

**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 MARC OVERLOCK, ESQ. IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE  
SERVICE AWARDS**

I, Marc Overlock, hereby declare and state as follows:

1. I am General Counsel of Nashville General Hospital (“Nashville General”). I have worked at Nashville General since 2004 and as General Counsel since approximately December 2005. I submit this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service Awards, including as support for the request that the Court approve an award of \$200,000 to Nashville General for its work as named plaintiff, and then Class Representative, in this case. The matters described are based on my personal knowledge, and if called as a witness, I could and would testify competently thereto.

2. Nashville General has provided quality healthcare to the Nashville community for 130 years. Its mission is to improve the health and wellness of Nashville by providing equitable access to coordinated patient-centered care, supporting tomorrow’s caregivers, and translating science into clinical practice. As a city hospital, Nashville General is committed to serving patients regardless of income or insurance status.

3. Nashville General retained Class Counsel Lieff Cabraser Heimann & Bernstein, LLP (“Lieff Cabraser”) in this matter through a competitive RFP process subject to approval by the Metropolitan Council of Nashville and Davidson County. Request for Qualifications No. 6308053 sought legal counsel to investigate, and, as appropriate, bring lawsuits against brand-name and generic pharmaceutical manufacturers that engaged in anticompetitive misconduct. The Metropolitan government and the Hospital Authority sought and retained counsel to hold pharmaceutical companies accountable for antitrust violations that raise drug prices for patients, providers, and third-party payors. Lack of competition is a widespread problem in the pharmaceutical industry, and high drug prices are a primary driver of the crisis in healthcare

costs faced by this country, particularly for publicly-funded safety-net hospitals like Nashville General.

4. Loeff Cabraser agreed to represent Nashville General on a wholly contingent basis and advanced all costs of the litigation, meaning that the taxpayers of Nashville had no costs and no risk of loss associated with the matter, except of course for the significant investment of time that I will detail below.

5. One of my responsibilities as General Counsel has been to oversee Loeff Cabraser's prosecution of this matter. Nashville General, through my active and continuous involvement, as detailed below, closely supervised and participated in all material aspects of the prosecution of this case. Nashville General received regular status reports from Loeff Cabraser on case developments, and participated in regular discussions with attorneys from Loeff Cabraser concerning the prosecution of the case, the strengths of and risks to the claims, and settlement. I have also supervised the collection of documents on behalf of Nashville General, prepared Nashville General witnesses for deposition, participated in strategic decision-making and settlement approval, and advised the Hospital Authority's Board of Trustees and the Metropolitan Department of Law regarding all of the foregoing. Specifically:

a. **Significant Pleadings and Briefs.** Nashville General filed this lawsuit in 2015. I reviewed and participated in the drafting of the initial complaint, the amended complaint, oppositions to Defendants' three motions to dismiss thereafter (based on subject-matter and personal jurisdiction, and under Rule 12(b)(6)), the motion for leave to amend, the two class certification motions, the summary judgment opposition, the numerous discovery disputes in the case (some of which centered on obtaining discovery from Nashville General), and other key filings throughout the litigation. I contributed my expertise as an attorney working

in the healthcare field to help ensure that Nashville General's best interests were reflected in Lieff Cabraser's litigation strategy and legal arguments.

b. **Court Hearings.** I attended nearly every significant hearing and status conference over the four-plus years this case has been litigated, including the February 29, 2016 motion to dismiss hearing; the April 5, 2016 initial case management conference and motion hearing; the August 19, 2016 continued initial case management conference; the February 12, 2019 case management conference; the May 13 and 14, 2019 class certification hearing; the July 12, 2019 class certification hearing; and the September 27, 2019 discovery hearing.

c. I also spent significant time preparing with Lieff Cabraser in advance of both class certification hearings, as well as other court hearings.

d. **Rule 26(a) Initial Disclosures and Document and Data Discovery.** I consulted with Lieff Cabraser attorneys regarding Nashville General's Rule 26(a) initial disclosures, and reviewed the disclosures before they were served on Defendants. Nashville General reviewed and provided comments on responses to 229 requests for admission, responded to 54 requests for production and 18 interrogatories, as well as searched for and produced 14,071 documents (89,248 pages). The discovery sought by Defendants was wide-ranging and voluminous; each set of interrogatories, requests for production, and requests for admission involved dozens of calls and emails between Nashville General employees and former employees, myself, and Lieff Cabraser attorneys.

e. Nashville General's productions included more than 13,000 custodial documents identified by search terms negotiated with Defendants (on which I provided input) and forensically extracted from Nashville General's systems by an outside vendor. The custodial productions included a former employee's email retrieved from a defunct server, a process that

required over a dozen hours of work by Niaz Qaradaghi, Nashville General's System Administrator, both in the initial document collection, calls and meetings with counsel and an outside vendor, and providing answers to the defendants' follow-up questions.

f. The non-custodial productions included Nashville General's purchase and billing data for enoxaparin, which required no fewer than 40 hours of Neill Little's and Mindy Smith's time. Ms. Smith, in particular, was uniquely able to identify and retrieve the appropriate data, sort through numerous fields, and export spreadsheets summarizing the billing data Defendants sought. Mr. Little, meanwhile, painstakingly explained and helped Lieff Cabraser attorneys navigate the pharmacy purchasing database throughout the months-long meet and confer process. In addition, I personally reviewed certain communications collected by Nashville General for privilege and instructed Lieff Cabraser on the creation of a privilege log.

g. Discovery in this case involved numerous disputes requiring the personal involvement of myself and other Nashville General employees. Defendants moved to compel Nashville General to produce dozens of insurance contracts, pharmacy billing records, payment datasets, and individual hospital bills; they sought virtually every record the hospital had of administrations of enoxaparin, short of individual patient charts. This motion was heard by Magistrate Judge Holmes on September 21, 2018. Soon thereafter, Defendants moved to compel Nashville General to produce 700 billing and payment records for individual patient accounts reflecting the administration of enoxaparin, or in the alternative a sampling thereof. On November 26, 2018, Magistrate Judge Holmes heard this motion. Though she found these records were not "of critical importance in resolving the certification issues," she ordered the production of 100 such accounts. I, along with current and former Nashville General employees

including Mindy Smith and Nashville General vendor Parallon, spent at least 30 hours dealing with these discovery disputes.

**h. Depositions and Hearing Testimony of Nashville General Witnesses.**

Five current or former Nashville General employees were deposed (two as 30(b)(6) designees) in seven depositions, and two testified at the class certification hearings. These employees included high-level members of Nashville General's administration, such as its chief information officer, Melanie Thomas.

i. Neill Little, Nashville General's staff pharmacist, was deposed as a 30(b)(6) witness on December 5, 2018 (for nearly two hours, including breaks) and June 6, 2019 (for approximately seven hours, including breaks), both of which I attended. Before each deposition, Mr. Little prepared by reviewing documents and meeting with counsel, meetings that I attended. After each deposition, Mr. Little reviewed the transcript and submitted errata. Mr. Little also testified at the May 13, 2019 class certification hearing, for which he and I participated in two preparation sessions. Mr. Little also submitted a declaration in connection with Plaintiffs' motions for class certification.

j. Mindy Smith, Nashville General's former business manager, was deposed as a 30(b)(6) witness on December 5, 2018 (for approximately four hours, including breaks) and June 4, 2019 (for nearly six hours, including breaks), both of which I attended. Before each deposition, Ms. Smith prepared by reviewing documents and meeting with counsel, meetings that I attended. After each deposition, Ms. Smith reviewed the transcript and submitted errata. Ms. Smith was present and prepared to testify at the May 13 and 14, 2019 class certification hearing, though she did not testify. She waited in the ready room throughout the day of May

13<sup>th</sup>. She did testify at the July 12, 2019 class certification hearing, for which she participated in three preparation sessions, two of which I attended.

k. Tom Cooper, Nashville General's Director of Materials Management, was deposed on June 7, 2019 (for nearly two hours, including breaks), a deposition I attended. Before deposition, Mr. Cooper prepared by meeting with counsel. After deposition, Mr. Cooper reviewed the transcript and submitted errata.

l. Ron West, Nashville General's former pharmacy director, was deposed on July 25, 2019 (for more than five hours, including breaks), a deposition that I attended. Before deposition, Mr. West prepared by reviewing documents and meeting with counsel, a meeting I attended. After deposition, Mr. West reviewed the transcript and submitted errata.

m. Melanie Thomas, Nashville General's Chief of Information Systems and Business Development, was deposed on July 23, 2019 (for more than two hours, including breaks), a deposition I attended. Before deposition, Mr. Thomas prepared by meeting with counsel. After deposition, Ms. Thomas reviewed the transcript and submitted errata. Ms. Thomas also submitted a declaration in connection with a discovery dispute.

n. **Other Significant Litigation Developments.** In addition to the specific tasks mentioned above, I continually coordinated with Lieff Cabraser attorneys and Nashville General personnel concerning significant developments in the litigation, and regularly reported to the Hospital Authority's Board of Trustees and the Metropolitan Department of Law regarding the same. Those efforts included discussing discovery disputes, document productions, case scheduling, and case strategy.

o. **Settlement Negotiations.** Nashville General oversaw the settlement negotiations in this Action, including my personal participation in both the July and November

2019 mediations, both in San Francisco. Before, during, and after the mediation sessions, I consulted 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 negotiations with the mediator about the resolution of this case. I also reviewed and provided feedback on the proposed settlement agreement and its terms.

p. **Approval of the Settlement by the Hospital Authority's Board of Directors.** In my role as General Counsel to Nashville General, I presented the proposed settlement to the Board on November 21, 2019. I provided my opinion on the merits of the settlement and recommended that the Board approve it, which the Board did.

q. **Claim Submission.** I have also overseen Nashville General's submission of claims, including conferring with Nashville General personnel and meeting with counsel.

r. **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 counsel's final approval papers due later this year, and attending the fairness hearing.

s. **Total.** In total, I devoted hundreds of hours to this litigation and to achieving the \$120 million settlement for the Class. Other Nashville General personnel contributed additional hundreds of hours, time without which the result in this case could not have been achieved.

6. As set forth above, this case required significant commitment on the part of personnel from numerous Nashville General departments, including pharmacy, billing,



procurement, and information technology. Nashville General respectfully submits that its initiative in commencing this lawsuit, its significant oversight of counsel, its active participation in all aspects of litigation and resolution of the case, and the time Nashville General representatives devoted to pursuing claims on its own behalf and on behalf of the Class, and helping achieve this extraordinary settlement, justify the requested service award. Nashville General is a charity hospital on a limited budget; every hour spent on this matter necessarily was one hour less spent on other important tasks. Nashville General will submit a claim based on approximately \$500,000 of enoxaparin and Lovenox purchases. My understanding is that Nashville General'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.

7. Nashville General's core values include honesty, integrity, and accountability. By fighting against these improper overcharges for life-saving medicine, we aimed to make medications more affordable for patients in our community and around the county.

I declare under penalty of perjury that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of Nashville General.

Executed on this 28th day of February, 2020, in Nashville, Tennessee.

By:   
Marc Overlock

**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