only had complicated securities law matters involving the alleged price increases and their effects on the relevant eight securities at different times, but also had the intersection of federal antitrust price fixing, complicated by the parallel DOJ investigation and indictment. Class Counsel had no shortcut to proving their case, since Teva did not admit misconduct, restate its financial statements, or face any enforcement action from the SEC. And Defendants were represented by experienced counsel who litigated this case with great intensity.

72. The risk of the litigation to Class Counsel was also greater than in the typical securities class action. It started as a novel concept, a price increase and price-fixing scheme over many years involving many Teva individuals and non-Teva actors, involving hundreds of generic drugs and eight different securities. While Class Counsel's efforts advanced the case through the completion of discovery and the preparation of summary judgment filings, I believe further litigation carried significant risk, as it is clear that the parties had a number of vigorous legal and factual disputes, expressed in part in the lengthy expert reports exchanged. The success achieved by Class Counsel is also noteworthy: the second-largest class action settlement in the District of Connecticut. The quality of the representation by Class Counsel was first-rate, and fortunately, the District Court had much contact with them over the years of this case.

73. As also demonstrated above, the requested fee of 23.70% of the common fund of \$420 million is supported by similar cases in this District, the Second Circuit and the nation.

74. Finally, this case had even more public policy importance than the typical securities class action as it involved the pricing of generic drugs, an issue of public concern, and alleged antitrust violations, which resulted in the DOJ obtaining a Sherman Act-based indictment.

VII. CONCLUSION

75. For the reasons above, I respectfully submit to the Court that Lead Counsel's requested fees and expenses are reasonable and justified.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22nd day of April 2022.



Judge Christopher F. Droney (Ret.)

EXHIBIT A

**EXHIBIT A TO
DECLARATION OF JUDGE CHRISTOPHER F. DRONEY (Ret.)**

CHRISTOPHER F. DRONEY
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Professional Background

DAY PITNEY LLP, Hartford, Connecticut

Partner, Litigation and Appellate Departments (2020 to present)

Appointed by National Football League Management Council and NFL Players Association as System Arbitrator to resolve disputes under Collective Bargaining Agreement (2021 to present)

UNITED STATES COURTS

United States Court of Appeals Judge for the Second Circuit (2011 to 2020)

Participated in over one thousand appeals; authored approximately one hundred opinions

United States District Judge for the District of Connecticut (1997 to 2011)

Presided over civil and criminal trials and other proceedings over fourteen years on the federal trial bench

U.S. DEPARTMENT OF JUSTICE, New Haven, CT (1993 to 1997)

United States Attorney for the District of Connecticut

Supervised and directed Assistant U.S. Attorneys in prosecuting federal crimes and representing the United States in Connecticut

Initiated new cooperative law enforcement efforts against violent drug enterprises, health care fraud and financial fraud

Personally tried cases against Ku Klux Klan leadership in New England and the leader of a New Haven drug group, and argued in the Second Circuit Court of Appeals on behalf of the United States

Appointed by Attorney General Janet Reno to the Attorney General's Advisory Committee of U.S. Attorneys (1997)

Chair of the Civil Issues Subcommittee of the Attorney General's Advisory Committee of U.S. Attorneys (1993 to 1995)

Bar and Educational Activities

Chair, Selection Committees for U.S. Bankruptcy Judges for the District of Connecticut, 2012-2013 and 2015-2016

Member, Committee for the Administration of the Bankruptcy Courts, United States Judicial Conference, 2011-2017

Member, Board of Directors, Federal Judges Association, 2014-2017

Member, Board of Trustees, Federal Bar Council, 2020-Present

Special Federal Public Defender, U.S. District Court, Connecticut, 1985-1989

Member, Committee for Selection of Dean for the University of Connecticut School of Law, 2012-2013

Lecturer and panelist on evidence, trials and appellate practice at Yale Law School, the University of Connecticut School of Law, and the National Advocacy Center of the United States Department of Justice

Member, The American Law Institute, 2021-present

Education

The University of Connecticut School of Law, J.D., 1979

Notes and Commends Editor, Connecticut Law Review

The College of the Holy Cross, B.A., History, 1976, magna cum laude

Awards

Honorary Doctor of Laws awarded May 22, 2016 by the University of Connecticut

Citizen of the Year, Nutmeg District, Boy Scouts of America, 1994

Distinguished Law Enforcement Award, Hartford Police Union, 1994

Honors Award, Mushaba Force Youth Foundation, 1995

Special Recognition Award, Spanish-American Merchants Association, 1997

Drug Enforcement Administration (DEA) New England Field Division Award, 1997

Distinguished Graduate Award, University of Connecticut School of Law, 2007

University of Connecticut Law School Review Alumni Award, 2012