

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

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

Plaintiffs,

v.

MOMENTA PHARMACEUTICALS, INC. and
SANDOZ INC.,

Defendants.

Civil Action No. 3:15-cv-01100

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

**DECLARATION OF AUDREY A. BROWNE, ESQ. IN SUPPORT OF SERVICE
AWARD TO CLASS REPRESENTATIVE
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
DISTRICT COUNCIL 37 HEALTH AND SECURITY PLAN**

I, Audrey A. Browne, hereby declare and state as follows:

1. I am the former Associate Administrator and Counsel of the American Federation of State, Municipal and County Employees District Council 37 Health and Security Plan (“DC 37”) and currently DC 37’s retained consultant for purposes of the instant litigation. I have worked in the union’s legal department, beginning in 1983, and in 2003 began working for the Health and Security Plan specifically. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service Awards, including as support for the Lief Cabraser request that the Court approve an award of \$200,000 to DC 37 for its work as named plaintiff, and then Class Representative, in the above-captioned action (the “Action”). The matters described are based on my personal knowledge, and if called as a witness, I could and would testify competently thereto.

2. DC 37 administers a health and welfare fund, which includes a prescription drug benefit for the benefit of current and retired employees of the City of New York. As of February 2020, DC 37’s plans covered over 300,000 beneficiaries. DC 37 is concerned about the lack of competition in the pharmaceutical industry, and high drug prices are a primary driver of the crisis in healthcare costs faced by this country, particularly for union funds like DC 37.

3. One of my primary responsibilities while Associate Administrator and Counsel, and now as a retained consultant for DC 37, has been to oversee litigation brought by DC 37, which includes monitoring DC 37’s selected outside counsel for litigation, participating in the collection of documents on behalf of DC 37, participating in strategic decision making and settlement approval, and advising DC 37’s Board of Trustees regarding all of the foregoing.

4. In this litigation, Lief Cabraser agreed to represent DC 37 on a wholly contingent basis and advanced all costs of the litigation, meaning that DC 37 and its members had no costs

and no risk of loss associated with the matter, except of course for the significant investment of time and associated costs in retrieving, reviewing and copying documents, and the production of claims data that I will detail below.

5. On DC 37's behalf, I had regular communications with attorneys from Lieff Cabraser, in their role as counsel to DC 37. DC 37, through my active and continuous involvement, as detailed below, closely supervised and participated in all material aspects of the prosecution of the Action. DC 37 received regular status reports from Lieff Cabraser on case developments, and participated in regular discussions with attorneys from Lieff Cabraser concerning the prosecution of the Action, the strengths of and risks to the claims, and settlement.

6. In particular, throughout the course of this Action, I coordinated with Lieff Cabraser about, and participated in, the following case events:

a. **Significant Pleadings and Briefs.** DC 37 joined the case in mid-2017, when the plaintiffs moved for leave to amend to file the amended complaint. I reviewed and participated in the drafting of the amended complaint, oppositions to the defendants' three motions to dismiss thereafter (based on subject-matter and personal jurisdiction, and under Rule 12(b)(6)), the two class certification motions, the summary judgment opposition, the numerous discovery disputes in the case (some of which centered on obtaining discovery from DC 37), and other key filings throughout the litigation. I contributed my expertise as an attorney and as DC 37's primary contact with the pharmaceutical industry, to help ensure that DC 37's best interests were reflected in Lieff Cabraser's litigation strategy and legal arguments. In total, I devoted approximately 17.25 hours to reviewing and commenting on significant pleadings and briefs.

b. **Court Hearings.** Although DC 37 is based in New York, I attended the May 13 and May 14 evidentiary hearing on the first motion for class certification.¹ I also conferred with Lief Cabraser both before and after both motions for class certification, as well as other court hearings. In total, I devoted approximately 30.75 hours to attending the May hearing, including travel between New York and Nashville, and other hearings in the case.

c. **Rule 26(a) Initial Disclosures and Document and Data Discovery.** DC 37 has previously participated as a plaintiff in class action litigation relating to alleged antitrust violations in pharmaceutical industry; in my seventeen-plus years with DC 37's Health and Security Plan, DC 37 has never, before or since, incurred discovery obligations as demanding as those imposed by this Action. Following the addition of DC 37 as a named plaintiff in the Action after the Court granted leave to amend the complaint, I consulted with Lief Cabraser attorneys regarding DC 37's Rule 26(a) initial disclosures, and reviewed the disclosures before they were served on the defendants. DC 37 reviewed and provided comments on responses to 76 requests for admission, responded to 42 requests for production and 11 interrogatories, as well as searched for and produced 2,601 documents (24,727 pages). These, however, were based on search terms negotiated with the defendants, and on which I provided input; the number of records culled from DC 37's systems, which involved an outside vendor forensically extracting documents onsite at DC 37's offices, was over 292,000. I devoted hours to reviewing and explaining documents to counsel, obtaining input from DC 37's Drug Unit and comptroller where necessary. In addition, I personally reviewed and, where necessary, edited, every entry of DC 37's privilege log created in connection with DC 37's document production, before the log was produced. DC 37 also produced complete payment data, pulled and sorted by

¹ I was unable to attend the July class certification hearing in person because of a family medical issue.

Willie Chang, reflecting purchases of enoxaparin and Lovenox for the period 2011 through 2016. In total, I and Mr. Chang devoted approximately 78 hours in connection with Rule 26(a) disclosures and document and data discovery.

d. **Depositions of DC 37.** I was deposed twice in this litigation, once as a Rule 30(b)(6) witness (in November 2018), and again in my individual capacity (in May 2019). The 30(b)(6) deposition lasted 4 hours and required my testimony on 18 exhibits, and the fact witness deposition lasted 3.5 hours. In my 30(b)(6) deposition, I testified on DC 37's behalf about DC 37's structure, formulary, and pharmacy benefit manager agreements, among other topics. In preparation for each deposition, I spent considerable time over the course of two days reviewing documents and meeting with counsel, and consulting with DC 37 Drug Unit personnel. In total, I devoted approximately 25.5 hours to preparing for deposition and being deposed. I also attended the preparation sessions and depositions of Mr. Chang, described below.

e. DC 37's former Benefits Fund Administrator, Willie Chang, was also deposed twice, first in his representative capacity under Rule 30(b)(6) (in November 2018) for 1.5 hours and again in his individual capacity (in May 2019) for 3.5 hours. In his 30(b)(6) deposition, Mr. Chang testified on DC 37's behalf about the following general topics, among others: how beneficiaries make pharmacy claims, co-payments charged to them, and the enoxaparin and Lovenox payment data DC 37 produced in the litigation. In preparation for each deposition, Mr. Chang spent considerable time, two days, reviewing documents and meeting with counsel. In total, Mr. Chang devoted approximately 18 hours to preparing for deposition and being deposed.

f. DC 37's former Controller, Gary Dean, assisted in gathering and reviewing responsive documents evidencing DC 37's payment for enoxaparin and Lovenox. In total he spent approximately 3 hours on such tasks as a former employee of DC 37.

g. In addition to the time that I and others from DC 37 devoted to participating in this litigation, DC 37 also incurred expenses in retrieving and copying documents in addition to claims data extraction charges in response to discovery demands as well as claims payment history for submission to the Claims Administrator. Document retrieval and copying expenses totaled \$1,980. The IT Department's charges for claims payment data extraction will total \$650.

h. **Other Significant Litigation Developments.** In addition to the specific tasks mentioned above, I continually coordinated with Lief Cabraser attorneys and in-house counsel at DC 37 concerning significant developments in the litigation, and regularly reported to DC 37's Board of Trustees regarding the same. Those efforts included discussing discovery disputes, document productions, case scheduling, and case strategy. In total, I devoted approximately 15.25 hours to those litigation efforts.

i. **Settlement Negotiations.** DC 37 oversaw the settlement negotiations in this Action, including participating in both the July (by telephone) and November 2019 mediations. I traveled to San Francisco to attend the November 2019 mediation.² Before, during, and after the mediation sessions, I conferred with Lief Cabraser attorneys at length regarding the parties' respective positions on the facts and the law (including reviewing the parties' respective mediation submissions where they had been shared), and the proposed monetary component of the Settlement. Further, during the final mediation sessions, I actively participated in

² I was unable to attend the July mediation session in person due to a family medical issue. I attended by telephone.

negotiations with the mediator about the resolution of this case. I also reviewed and provided feedback on the proposed settlement agreement and its terms. In total, I devoted approximately 26 hours to mediation and related efforts to settle this Action, including travel between New York and San Francisco to participate in the November mediation.

j. **Approval of the Settlement by the DC 37 Board of Trustees.** In my role as Associate Administrator and Counsel to DC 37, and now as consultant to the Board regarding ongoing litigation, based upon my extensive involvement in class action litigation, I was previously authorized by the Board of Trustees to accept a reasonable settlement offer. Thus, I presented the proposed settlement to the Board at its regularly scheduled meeting on December 17, 2019 at which I provided my opinion on the merits of the settlement. The Board was pleased with the results of the proposed settlement.

k. In total, I devoted approximately 45 minutes to advising the Board about the proposed settlement and the legal processes that would follow said proposed settlement once it was approved by the Court.

l. **Preliminary and Final Approval.** I reviewed counsel's drafts of the preliminary approval briefing, submitted December 20, 2019, and anticipate reviewing and providing feedback on Lief Cabraser's final approval papers due later this year.

7. **Total.** In total, I and other DC 37 personnel/consultants devoted approximately 224.50 hours to helping DC 37 pursue claims and achieve the \$120 million settlement for the Class. As stated above, particularly because of the discovery involved, the time I devoted to pursuing the interests of DC 37 and the Class in this Action was substantial. When I was still employed by DC 37, it was time I otherwise would have devoted to other work for DC 37. Since my transition to being a consultant, it is work that DC 37 has had to pay me for on an hourly

basis without assurance that it would recover anything from participation in the Action. The same is true with respect to Mr. Chang. As detailed above, as DC 37 representatives, Mr. Chang and I devoted approximately 213.50 hours to this Action. Of that, DC 37 paid for 159 hours of my time and 18 hours of Mr. Chang's time at our hourly consulting rates of \$155 an hour and \$175 an hour, respectively. DC 37 respectfully submits that its significant oversight of counsel in this Action, its active participation in all aspects of litigation and resolution of the case, and the time DC 37 representatives devoted to pursuing claims on DC 37's behalf and on behalf of the Class, and helping achieve this extraordinary settlement, justify the requested \$200,000 award. My understanding is that DC 37's share of the settlement will be dwarfed by those of other class members such as large insurance companies with claims based on tens or hundreds of millions of dollars of purchases.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of DC 37.

Executed on this 2nd day of March, 2020, at New York, New York.

By: 
Audrey A. Browne

CERTIFICATE OF SERVICE

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

Timothy L. Warnock (TN Bar No. 12844)
Stuart A. Burkhalter (TN Bar No. 29078)
RILEY WARNOCK & JACOBSON, PLC
1906 West End Avenue
Nashville, TN 37203
Telephone: (615) 320-3700
Facsimile: (615) 320-3737

Matthew D. Kent (*pro hac vice*)
Liz Brodway Brown (*pro hac vice*)
D. Andrew Hatchett (*pro hac vice*)
Michael P. Kenny (*pro hac vice*)
Anthony Thomas Greene (*pro hac vice*)
Kara F. Kennedy (*pro hac vice*)
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
Telephone: (404) 881-7000
Facsimile: (404) 881-7777

Teresa T. Bonder (*pro hac vice*)
Nell G. Moley (*pro hac vice*)
Jean E. Richmann (*pro hac vice*)
ALSTON & BIRD LLP
560 Mission Street, Suite 2100
San Francisco, CA 94105
Telephone: (415) 243-1000
Facsimile: (415) 243-1001

Attorneys for Sandoz Inc.

R. Dale Grimes (TN Bar No. 6223)
Virginia M. Yetter (TN Bar No. 31471)
BASS, BERRY & SIMS PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
Telephone: (615) 742-6200

Jason T. Murata (*pro hac vice*)
Brooke Jones Oppenheimer (*pro hac vice*)
Thomas G. Rohback (*pro hac vice*)
AXINN, VELTROP & HARKRIDER LLP
90 State House Square
Hartford, CT 06103
Telephone: (860) 275-8100
Facsimile: (860) 275-8101

Carmel Rana Arikat (*pro hac vice*)
Richard B. Dagen (*pro hac vice*)
Bradley D. Justus (*pro hac vice*)
Michael L. Keeley (*pro hac vice*)
Daniel K. Oakes (*pro hac vice*)
Jetta C. Sandin (*pro hac vice*)
AXINN, VELTROP & HARKRIDER LLP
950 F Street, NW
Washington, DC 20004
Telephone: (202) 912-4700
Facsimile: (202) 912-4701

Carol Xianxiao Liu (*pro hac vice*)
Varnitha Siva (*pro hac vice*)
AXINN, VELTROP & HARKRIDER LLP
114 West 47th Street
New York, NY 10036
Telephone: (212) 728-2200
Facsimile: (212) 728-2201

Juanita R. Brooks (*pro hac vice*)
Roger Alen Denning (*pro hac vice*)
Tucker N. Terhufen
FISH & RICHARDSON, P.C.
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Attorneys for Momenta Pharmaceuticals, Inc.

/s/Katherine Lubin Benson
Katherine Lubin Benson