UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC. VYTORIN/ZETIA SECURITIES LITIGATION	Civil Action No. 08-2177 (DMC) (JAD)

JOINT DECLARATION OF DANIEL L. BERGER AND SALVATORE J. GRAZIANO IN SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND (II) CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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DANIEL L. BERGER and SALVATORE J. GRAZIANO declare as follows:

1. I, Daniel L. Berger, am a director of the law firm of Grant & Eisenhofer, P.A. ("G&E"). I am a member of the bars of the State of New York, the Southern and Eastern Districts of New York, and the Third, Sixth, Seventh, and Ninth Circuits. I have been admitted to appear *pro hac vice* before this Court in the above-captioned action (the "Action"). I have personal knowledge of the matters set forth herein based on my participation in the prosecution and settlement of the claims asserted on behalf of the Class (defined below) in the Action.

2. I, Salvatore J. Graziano, am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"). I am a member of the bars of the State of New York, the Southern and Eastern Districts of New York, and the First, Second, Third, Ninth, and Eleventh Circuits. I have been admitted to appear *pro hac vice* before this Court in the above-captioned Action. I have personal knowledge of the matters set forth herein based on my participation in the prosecution and settlement of the claims asserted on behalf of the Class in the Action.[1]

3. G&E and BLB&G are the Court-appointed co-lead counsel ("Co-Lead Counsel") for the Court-appointed lead plaintiffs Stichting Pensioenfonds ABP ("ABP"), International Fund Management, S.A. (Luxemburg) ("IFM"), the Jacksonville Police and Fire Retirement System ("Jacksonville"), and the General Retirement System of the City of Detroit ("Detroit") (collectively, "Lead Plaintiffs") as well as the certified Class in this consolidated securities class action lawsuit.

4. We respectfully submit this Joint Declaration in support of Lead Plaintiffs' motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the

[1] Unless otherwise noted, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of June 3, 2013 (the "Stipulation"), entered into by and among Lead Plaintiffs and Defendants. ECF No. 328-1.

Settlement and the proposed plan for allocating the proceeds of the Settlement to eligible Class Members (the "Plan of Allocation") and for an award of attorneys' fees and reimbursement of litigation expenses. The Settlement will resolve the claims asserted in the Action on behalf of the class that was certified by the Court. The certified class consists of all persons and entities that purchased or acquired Merck &Co., Inc. ("Merck") common stock, or call options, and/or sold Merck put options, during the period between December 6, 2006 through and including March 28, 2008 (the "Class Period"), and who did not sell their stock and/or options on or before January 14, 2008, and who were damaged thereby (the "Class").[2] The Court preliminarily approved the Settlement by its Order entered on June 6, 2013 (the "Preliminary Approval Order").

5. The results achieved in this case, we believe, are exceptional and were the product of arduous and protracted litigation, spanning nearly five years, which ended just weeks before trial was set to begin. This Joint Declaration sets forth in detail how Co-Lead Counsel and the Lead Plaintiffs were able to achieve this outstanding result on behalf of the Class.

6. We also respectfully submit this Joint Declaration in support of Co-Lead Counsel's motion for an award of attorneys' fees from the $215 million cash payment plus

[2] Excluded from the Class by definition are (a) Defendants; (b) members of the Immediate Families of the Individual Defendants; (c) the subsidiaries and affiliates of Defendants, as these terms are defined by the federal securities laws, including the 401 (k) plans of Merck and Schering; (d) any person or entity who was a partner, executive officer, director, or controlling person of Merck, M/S-P or Schering (including any of their subsidiaries or affiliates), or any other Defendants; (e) any entity in which any Defendant has a controlling interest; (f) Defendants' directors' and officers' liability insurance carriers, and any affiliates or subsidiaries thereof; and (g) the legal representatives, heirs, successors and assigns of any such excluded party. Also excluded from the Class are any persons and entities who submitted a request for exclusion in connection with the previously mailed Notice of Pendency of Class Action (the "Class Notice") as set forth in Appendix 1 to the Stipulation who do not opt back into the Class. *See* ¶ 121 n.6, *infra*.

interest earned thereon (the "Settlement Fund") and reimbursement of litigation expenses in the amount of $4,367,376.95 and Lead Plaintiffs' expenses of $109,865.31 (pursuant to Section 21D(a)(4) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(4)).

7. For the reasons set forth below and in the accompanying memoranda, Lead Plaintiffs and Co-Lead Counsel respectfully submit that (i) the terms of the Settlement are fair, reasonable and adequate in all respects and should be approved by the Court; (ii) the proposed Plan of Allocation is fair and reasonable and should be approved by the Court; and (iii) the Fee and Expense Application is supported by the facts and the law and should be granted in all respects.

THE OUTSTANDING RECOVERY ACHIEVED

8. Lead Plaintiffs have succeeded in obtaining a recovery of $215,000,000.00 (the "Settlement Amount") in cash for the Class. The proposed Settlement is an outstanding result that would bring to a close nearly five years of contentious litigation between Lead Plaintiffs and Defendants. If approved, this recovery is the third largest securities class action settlement against a pharmaceutical company, the seventh largest within the Third Circuit, and among the top 50 largest securities class actions.[3] Thousands of Merck investors will benefit from this large recovery and, as made clear below, it is particularly significant in light of the risks posed by trial. As set forth in the Stipulation, in exchange for this payment, the proposed Settlement would dismiss with prejudice all claims asserted by Lead Plaintiffs and the Class against Defendants (defined below) and end the Action.

9. As discussed further below, Lead Plaintiffs obtained this substantial recovery for the Class despite the significant risks inherent in complex securities class actions generally, and

[3] *See* Exhibit A (http://www.issgovernance.com/files/private/SCASTop100Settlements_2H2012Rev01312013.pdf).

the case-specific risks they faced in prosecuting the Action against Defendants. The Parties were only three weeks from beginning the trial when they reached a settlement in principle. The outcome of a jury trial, especially in a highly complex case such as this, can never be predicted with reasonable certainty. Had Lead Plaintiffs prevailed at trial, there is no assurance that the recovery would have been any greater than the proposed Settlement Amount. Further increasing the uncertainty of the ultimate outcome, there are several instances of plaintiffs' verdicts in securities fraud cases that were reversed by the trial court or on appeal.

10. Lead Plaintiffs not only had a clear understanding of the practical considerations confronting them, but at the time the Settlement was agreed to, also understood the strengths and weaknesses of the case through Co-Lead Counsel's extensive investigation, prosecution of the case, and preparation for trial. In this respect, the Parties were in their final pre-trial preparations when the Settlement was reached. In the nearly five years of extensive and hard-fought litigation, Lead Plaintiffs engaged in comprehensive and vigorous litigation in which they, *inter alia*, (i) conducted a thorough investigation into the Class's claims; (ii) drafted a detailed Consolidated Class Action Complaint; (iii) successfully opposed Defendants' motion to dismiss the Complaint; (iv) successfully moved for class certification and opposed Defendants' effort to seek appellate interlocutory review of the Court's order granting class certification; (v) engaged in an extensive and diligent discovery program, including taking over fifty (50) depositions, several of which were conducted overseas, and the production and review of more than twelve million pages of documents; (vi) filed a Second Amended Consolidated Complaint based on certain information uncovered during discovery (the "Complaint"); (vii) successfully opposed Defendants' motion for summary judgment; and (viii) completed virtually all pre-trial preparations, including the exchange of *Daubert* motions, motions *in limine*, bifurcation motions,

and trial briefs, as well as completing a comprehensive joint Pretrial Order. Plaintiffs also engaged in a two-day mock trial exercise, which provided them with extensive information as to the risks they faced at trial.

11. The Settlement was accomplished through arm's–length settlement discussions facilitated by several mediators over the course of several years. Experienced mediators including Judge Layn Phillips and, ultimately, the court-appointed mediators, Jonathan Lerner and Stephen Greenberg of the Pilgrim Mediation Group, assisted the parties to settle this case. The settlement discussions included numerous in-person mediation sessions with detailed presentations given by attorneys representing each side, focusing first on liability and subsequently on damages, telephonic follow-up and in-person sessions, and face-to-face meetings between representatives of each side over the course of several months. The Parties reached an agreement in principle just weeks before trial, which was scheduled to begin on March 4, 2013. Even after reaching the agreement in principle, we engaged in over three more months of negotiations over the specific terms of the Stipulation.

12. As evidenced by the enormous effort and advocacy summarized above and described in greater detail herein, by the time the Settlement was reached, Co-Lead Counsel had a detailed and thorough understanding of the strengths and weaknesses of the case. We unequivocally believe, based on our knowledge and understanding of the claims and defenses asserted in this Action, that the $215 million Settlement is an outstanding result for the Class, particularly when considered against the very substantial risk of a much smaller recovery – or, even no recovery – after a trial of the Action, and the inevitable and lengthy appeals that would have followed, assuming success at trial.

13. As set forth in the attached declarations of J.G.H.C.M. Beris and J.A. Hendriks of ABP, Lutz Schleidt of IFM, John Keane of Jacksonville, and John Riehl of Detroit, Lead Plaintiffs endorse the Settlement. *See* Exs. B, C, D, E.

14. For all of the reasons set forth herein, including the excellent result obtained and the significant litigation risks, we respectfully submit that the Settlement and Plan of Allocation are "fair, reasonable and adequate" in all respects, and that the Court should approve them pursuant to Federal Rule of Civil Procedure Rule 23(e). For similar reasons, and for the additional reasons set forth in Section II below, we respectfully submit that an award of attorneys' fees up to the maximum amount of 28% of the settlement amount that the mediator can recommend and the requested reimbursement of litigation expenses, including the requested PSLRA awards to the Lead Plaintiffs, are also fair and reasonable, and should be approved.

I. PROSECUTION OF THE ACTION

A. FACTUAL BACKGROUND OF THE ACTION

15. This securities fraud class action was brought under the Securities Exchange Act of 1934 ("Exchange Act"). The Exchange Act Claims were brought against Merck; Richard Clark, Merck's Chief Executive Officer during the relevant period; Peter S. Kim, the President of Merck Research Laboratories; a joint venture formed by Merck and Schering ("M/SP") to develop and market the Vytorin drug at issue in the case; and Deepak Khanna, the General Manager of that joint venture. Lead Plaintiffs alleged that Defendants violated the Exchange Act by, *inter alia*, failing to disclose during the Class Period material information concerning the commercial prospects of Vytorin (a cholesterol-lowering drug that is a combination of a drug developed by Merck (Zocor) and a drug developed by Schering (Zetia)), and especially the results of a clinical trial known as ENHANCE that tested whether Vytorin was more effective than Zocor alone in reducing the build-up of arterial plaque. Unlike the securities case against

Merck's joint venture partner, Schering, the case against Merck did not include negligence-based claims brought under the Securities Act of 1933.

16. The ENHANCE trial, jointly sponsored by Merck and Schering, compared Vytorin and Zocor based on their ability to slow or reverse atherosclerosis, as measured by changes in study subjects' carotid artery intima-media thickness ("cIMT") over the course of 24 months. Vytorin on average lowers patients' low density lipoprotein or "bad" cholesterol more than Zocor. The hypothesis of the ENHANCE trial was that the more aggressive cholesterol-lowering with Vytorin would lead to more beneficial changes in patients' cIMT.

17. Lead Plaintiffs alleged that more than a year before the ENHANCE results were made public, Defendants conducted improper statistical analyses of ENHANCE trial results and thereby determined that there was no difference in the change of cIMT between subjects receiving Zocor and subjects receiving Vytorin. Lead Plaintiffs further alleged that Defendants thereafter made materially false and misleading statements concerning the ENHANCE trial and the commercial prospects of Vytorin and Zetia.

18. The material misstatements and omissions by Defendants, as set forth in the Complaint, are alleged to have caused Merck's securities to trade at distorted prices during the Class Period. Plaintiffs alleged that purchasers of Merck common stock and call options and sellers of Merck put options at these distorted prices were damaged when the truth about ENHANCE, and its implications for Merck's financial prospects, began to be disclosed in January 2008. The price distortion caused by Defendants' statements and omissions was allegedly removed through a series of partial disclosures made by Merck, by certain government entities, and through news and analyst reports and press releases between January and March 2008.

19. Defendants have denied all of Lead Plaintiffs' allegations and do not admit, as part of this Settlement, to any wrongdoing.

B. THE PROSECUTION OF THE ACTION

1. Co-Lead Counsel's Pre-Filing Investigation And Preparation Of The Complaint

20. Prior to filing the initial complaint, Co-Lead Counsel developed a plan to coordinate a thorough investigation of Lead Plaintiffs' claims, preserve relevant discovery, and access all relevant information from public and non-public sources. Both internal and external investigators employed by Co-Lead Counsel initially gathered all responsive public information concerning Lead Plaintiffs' claims. Marshaling these sources of information, Co-Lead Counsel developed leads for potential additional witnesses and, in conjunction with Co-Lead Counsel in the Schering matter, ultimately interviewed over 85 former Merck and Schering employees.

21. In addition to interviewing witnesses with helpful information, Co-Lead Counsel's coordinated pre-filing investigation included, among other things, a detailed review and analysis of (i) public filings with the SEC by Merck and Schering; (ii) research reports by securities and financial analysts; (iii) transcripts of investor conference calls; (iv) publicly available presentations by Merck and Schering; (v) press releases and media reports; (vi) economic analyses of securities price movements and pricing data; (vii) publicly available legal and Congressional actions involving both companies; and (viii) postings on a medical website called Cafépharma.

22. In addition, prior to the filing of the complaint, Co-Lead Counsel retained and consulted experts in cardiovascular medicine and in securities fraud damages to assist in developing the claims that would ultimately be asserted.

2. The Consolidated Class Action Complaint

23. On May 5, 2008, a class action complaint was filed against Merck and Clark in the United States District Court for the District of New Jersey.

24. After various proceedings with respect to consolidation and appointment of a lead plaintiff pursuant to the PSLRA, by Order dated July 2, 2008, Judge Dennis M. Cavanaugh appointed ABP, IFM, Jacksonville and Detroit to serve as Lead Plaintiffs and approved their selection of G&E and BLB&G to serve as Co-Lead Counsel. ECF No. 18.

25. On October 6, 2008, Lead Plaintiffs filed a 216-page Consolidated Class Action Complaint against Merck and Clark. ECF No. 24.

3. Defendants' Motion To Dismiss The Consolidated Class Action Complaint

26. On December 12, 2008, Defendants moved to dismiss the Consolidated Class Action Complaint, supported by a 40-page brief that attached nineteen exhibits totaling over 600 pages. ECF No. 40-1. Defendants argued, among other things, that the misstatements and omissions alleged by Lead Plaintiffs were immaterial as a matter of law, that Defendants' conduct had not caused Lead Plaintiffs' losses, and that Lead Plaintiffs had not adequately pleaded Defendants' scienter.

27. On February 2, 2009, Lead Plaintiffs filed their opposition to Defendants' motion to dismiss, arguing among other things that Lead Plaintiffs had pleaded materially false and misleading statements, loss causation, and scienter. ECF No. 47.

28. On April 9, 2009, Defendants filed their reply brief in further support of their motion to dismiss. ECF No. 58.

29. On September 2, 2009, the Court issued an Opinion and entered and Order denying Defendants' motion to dismiss in its entirety. ECF No. 64; ECF No. 65.

4. Lead Plaintiffs Secure Leave To Amend The Complaint

30. On June 3, 2011, Lead Plaintiffs filed a Motion For Leave To Amend, attaching a copy of a proposed First Amended Consolidated Class Action Complaint. ECF No. 150, 150-1.

31. On June 20, 2011, Defendants filed a limited opposition to this motion, objecting to the inclusion of several statements attributed to confidential witnesses. ECF No. 156.

32. On August 23, 2011, while the motion for leave to amend was pending, Lead Plaintiffs filed a letter with the Court attaching a "revised" proposed amended complaint. ECF No. 175.

33. By Order dated February 7, 2012, the Court granted Lead Plaintiffs' Motion For Leave To Amend, ECF No. 206, and on February 9, 2012, Lead Plaintiffs filed a Second Amended Consolidated Complaint. ECF No. 208. Defendants answered the Second Amended Complaint on February 23, 2012. ECF No. 214.

5. Lead Plaintiffs' Motion to Certify the Class

a) Class Discovery

34. On February 1, 2011, the Court issued an order setting a schedule for, among other things, class certification discovery and class certification briefing. ECF No. 120.

35. The motion for class certification was vigorously contested and entailed extensive discovery, much of which occurred before the filing of the motion. On April 12, 2010, in anticipation of Lead Plaintiffs' motion for class certification, Merck commenced extensive discovery by serving Lead Plaintiffs with document requests and interrogatories related to class issues. Defendants' discovery requests were extremely broad and included 48 separate requests for documents and 8 interrogatories.

36. In response to Defendants' discovery requests, Lead Plaintiffs produced thousands of pages of documents, including account statements, investment guidelines, and

investment manager reports. Co-Lead Counsel reviewed all of these documents for relevance and privilege.

37. Defendants then deposed six Rule 30(b)(6) representatives of the various Lead Plaintiffs. Co-Lead Counsel defended each of these depositions.

38. Defendants deposed two witnesses from Jacksonville: John Keane and Richard Cohee, on February 8, 2011 in New York, NY. These witnesses testified concerning Jacksonville's investment decisions, including the decision to invest in Merck, the allegations in the Complaint, and Jacksonville's decision to seek Lead Plaintiff status.

39. Defendants deposed two witnesses from IFM: Lutz Schleidt and Simon Boll, who were deposed on February 17, 2011 in New York, NY. These witnesses testified concerning IFM's investment decisions, including the decision to invest in Merck, the allegations in the Complaint, and IMF's decision to seek Lead Plaintiff status.

40. Defendants deposed Deirdre Ypma of ABP on May 13, 2011 in New York. Ms. Ypma testified concerning ABP's investment decisions, including the decision to invest in Merck, the allegations in the Complaint, and ABP's decision to seek Lead Plaintiff status.

41. Defendants deposed Walter Stampor of Detroit on March 29, 2011 in New York, NY. Mr. Stampor testified concerning Detroit's investment decisions, including the decision to invest in Merck, the allegations in the Complaint, and Detroit's decision to seek Lead Plaintiff status.

42. Defendants also sought discovery from the external investment advisers and portfolio managers that purchased Merck stock on Lead Plaintiffs' behalf during the Class Period. It is common for public pension funds to diversify their investment strategy by

apportioning their capital among a number of investment managers, who usually specialize in different asset classes – *e.g.*, equity, fixed income, emerging markets, etc.

43. Between December 2010 and March 2011, Defendants served subpoenas *duces tecum* on Advanced Investment Partners, Alliance Bernstein LP, Alpha Partners LLC, Atlanta Capital Management LLC, Barclays Global Investors Limited, Cooke & Bieler, L.P., Edgar Lomax Company, Fayez Sarofim & Co., Globalt, Inc., Goldman Sachs Asset Management International, INTECH Investment Management LLC, Investment Services Limited, Montag & Caldwell, LLC, Numeric Investors LP, Orbimed Advisors LLC, Palisades Partners, LLC, Piedmont Investment Advisors, LLC, State Street Global Advisors, T. Rowe Price Global, Thompson, Siegel & Walmsley Investment Management LLC, and UBS O'Connor LLC. Co-Lead Counsel worked with representatives of the Lead Plaintiffs' external investment advisors, and in many cases, separate counsel that the advisors or managers hired to represent them with respect to the subpoenas, to respond to the extensive discovery defendants sought. In addition, Co-Lead Counsel reviewed approximately 100,000 pages of documents produced by these external investment advisers.

44. Thereafter, at depositions held throughout the country, Defendants deposed the following representatives of the various advisors to the Lead Plaintiffs on the following topics:

(a) Numeric Investors LP provided Robert Furdak as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of ABP;

(b) Barclays Global Investors Ltd./Blackrock provided Elaine Moore as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of ABP;

(c) Advanced Investment Partners provided Doug Case as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of ABP;

(d) OrbiMed Advisors LLC provided Trevor Polischuk as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of ABP;

(e) Thompson Siegel & Walmsley Investment Management LLC provided Horace Whitworth as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Jacksonville;

(f) Thompson Siegel & Walmsley Investment Management LLC provided Jessica Thompson as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Jacksonville;

(g) Montag & Caldwell LLC provided Jeff Hagood as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Jacksonville;

(h) Montag & Caldwell LLC provided Piper Burnette as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Jacksonville;

(i) Piedmont Investment Advisors LLC provided Sumali Sanyal as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Detroit;

(j) INTECH Investment Management LLC provided Jennifer Young as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Detroit;

(k) Edgar Lomax Company provided Randall Eley as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Detroit;

(l) Atlanta Capital Management LLC provided Richard England as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Detroit;

(m) Palisades Partners LLC provided Quint Stills as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Detroit; and

(n) Globalt Inc. provided Gary Fullam as a 30(b)(6) witness regarding its investment policies and procedures and its transactions in Merck common stock on behalf of Detroit.

45. There was also considerable expert discovery taken in connection with the motion for class certification. The Parties submitted multiple expert reports in support of their respective positions. Lead Plaintiffs filed an expert report on market efficiency and loss causation by Gregg A. Jarrell, Ph.D., who conducted detailed event studies concerning Merck's stock price drops. Defendants then deposed Dr. Jarrell, and Lead Plaintiffs deposed Defendants' expert, Denise Neumann Martin, Ph.D.

b) Class Certification Briefing And Order

46. On February 7, 2011, Lead Plaintiffs moved to certify the class and to be appointed class representatives. ECF No. 121-1.

47. Lead Plaintiffs amended their motion for class certification on September 16, 2011. ECF No. 179.

48. On December 6, 2011, Defendants filed a 40-page opposition brief. ECF No. 195. Defendants challenged class certification on numerous grounds, including the definition of the Class, Lead Plaintiffs' adequacy and typicality, and loss causation with respect to various disclosures.

49. On January 31, 2012, Lead Plaintiffs filed a 25-page reply brief in further support of their motion. ECF No. 203.

50. By Order filed September 25, 2012, the Court granted Lead Plaintiffs' motion and certified the Action as a class action (the "Class Certification Order"). ECF No. 251. The Court issued a 20-page opinion outlining its reasons for granting Lead Plaintiffs' motion for class certification (the "Class Certification Opinion"). ECF No. 250.

51. On October 9, 2012, Defendants sought permission to appeal the Class Certification Order to the United States Court of Appeals for the Third Circuit under Fed. R. Civ. P. 23(f). Defendants requested that the Third Circuit review the District Court's ruling on the

ground that the District Court erred by declining to resolve a factual dispute regarding the length of the Class Period.

52. After extensive briefing, on January 7, 2013, the Third Circuit issued an Order denying Defendants' Rule 23(f) petition.

53. In connection with the Court's certification of the Class, on December 27, 2012, Lead Plaintiffs filed a letter seeking approval of the Notice and Summary Notice of Pendency of Class Action. ECF No. 271. On December 28, 2012, the Court approved the Class Notice prepared by Co-Lead Counsel. ECF No. 272. Beginning with the initial mailing on January 17, 2013, nearly 730,000 Class Notices were mailed to potential Class Members. *See* Declaration of Stephanie A. Thurin Regarding (A) Mailing Of The Settlement Notice And Proof Of Claim And (B) Report On Opt-In Requests Received To Date (the "Epiq Decl."), at ¶¶ 5-8 (Exhibit F). The Class Notice notified potential Class Members of, among other things: (i) the Action pending against the Defendants; (ii) the Court's certification of the Action to proceed as a class action on behalf of the Court-certified Class; and (iii) their right to request to be excluded from the Class, the effect of remaining in the Class or requesting exclusion, and the requirements for requesting exclusion. As set forth on Appendix 1 to the Stipulation, one hundred eighty eight (188) requests for exclusion from the Class were received in connection with the Class Notice.

6. Lead Plaintiffs' Extensive Fact Discovery Efforts

54. Through the course of extensive and hotly contested discovery, Lead Plaintiffs, through the efforts of Co-Lead Counsel, were able to develop strong evidentiary support for the claims asserted in the Complaint. The results achieved for the Class would not have been possible in the absence of these discovery efforts.

55. After the motion to dismiss was decided in September 2009, formal fact discovery began. Lead Plaintiffs served 35 documents requests on Defendants. In addition, Lead Plaintiffs served interrogatories on Defendants.

56. Further, Lead Plaintiffs gathered evidence from numerous non-parties and served subpoenas *duces tecum* on 7 non-parties, including clinical imaging firms, informatics and technology firms, industry intelligence firms, and crisis management firms engaged or retained by Defendants in connection with the ENHANCE trial or the marketing of Vytorin and Zetia.

57. By Order dated December 22, 2009, the Court ordered that fact discovery be completed by April 30, 2011. ECF No. 84. By subsequent Order, this date was extended to August 1, 2011. ECF No. 120.

58. In response to Lead Plaintiffs' document requests and subpoenas, Defendants and non-parties produced more than 12 million pages of documents.

59. Co-Lead Counsel dedicated extensive resources and used cutting-edge technology to review, organize and analyze the vast amount of information produced by Parties and non-parties, but they also recognized that significant efficiencies both in terms of time and money could be achieved by coordinating discovery efforts with the parallel action *In re Schering-Plough Corporation/ENHANCE Securities Litigation*, No. 08-397 (DMC) (JAD) ("*Schering*").

60. Co-Lead Counsel in this Action and in *Schering* developed a joint discovery program for the review of documents and the taking of depositions. This approach, among other things, allowed for a larger overall team of attorneys to review the documents and for the teams to seamlessly share information with each other and with more senior lawyers in each case. This increased the efficiency of the document review in both cases by eliminating redundancy and duplicated efforts and facilitated not only the review of documents but the efficient preparation

for depositions as well. Thus, areas of responsibility both as to document review and depositions were allocated among attorneys in both actions.

61. Additionally, the classes in the respective actions also realized significant cost savings as the documents produced by all Parties and non-parties were placed in a shared electronic document depository hosted by Merrill Corporation ("Merrill"), one of the leading litigation technology support companies, that was hired by co-lead counsel in the Action and *Schering*.

62. The electronic document depository allowed Plaintiffs' Counsel (as well as plaintiffs' counsel in *Schering*) to search the documents through "Boolean" type searches (*i.e.*, the type of searches used in the Westlaw and Lexis-Nexis databases), as well as by multiple categories, such as by author and/or recipients, type of document (*e.g.*, emails, memoranda, SEC filings), date, bates number, etc. The electronic database was accessible through the Internet, allowing attorneys in this Action and *Schering* under the direction and supervision of their respective Co-Lead Counsel to review documents and coordinate discovery remotely. For example, when attorneys in one location identified "hot" documents, that designation was saved so attorneys in other locations would be aware of which documents carried that designation and could immediately review them.

63. Co-Lead Counsel achieved substantial savings by working primarily electronically (saving significant copying costs), and by sharing the costs of electronic data storage with the plaintiffs in *Schering*.

64. To review Defendants' enormous document production, a team of attorneys from Plaintiffs' Counsel in this Action as well as a team in the *Schering* Action was assembled and thorough document review guidelines and protocols were prepared for them. These attorneys

worked full-time on this project to complete the document review and analysis as quickly and efficiently as possible. The attorneys conducted their review with direct guidance from senior attorneys. The review was structured to limit overall cost, with the bulk of the initial review being conducted by more junior attorney employees.

65. All aspects of the review by attorneys in the Action were carefully supervised by Co-Lead Counsel to eliminate inefficiencies and to insure a high-quality work-product. This supervision included multiple in-person training sessions, the drafting of a detailed "document review manual," presentations regarding the key legal and factual issues in the case, and in-person instruction from senior attorneys and experts. The training sessions were supplemented by weekly conferences with senior attorneys at both Co-Lead Counsel firms as well as conferences with counsel in *Schering* to discuss important documents and case strategy.

66. Moreover, the "hot" documents identified were all subject to further analysis and assessment by senior attorneys (with the assistance of Lead Plaintiffs' experts) on an on-going basis. In addition, samplings of documents coded as "relevant" and "non-relevant" were reviewed by those same senior attorneys to provide quality control, *i.e.*, to make certain that the more junior attorneys' assessments were accurate.

67. In addition to reviewing more than 12 million pages of documents and taking and defending depositions related to class discovery as described above, Lead Plaintiffs took more than 50 depositions of fact witnesses and 30(b)(6) witnesses, some of which were two-day depositions.

68. These depositions include, among others:

(a) Defendant Richard Clark, former Merck CEO;

(b) Fred Hassan, former Schering CEO;

(c) Arthur Hirt, Merck Vice President of Marketing;

(d) Matthew Arm, Marketing Director for Merck;

(e) Soren Bo Christiansen, General Manager of the Merck/Schering joint venture in Europe;

(f) Deepak Khanna, General Manager of the Merck/Schering joint venture;

(g) Elizabeth Stoner, Merck's Senior Vice President of Global Clinical Development Operations;

(h) Drs. Wang, Shi, and Yang, former Schering biostatisticians; and

(i) Drs. Michiel Bots, John J.P. Kastelein and Eric de Groot, third-party witnesses affiliated with the ENHANCE study, whose depositions took place in the Netherlands after a Hague Motion.

69. In preparing for these depositions (and for possible trial), Co-Lead Counsel undertook extensive efforts to analyze the complex medical, scientific and statistical issues that are integral to Lead Plaintiffs' claims, as well as issues related to proving loss causation and the damages. Co-Lead Counsel and their experts devoted considerable time and effort to learning and analyzing: (i) the principles of conducting clinical trials and the protocol for the ENHANCE study; (ii) the interim and final results of the ENHANCE study; (iii) information relating to collection, transmittal, storage and analysis of data gathered during the course of the ENHANCE study, including the use of the "SAS" platform in connection with statistical analyses; (iv) internal Schering and Merck documents and scientific literature concerning the pharmacodynamics of Vytorin, Zetia, Zocor, other cholesterol drugs in the "statin" class, and other cholesterol-lowering medications; (v) internal Schering and Merck documents and scientific literature relating to complex statistical concepts and methods; and (vi) information relating to the marketing practices of Schering and Merck and M/SP relating to their cholesterol franchise.

70. The parties also exchanged and served extensive contention interrogatories. Specifically, on June 3, 2011, Defendants served Plaintiffs with 15 contention interrogatories. Plaintiffs served over 138 pages in response. Plaintiffs also served Defendants with hundreds of requests for admission regarding the authenticity and business record status of certain discovery materials.

7. Extensive Expert Discovery

71. The parties exchanged 18 opening and rebuttal reports from 9 experts accompanied by thousands of pages of exhibits.

72. On September 15, 2011, Lead Plaintiffs served expert reports to Defendants from the following individuals:

Expert	**Subject Area**
Gregg A. Jarrell, Ph.D.	Damages, Market Efficiency, Loss Causation, Valuation Analyses
Curt D. Furberg, M.D., Ph.D.	Clinical Trial Standards, Clinical Trial Design, Clinical Trial Data Analyses, Publication of Clinical Trial Results
David B. Madigan, Ph.D	Biostatistics, Clinical Trial Standards Relating To Blinded Data, Clinical Trial Data Quality and Reliability
Allan J. Taylor, M.D., F.A.C.C, F.A.H.A.	Cardiology, Clinical Trial Standards, Imaging Trials, cIMT Methodology, Surrogate Clinical Markers

73. On September 15, 2011, Defendants served expert reports to Lead Plaintiffs from the following individuals:

Expert	Subject Area
Arnold Barnett, Ph.D.	Statistics, Clinical Trial Data Quality and Reliability
Marc Cohen, M.D., F.A.C.C,	Cardiology, Surrogate Clinical Markers, Publication of Clinical Trial Results
Eva Lonn M.D., M.Sc., F.R.C.P.C., F.A.C.C.	Cardiology, Surrogate Clinical Markers, Imaging Trials, cIMT Methodology, Publication of Clinical Trial Results
Denise Neumann Martin, Ph.D.	Damages, Market Efficiency, Loss Causation, Valuation Analyses
Robert Starbuck, Ph.D.	Biostatistics, Clinical Trial Data Quality and Reliability, Clinical Trial Data Cleaning

74. On October 28, 2011, the parties served rebuttal expert reports drafted by each of the expert witnesses identified above.

75. Expert depositions commenced in November, 2011. The parties took and defended a total of 9 expert depositions.

76. Lead Plaintiffs deposed Defendants' experts, as follows:

Deponent	Deposition Date(s)	Location
Arnold Barnett, Ph.D.	12/09/2011	New York, NY
Marc Cohen, M.D., F.A.C.C,	12/13/2011	New York, NY
Eva Lonn M.D., M.Sc., F.R.C.P.C., F.A.C.C.	12/21/2011	New York, NY
Denise Neumann Martin, Ph.D.	12/08/2011[4]	New York, NY
Robert Starbuck, Ph.D.	12/15/2011	New York, NY

77. Defendants deposed the following Lead Plaintiffs' experts, as follows:

Deponent	Deposition Date(s)	Location
Gregg A. Jarrell, Ph.D.	11/11/2011	New York, NY
Curt D. Furberg, M.D., Ph.D.	01/10/2012	New York, NY
David B. Madigan, Ph.D	11/22/2011	New York, NY
Allan J. Taylor, M.D., F.A.C.C,	12/16/2011	Washington, DC

[4] Dr. Martin was deposed for two days. One day was in connection with the Schering case and one day was in connection with the Merck case.

Deponent	Deposition Date(s)	Location
F.A.H.A.		

78. Lead Plaintiffs' scientific, medical, and statistical experts were essential to the development of their claims. Lead Plaintiffs allege that biostatisticians from the Merck/Schering joint venture conducted improper statistical analyses, in violation of accepted clinical trial standards, thereby learning the results of the ENHANCE study before it was proper to do so. The opinions of Drs. Madigan, Furberg and Taylor were necessary to support Lead Plaintiffs' claims that (i) conducting such analyses on "blinded" clinical trial data was improper, and (ii) the analyses revealed that Vytorin had failed to outperform Zocor.

8. Defendants' Motion For Summary Judgment

79. On March 1, 2012, Defendants moved for summary judgment. ECF Nos. 216 through 220. In support, Defendants submitted 36 pages of briefing, a 12-page Rule 56.1 statement, and 42 exhibits.

80. Defendants argued that summary judgment should be granted because Lead Plaintiffs could not prove loss causation as to any alleged corrective disclosure after January 15, 2008.

81. On April 6, 2012, Lead Plaintiffs submitted their opposition to the motion, including 40 pages of opposition briefing, 85 pages of Rule 56.1 statements, and 238 exhibits. ECF No. 231, 233.

82. In their opposition to Defendants' motion, Lead Plaintiffs argued that Defendants misstated the standard for loss causation, and argued that a reasonable jury would find all alleged disclosures made from January 14, 2008 to March 30, 2008 were true corrective disclosures.

83. Defendants filed a 15-page reply brief in further support of their summary judgment motion, reiterating the arguments in their main briefs. ECF No. 241.

84. In an Order dated September 25, 2012, the Court denied Defendants' motion for summary judgment. ECF No. 252.

9. The Parties' Extensive Pretrial Order

85. By Order dated August 6, 2012, the Court set the trial to begin on November 3, 2012. ECF No. 244. At a September 25, 2012 status conference, the Court postponed (at Defendants' request and over Co-Lead Counsel's objection) the trial of the Action to March 4, 2013. ECF No. 253. By Order dated October 4, 2012, the Court set a February 5, 2013 deadline for the submission of a joint final pre-trial order ("Pretrial Order"), and set the final pre-trial conference for February 7, 2013. ECF No. 324.

86. On January 8, 2013, the parties exchanged extensive proposed Pretrial Order materials, including thousands of proposed trial exhibits, designated deposition testimony, hundreds of proposed stipulated facts, proposed summaries of expert qualifications, proposed jury instructions and verdict forms, proposed legal issues, witness lists, and proposed voir dire questions.[5] The Parties exchanged objections to proposed Pretrial Order materials, and supplemental exhibits and deposition designations on January 22, 2013 and January 28, 2013. The parties thereafter conducted numerous meet and confers.

87. On February 5, 2013, the Parties jointly filed the Pretrial Order with the Court. Lead Plaintiffs (together with Co-Lead Plaintiffs in the Schering action) identified, among other things, 46 potential witnesses expected to testify live or by video, 213 stipulated facts, stipulated

[5] The Parties submitted competing sets of jury instructions and verdict forms offering in critical respects fundamentally divergent views of the applicable law.

by Lead Plaintiffs in the *Merck* and *Schering* actions and Defendants, and 51 proposed jury instructions, including 17 jointly proposed with Defendants.

88. Also on February 5, 2013, Lead Plaintiffs and Defendants separately filed trial briefs outlining their respective cases in chief and key legal and factual issues to be decided.

10. *Daubert* Motions

89. On January 14, 2013, Lead Plaintiffs were served with two motions by Defendants challenging the opinions and qualifications of their four expert witnesses.

90. Lead Plaintiffs filed their oppositions to these *Daubert* briefs on February 4, 2013. The Parties reached a settlement in principle prior to the filing of reply papers.

11. Motions *In Limine*

91. On February 1, 2013, Lead Plaintiffs filed 23 motions *in limine*. Lead Plaintiffs sought to exclude, among other things: (i) evidence and argument regarding the contention that Merck and Schering are good corporate citizens, including references to Merck's and Schering's mission to extend and enhance human life; (ii) evidence and argument regarding Merck's employment of thousands of New Jersey residents; (iii) evidence and argument regarding post-class period results of government investigations into Defendants after the release of the ENHANCE study results; and (iv) evidence and argument regarding the size of other pending clinical trials relating to Vytorin.

92. Also on February 1, 2013, Defendants served Lead Plaintiffs with seven motions *in limine*. Defendants sought to exclude, among other things: (i) settlements or allegations of misconduct relating to Vioxx or other unrelated drugs; (ii) evidence and argument regarding the Congressional investigation into the ENHANCE study; (iii) evidence and argument regarding certain internet message board postings; (iv) purported opinion testimony of two physicians who spoke publicly about the ENHANCE results during the Class Period; (v) evidence or argument

regarding the merger between Merck and Schering, the personal wealth of Defendants, or the decision of a certain physician to "cut ties" with Merck; and (vi) evidence or argument concerning a purported link between Vytorin and cancer.

93. The Parties reached a settlement in principle prior to the filing of opposition papers.

12. Trial Preparation And Other Pretrial Motions

94. Lead Plaintiffs retained a jury consultant and trial graphics company for trial. Together with the jury consultant, Lead Plaintiffs conducted an extensive multi-day mock trial exercise specifically for this Action. Lead Plaintiffs also worked with their jury consultant on the proposed jury instructions, verdict forms and voir dire, and to develop numerous demonstratives for trial.

95. Lead Plaintiffs also prepared, or were in the process of preparing, drafts of trial examination for the current and former individual defendants, experts, and other current and former employees of Merck and Schering.

96. In addition, on February 1, 2013, Lead Plaintiffs filed a motion to bifurcate the trial. ECF No. 289. Lead Plaintiffs proposed addressing all class-wide issues in the first phase of the trial, and addressing all individual reliance issues relating to Lead Plaintiffs in the second phase. The accompanying 37-page brief also served as an opposition to Defendants' January 14, 2013 motion to bifurcate. Defendants also proposed separating the class-wide issues from individual issues relating to Lead Plaintiffs, but argued that Defendants should be able to introduce evidence relating to Lead Plaintiffs' investment decisions in the first phase of trial.

97. The Parties reached a settlement in principle prior to the filing of reply papers.

C. RISKS REGARDING LIABILITY AGAINST DEFENDANTS

98. At the time the Settlement was reached, the Parties were approximately three weeks away from trial. Lead Plaintiffs and Co-Lead Counsel had a thorough understanding of the strengths and weaknesses of the Action. While Lead Plaintiffs and Co-Lead Counsel believe that the claims asserted against the Defendants have merit, they also recognize that there were considerable risks involved in pursuing the Action.

99. Co-Lead Counsel's investigation and discovery with respect to both liability and damages issues, legal analyses, and jury research all enabled Lead Plaintiffs and Co-Lead Counsel to thoroughly understand and evaluate the strengths and weaknesses of the claims and the risks of continued litigation, and accordingly to enter into the Settlement on a fully informed basis.

100. Lead Plaintiffs and Co-Lead Counsel considered, among other things: (i) the substantial cash benefit to Settlement Class Members under the terms of the Agreement; (ii) the risks and expense of bringing the Action to trial; (iii) the risk of not prevailing on some or all claims; (iv) the difficulties and risks involved in proving the claims at trial, including the difficulties of proving (a) materiality with respect to the ENHANCE trial, (b) scienter, and (c) loss causation where, as here, the disclosures regarding the ENHANCE study occurred over an extended period of time; (v) that, even if Lead Plaintiffs prevailed at trial, any monetary recovery could potentially have been less than the Settlement Amount; (vi) the delays inherent in such litigation, including appeals; and (vii) the risks of presenting an exceedingly complex and fact-intensive case to a jury.

101. Lead Plaintiffs' claims presented significant risks given, among other things, the highly complex nature of the alleged fraud here at issue. To prove their case, Lead Plaintiffs needed to establish that Schering biostatisticians working for the Merck/Schering joint venture

conducted improper statistical analyses on unblinded data from the ENHANCE study, and were then able to conclude, based on their knowledge of statistical methods, that the ENHANCE study had failed. These alleged violations of complex practices related to the conduct of clinical trials might not be easily understood by a jury and were vigorously disputed by Defendants who offered a plausible alternate explanation supported by experts and numerous exhibits, specifically that Defendants were focused on improving data quality and not improperly learning the ENHANCE results. Moreover, because these biostatisticians were Schering employees, Plaintiffs faced a very real risk that jury would have been unwilling to impose liability of Merck for their conduct.

102. Further, even if improper actions were proven, Lead Plaintiffs faced the very real risk that a jury would conclude that Defendants did not act with the requisite scienter. The statistical analyses described above were conducted by junior employees of Schering, who were several steps removed from the senior officers of Schering, let alone of Merck. Lead Plaintiffs were forced to rely on circumstantial evidence to show that Defendants were aware that the ENHANCE study had failed. Without a true "smoking gun" showing actual scienter, a jury may have concluded that Lead Plaintiffs did not adequately prove this element of their case.

103. The difficulty of establishing scienter was compounded here by the fact that Defendants would have been able to buttress their assertion that they did not engage in any wrongdoing in connection with the ENHANCE trial or the marketing of Vytorin and Zetia, by citing to the facts that, although Congress launched an investigation into the conduct of the trial, that investigation produced no findings adverse to Defendants and, similarly, although the FDA scrutinized the management of the ENHANCE trial, it also made no adverse findings.

104. In addition, Lead Plaintiffs faced a significant risk in establishing loss causation and resulting damages. If a jury were to find that any of the alleged corrective disclosures identified in the Complaint were not true corrective disclosures, the potential recovery for the Class would be significantly diminished. Specifically, Lead Plaintiffs faced significant risk of a jury finding that the alleged fraud was fully cured as of January 14, 2008, when the top-line results of the ENHANCE study were publicly disclosed, yet the price of Merck's stock did not decline in a statistically significant amount. Plaintiffs alleged that the market remained uncertain until March 30, 2008 as to what the full ENHANCE results would reveal. However, if the Defendants were able to convince the jury that no new material information relating to the alleged fraud was publicly disclosed after January 14, 2008, the jury could very well have ended the Class Period on that date, resulting in no recoverable damages for the Class.

D. RISKS ATTENDANT TO TRIAL

105. In addition to specific liability risks in this action and the usual uncertainties attendant to placing complex issues before a jury, a trial of this case presented many specific risks. All of the key fact witnesses in this Action who Plaintiffs would have used to present evidence at trial were adverse witnesses, including Defendant Clark and current and former Merck and Schering officers.

106. Moreover, given the complex nature of this Action, Lead Plaintiffs intended to rely heavily on their scientific experts. At the time the Settlement was reached, the Parties had exchanged *Daubert* motions in which Defendants were seeking to exclude all or most of the testimony that Plaintiffs intended to offer through these experts. Had Defendants prevailed in excluding any of this testimony, the presentation of many aspects of Plaintiffs' case would have been extremely difficult, thereby increasing the risks at trial.

107. In addition, at the time the Settlement was reached, the Parties had also briefed *in limine* motions through which Defendants sought to exclude key evidence. If Defendants succeeded on these motions, it would have presented enormous obstacles to Plaintiffs' presentation of their claims.

108. Even if Lead Plaintiffs were successful in obtaining a jury verdict on all or part of their claims, it was a foregone certainty that a jury verdict would have been just the beginning of a long appellate process. Given the novelty of the issues concerning materiality, damages, and the duties attendant under Section 10(b), a long and arduous appellate process, with the possibility of reversal, presented extreme risk to the Class of actual recovery.

E. THE PARTIES' SETTLEMENT NEGOTIATIONS

109. As mentioned above, the $215 million cash Settlement is the third largest settlement ever obtained against a pharmaceutical manufacturer in a securities fraud class action, and among the top 50 securities fraud class action settlements of all time. As a point of comparison, the same common nucleus of operative facts that form the basis of Lead Plaintiffs' allegations in the Action were also investigated by multiple state and federal agencies. Of those investigations, the only monetary recovery achieved was a $5.4 million settlement by a coalition of 36 state attorneys general, a recovery of 2.5% of the proposed $215 million Settlement. Furthermore, there were no criminal or SEC claims brought against any Defendant, no restatement filed, no Congressional findings of wrongdoing and no negative FDA findings. In addition, Vytorin, the drug at issue, was never withdrawn from the market; there were no allegations that Vytorin was unsafe to use; and Merck and Schering continued to sell billions of dollars of the drug during the Class Period and to date.

110. The proposed Settlement was reached only after a lengthy mediation process that began more than two years ago. At different points in time, three well-respected and highly

experienced mediators contributed their efforts to resolve Lead Plaintiffs' claims, collectively holding dozens of formal and informal discussions and formal mediation sessions.

111. In early 2011, the parties jointly agreed to mediate before the Honorable Layn R. Phillips (Ret.). Judge Phillips conducted three mediation sessions in 2011 and spoke with counsel for the parties on numerous other occasions. Lead Plaintiffs' first formal mediation session with Judge Phillips occurred in April 2011. Prior to the initial session with Judge Phillips, Lead Plaintiffs and Defendants exchanged detailed mediation statements, each attaching more than 100 exhibits. The initial mediation session was attended by representatives from Lead Plaintiffs, representatives from Merck and their counsel, representatives and counsel for Lead Plaintiffs in the *Schering* action, and representatives from Defendants' insurance carriers. That mediation was not successful. A second mediation session took place in July 2011, and was attended by the same representatives as those at the April 2011 session. Supplemental mediation statements, outlining new discovery taken to date, were exchanged. This mediation session was not successful.

112. In February 2012, the Court appointed the Honorable Nicholas H. Politan (Ret.) as an additional mediator to facilitate settlement discussions, but Judge Politan passed away shortly after his appointment. In May 2012, the Court appointed Stephen M. Greenberg and Jonathan J. Lerner of Pilgrim Mediation Group to facilitate the discussions.

113. In mid-2012, the parties began meeting informally with Pilgrim Mediation Group. Messrs. Greenberg and Lerner conducted separate sessions with Lead Plaintiffs and Defendants in person or by telephone on multiple occasions in May, June, July, August and September 2012, and the Court convened an in-person mediation session at the courthouse in Newark, New Jersey on September 7, 2012. The Lead Plaintiffs attended the in-person September 7, 2012 mediation

session and were actively involved in all the mediation discussions. These mediation sessions were also unsuccessful.

114. In January 2013, as the trial date approached, Messrs. Greenberg and Lerner re-started the process of separate in-person and telephone discussions with Lead Plaintiffs and Defendants. After several discussions, on February 1, 2013, Messrs. Greenberg and Lerner transmitted to both sides a final, "take-it-or-leave-it" mediators' recommendation of a cash settlement of $215 million. This was the mediators' recommendation of a settlement amount that would be fair to both the Class and the Defendants. The mediators informed the parties that the $215 million amount was not subject to any negotiation, and gave the parties a deadline to either accept or reject the proposal. On Monday, February 11, 2013, the mediators confirmed that Lead Plaintiffs and Defendants had accepted the mediators' recommendation.

115. On February 25, 2013, the Parties executed a Memorandum of Understanding. The formal Settlement Agreement and exhibits were then drafted over the following months, following numerous negotiating sessions, both by phone and in person, regarding the precise settlement terms.

F. PLAN OF ALLOCATION

116. Pursuant to the Preliminary Approval Order, and as set forth in the Settlement Notice, all Class Members who want to participate in the distribution of the Net Settlement Fund (*i.e.*, the Settlement Fund less (a) any Taxes, (b) any Notice and Administration Costs, (c) and Litigation Expenses awarded by the Court, and (d) any attorneys' fees awarded by the Court) must submit a valid Proof of Claim and all required information postmarked no later than November 18, 2013. As provided in the Settlement Notice, the Net Settlement Fund will be distributed according to the plan of allocation approved by the Court.

117. The proposed Plan of Allocation is designed to achieve an equitable and rational distribution of the Net Settlement Fund, but it is not a formal damages analysis that would have been submitted at trial. Co-Lead Counsel developed the Plan of Allocation in consultation with Forensic Economics and Dr. Gregg Jarrell, Lead Plaintiffs' damages expert, and believe it provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

118. In developing the Plan of Allocation, Lead Plaintiffs' damages expert calculated the reasonable amount of artificial inflation present in the per share closing prices of Merck common stock and call options (and artificial deflation in the per share closing prices of sold Merck put options) throughout the Class Period that was purportedly caused by the alleged fraud. The damages expert's analysis entailed studying the price decline in Merck common stock and call options (and price increase in the sold Merck put options) associated with the alleged corrective disclosures, adjusted to eliminate the effects attributable to general market or industry conditions. In this respect, artificial inflation tables were created and presented as part of the Settlement Notice for Merck common stock and call options (and artificial deflation tables in the per share closing prices of Merck put options). These tables will be utilized in calculating Recognized Loss Amounts for Authorized Claimants.

119. Epiq Systems, Inc. ("Epiq"), as the Court-approved Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim (defined in the Plan of Allocation as the total of the Claimant's Recognized Loss Amounts) compared to the aggregate Recognized Claims of all Authorized Claimants, as calculated in accordance with the Plan of Allocation. Calculation of the Recognized Claim will depend upon several factors, including when the Authorized

Claimant's common stock or call options were purchased (or put options were sold) during the Class Period, whether these securities were purchased (or sold) during the Class Period, and if so, when.

120. The proposed Plan of Allocation was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants based on the amount of alleged artificial inflation present in Merck common stock and call options (and artificial deflation in Merck put options) that was purportedly caused by the Defendants' alleged violations of the federal securities laws during the Class Period and the risks of recovery. Accordingly, Co-Lead Counsel respectfully submit that the proposed Plan of Allocation is fair and reasonable and should be approved.

G. LEAD PLAINTIFFS' COMPLIANCE WITH THE COURT'S ORDER REQUIRING ISSUANCE OF NOTICE OF THE SETTLEMENT TO CLASS MEMBERS AND CLASS REACTION TO DATE

121. The terms of the Settlement are set forth in the Stipulation and in the Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Settlement Notice"), which provides Class Members with information on the terms of the Settlement and, among other things, their right to object to any aspect of the Settlement, the Plan of Allocation, or the Fee and Expense Application; and the manner for submitting a Proof of Claim in order to be eligible for a payment from the proceeds of the Settlement and of their right to opt-back into the Class.[6] The Settlement Notice also informs Class Members of Co-Lead Counsel's intention

[6] As set forth in the Preliminary Approval Order, Persons who previously submitted a request for exclusion from the Class may elect to opt-back into the Class and be eligible to receive a payment from the Settlement, but a Person may not opt-back into the Class for the purpose of objecting to any aspect of the Settlement, the Plan of Allocation, or Co-Lead Counsel's request for attorneys' fees and reimbursement of Litigation Expenses. *See id.* ¶10 and Settlement Notice at response to Question 18 (ECF No. 330 Preliminary Approval Order Ex. 1).

to apply for an award of attorneys' fees in an amount not to exceed 28% of the Settlement Fund (which includes accrued interest), and for reimbursement of litigation expenses in an amount not to exceed $5,000,000, plus interest, which would include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Class in an amount not to exceed $175,000.

122. On June 7, 2013, the Court entered the Order Preliminarily Approving Proposed Settlement and Providing for Notice (the "Preliminary Approval Order"), which approved the form and content of the Settlement Notice.

123. Pursuant to the Preliminary Approval Order, the Court authorized Co-Lead Counsel to retain Epiq as Claims Administrator in the Action and instructed Epiq to disseminate copies of the Settlement Notice and Proof of Claim (the "Settlement Notice Packet") by mail and to publish the Summary Settlement Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Settlement Notice"). The Preliminary Approval Order also set an August 5, 2013 deadline for Class Members to submit objections to the Settlement, the Plan of Allocation or the Fee and Expense Application or to opt-back into the Class.

124. On June 21, 2013, Settlement Notice Packets were mailed to 689,892 potential Class Members and to 2,237 Nominees listed in Epiq's proprietary nominee database, by first-class mail. *See* Epiq Decl. ¶ 6.

125. Epiq received additional request for Settlement Notice Packets from nominees and other individuals. From the Notice Date through July 1, 2013, Epiq mailed an additional 44 copies of the Settlement Notice Packet to potential members of the Class whose names and

addresses were provided by individuals or Nominees, and mailed another 37,122 Settlement Notice Packets to Nominees who requested Settlement Notice Packets to Nominees who requested Settlement Notice Packets in bulk for forwarding to their customers. *Id.* ¶ 7.

126. As of July 1, 2013, Epiq has disseminated a total of 729,295 Settlement Notice Packets to potential Class Members and Nominees by first-class mail. *Id.* ¶ 8.

127. On July 2, 2013, Epiq caused the Summary Settlement Notice to be published in the national edition of *The Wall Street Journal* and to be transmitted over *PR Newswire*. *Id.* ¶ 9.

128. Epiq also posts information regarding the Settlement on a dedicated website established for the Action, www.merckvytorinsecuritieslitigation.com, to provide Class Members with information concerning the Settlement, as well as downloadable copies of the Settlement Notice Packet and the Stipulation. *Id.* ¶ 13.

129. As set forth above, the deadline for Class Members to file objections to the Settlement, the Plan of Allocation and/or the Fee and Expense Application or to opt back into the Class is August 5, 2013. To date, no objections to the Settlement, the Plan of Allocation or Co-Lead Counsel's Fee and Expense Application have been received and no requests to opt-back into the Class have been received. *Id.* ¶ 14. Co-Lead Counsel will file reply papers on August 13, 2013 that will address any objections and opt-in requests that may be received.

II. CO-LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

130. In addition to seeking final approval of the Settlement and Plan of Allocation, Co-Lead Counsel has moved on behalf of Plaintiffs' Counsel for a fee award from the Settlement Fund. In light of the fact that the amount of attorneys' fees to be awarded will be initially recommended to the Court by the Court-appointed, independent Special Masters, Co-Lead Counsel has not applied for a specific fee amount. Three of the four Lead Plaintiffs expressly

support an award of fees amounting to 28% of the Settlement Fund, and the fourth Lead Plaintiff takes no position on the amount of the fee, and instead defers to the discretion of the Special Masters and the Court.

131. Co-Lead Counsel also request reimbursement of expenses incurred in connection with the investigation, prosecution, and resolution of the Action from the Settlement Fund in the amount of $4,367,376.95, well below the $5,000,000 maximum expense amount the Class was advised could be requested. Co-Lead Counsel further request reimbursement of the costs and expenses incurred by Lead Plaintiffs, pursuant to 15 U.S.C. § 78u-4(a)(4), directly related to their representation of the Class in the total amount of $109,865.31 (as detailed in paragraphs 162-164, below), an amount well below the maximum $175,000 in Lead Plaintiff costs and expenses the Class was advised could be requested. The legal authorities supporting the request for an award of fees and expenses are set forth in Co-Lead Counsel's separate Fee Memorandum. Below is a summary of the primary factual bases for Co-Lead Counsel's requested fees and expenses.

A. AN AWARD OF FEES UP TO 28% WOULD BE FAIR AND REASONABLE

132. The work undertaken by Co-Lead Counsel in investigating and prosecuting this case and arriving at the present Settlement in the face of substantial risks has been time-consuming and challenging. As more fully set forth above, the Action settled only after Co-Lead Counsel overcame multiple legal and factual challenges and the Parties had litigated the case to the eve of trial. Among other efforts, Co-Lead Counsel conducted an extensive investigation into the Class's claims; researched and prepared a detailed amended complaint; successfully opposed Defendants' motion to dismiss; successfully moved for class certification, and opposed Defendants' effort to appeal the Court's Class Certification order; consulted extensively with experts and consultants; obtained, organized and reviewed more than 12 million pages of

documents obtained from Defendants and non-parties, and took over 50 and defended more than 20 depositions; successfully opposed Defendants' motion for summary judgment; prepared for trial scheduled to begin on March 4, 2013, and engaged in a hard-fought and protracted settlement process with experienced defense counsel.

133. At all times throughout the pendency of the Action, Co-Lead Counsel's efforts were driven and focused on advancing the litigation to bring about the most successful outcome for the Class, whether through settlement or trial. The substantial time and expense incurred by Co-Lead Counsel have achieved precisely such an outcome, and accordingly, this factor weighs strongly in favor of Co-Lead Counsel's Fee Application.

1. A Lodestar Cross-Check Confirms The Reasonableness Of Co-Lead Counsel's Fee Application

134. As described in the Fee Memorandum, the requested fee award is not only fair and reasonable under the percentage method but confirmed by a lodestar cross-check.

135. Attached hereto as Exhibits G thru L are declarations from Plaintiffs' Counsel[7] in support of the request for an award of attorney's fees and reimbursement of litigation expenses. Included with each firm's declaration is a schedule that summarizes the lodestar of the firm, as well as the expenses incurred by category (the "Fee and Expense Schedules").[8] In particular, the attached declarations and the Fee and Expense Schedules contained within each indicate the amount of time spent on this case by each attorney and professional support staff employed by Plaintiffs' Counsel, and the lodestar calculations based on their current billing rates. As set forth in each declaration, the declarations were prepared from contemporaneous daily time records

[7] Plaintiffs' Counsel include Co-Lead Counsel, the law firms of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. and Seeger Weiss, LLP, Court-appointed liaison counsel to the Class; Labaton Sucharow; and Klausner & Kaufman PA, additional counsel to Jacksonville.

[8] Attached as Exhibit M is a summary chart of the hours expended and lodestar amounts for each firm comprising Plaintiffs' Counsel, as well as a summary of each firm's total litigation expenses.

regularly prepared and maintained by the respective firms, which are available at the request of the Court. The hourly rates for attorneys and professional support staff included in these schedules are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation. For attorneys or professional support staff who are no longer employed by Plaintiffs' Counsel, the lodestar calculations are based upon the billing rates for such person in his or her final year of employment.

136. As summarized in Exhibit M hereto, Plaintiffs' Counsel have expended 105,341.76 hours in the investigation, prosecution and resolution of the Action against Defendants, for a collective lodestar value of $44,941,902.75 through May 31, 2013.[9] Under the lodestar approach, a fee award of 28% of the Settlement Fund yields a multiplier of 1.34 on the lodestar. This multiplier is within the range of multipliers awarded in actions where similar settlements have been achieved. *See* Fee Memorandum at Legal Arg. § I.C.2 (i).

B. THE QUALITY OF CO-LEAD COUNSEL'S REPRESENTATION

137. A number of considerations may be relevant to assessing the quality of class counsel's representation of a plaintiff class, including the Court's own observations, class counsel's experience and standing at the bar, and the quality of opposing counsel. Ultimately, however, the acid test for evaluating "quality of the representation" is the quality of the results achieved for the class members whom Class Counsel were appointed to represent.

[9] Co-Lead Counsel will continue to perform legal work on behalf of the Class should the Court approve the proposed Settlement. Additional resources will be expended assisting Class Members with their Proof of Claim Forms and related inquiries and working with the Claims Administrator, Epiq, to ensure the smooth progression of claims processing.

1. The Excellent Results Obtained From Co-Lead Counsel's Efforts

138. Here, for the reasons previously detailed above and in Lead Plaintiffs' Memorandum In Support Of Final Approval Of Class Action Settlement And Plan Of Allocation, Co-Lead Counsel respectfully submit that the Settlement, consisting of $215 million in cash – the third largest securities class action settlement ever paid by a pharmaceutical company – is an extraordinary result for the Class. Indeed, the result achieved for the Class reflects the superior quality of Co-Lead Counsel's representation.

139. Reached just weeks before trial, the Settlement is the result of Co-Lead Counsel's hard work, persistence and skill in a case that presented significant litigation risks. It also bears repeating that Co-Lead Counsel obtained this exceptional result where there was neither a financial restatement involved nor criminal convictions related to the alleged misconduct.

2. The Court's Observations As To The Quality Of Co-Lead Counsel's Work

140. The Court may, of course, also take into account its own observations of the quality of Co-Lead Counsel's representation during the course of this litigation. Since the inception of the Action on May 5, 2008, Co-Lead Counsel have appeared on multiple occasions before the Court, and the Court has reviewed numerous motions and briefs submitted by Co-Lead Counsel, including, inter alia, a detailed amended complaint, an opposition to Defendants' motion to dismiss, briefing in support of class certification, an opposition to Defendants' motion for summary judgment, and the numerous papers in connection with both preliminary and final approval of the Settlement. Although the papers submitted to the Court represent only a fraction of the total work performed by Co-Lead Counsel throughout the pendency of the Action, Co-Lead Counsel respectfully submit that the quality of that work in reflective of the quality,

thoroughness and professionalism of the effort that Co-Lead Counsel have devoted to all aspects of this Action on behalf of the Class.

3. The Standing And Expertise Of Co-Lead Counsel

141. Co-Lead Counsel are highly experienced in prosecuting complex litigation, particularly securities class actions, and worked diligently and efficiently in prosecuting this Action. As demonstrated by the firm resumes attached to their respective declarations (*see* Exhibits G and H hereto), Co-Lead Counsel – the law firms of G&E and BLB&G – are among the most experienced and skilled firms in the securities litigation field, and each firm has a long and successful track record in securities cases throughout the country.

4. Standing And Caliber Of Defense Counsel

142. The quality of the work performed by Co-Lead Counsel in attaining the Settlement also should be evaluated in light of the quality of the opposition. Defendants were represented by multiple law firms, which included many of the nation's most elite firms. Defense counsel included Paul, Weiss, Rifkind, Wharton & Garrison LLP; Lowenstein Sandler LLP; Tompkins, McGuire, Wachenfeld, & Barry LLP; and Pepper Hamilton, LLP. These firms vigorously represented the interests of their respective clients. In the face of this experienced, formidable, and well-financed opposition who aggressively litigated the Action on behalf of their clients until the eve of trial, Co-Lead Counsel were nonetheless able to persuade Defendants to settle the case on terms highly favorable to the Class – a fact which makes Co-Lead Counsel's success here all the more impressive.

C. THE RISKS AND UNIQUE COMPLEXITIES OF THE LITIGATION

1. The Risks Undertaken By Co-Lead Counsel In Pursuing This Action

143. This Action presented exceedingly novel procedural and substantive legal challenges from the outset. As discussed above, Co-Lead Counsel were required to contend

with, among others, unusual class certification issues and complex issues of circumstantial proof, loss causation and damages, many of which were lacking precedent. In particular, there were substantial risks to establishing loss causation and damages under Section 10(b), and to proving misconduct and scienter in a highly complex, scientifically based case supported only by circumstantial evidence.

144. These novel risks are in addition to risks typically accompanying all securities litigation, such as the fact that this prosecution was undertaken by Co-Lead Counsel entirely on a contingent-fee basis as discussed below.

2. The Risks Of Contingent Litigation

145. There are numerous cases where plaintiffs' counsel in contingent-fee cases such as this have expended thousands of hours, only to receive no compensation whatsoever. This prosecution was undertaken by Co-Lead Counsel on a contingent-fee basis, and the risks assumed by Co-Lead Counsel (as described above), and the time and expenses incurred without any payment (as described above), were substantial.

146. From the outset, Co-Lead Counsel understood that they were embarking on a complex, expensive and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Co-Lead Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of the Action and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. With an average lag time of several years for cases of this type to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel received no compensation during the course of this nearly five year Action and advanced or incurred $4,367,376.95 in expenses in prosecuting this Action for the benefit of the Class.

147. Co-Lead Counsel also bore the risk that no recovery would be achieved. As discussed herein, from the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever.

148. Moreover, for decades the United States Supreme Court (and countless lower courts) have repeatedly and consistently recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. Indeed, as recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private investors, particularly institutional investors, take an active role in protecting the interests of shareholders. If this important public policy is to be carried out, courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting securities class actions.

149. The risks assumed by Co-Lead Counsel in connection with the Action, and the time and expenses incurred without any payment, were extensive. Co-Lead Counsel's persistent efforts in the face of substantial risks and uncertainties have resulted in a significant and immediate recovery for the benefit of the Class. In circumstances such as these, and in consideration of Co-Lead Counsel's hard work and the extraordinary result achieved, a fee of 28% of the Settlement Fund, as detailed below, is reasonable and should be approved.

D. AWARDS IN SIMILAR CASES

150. Awards of attorneys' fees that have been approved in other large securities class action cases have been compiled and are discussed in the accompanying Fee Memorandum. *See* Fee Memorandum at Legal Arg. § I.C.2. For the reasons set forth therein, a fee award of 28% is well within the range of fee awards that have been approved in other similarly sized litigations.

E. THE REACTION OF THE CLASS TO THE FEE APPLICATION

151. In accordance with the Preliminary Approval Order, 729,295 Notice Packets have been mailed to potential Class Members and Nominees advising them that Co-Lead Counsel would seek an award of attorneys' fees in an amount not to exceed 28% of the Settlement Fund and reimbursement of expenses paid on incurred in connection with the investigation, prosecution, and resolution of the Action in an amount not to exceed $5,000,000 and expenses incurred by the Lead Plaintiffs in an amount not to exceed $175,000. *See* Epiq Decl. ¶ 8. Additionally, on July 2, 2013 the Court-approved Summary Notice was published in the national edition of *The Wall Street Journal* and was transmitted over the Internet via *PRNewswire*. *Id.* ¶ 9. The Stipulation of Settlement, Claims Notice, Preliminary Approval Order, and Claim Form have also been posted on the website for this Action, https://www.merckvytorinsecuritieslitigation.com, for review (*Id.* ¶13) and on Co-Lead Counsel's websites, gelaw.com and blbglaw.com. As noted above, the deadline set by the Court for Class Members to object to the amount of attorney's fees and expenses set forth in the Settlement Notice has not yet passed. To date, Co-Lead Counsel are not aware of any objections by any Class member to the amount of fees set forth in the Settlement Notice. *See* ¶ 129 above. Co-Lead Counsel will address all objections received, if any, in their reply papers to be filed with the Court on or before August 13, 2013.

III. REIMBURSEMENT OF THE REQUESTED LITIGATION EXPENSES IS FAIR AND REASONABLE

152. Co-Lead Counsel also seek reimbursement from the Settlement Fund in the total aggregate amount of $4,367,376.95 for litigation expenses that were reasonably incurred by Plaintiffs' Counsel in connection with commencing, prosecuting and resolving the claims asserted in the Action against Defendants, as well as $109,865.31 for the costs and expenses

incurred by Lead Plaintiffs directly related to their representation of the Class (the "Expense Application").

153. From the beginning of the case, Co-Lead Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover any of their out-of-pocket expenses until the Action was successfully resolved. Thus, Co-Lead Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

154. As set forth in the Fee and Expenses Schedules (attached as Exhibit M hereto), Plaintiffs' Counsel have incurred a total of $4,367,376.95 in unreimbursed litigation expenses in connection with the prosecution of the Action for which they are seeking reimbursement. As attested to, these expenses are reflected on the books and records maintained by respective Plaintiffs' Counsel. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred. Plaintiffs' Counsel's expenses are set forth in detail in their firm's respective declaration, each of which identifies the specific category of expense, *e.g.*, online and legal factual research, experts' fees, out-of-town travel costs, the costs of document management and litigation support, photocopying, telephone, fax and postage expenses, and other costs actually incurred for which Co-Lead Counsel seek reimbursement. These expense items are billed separately and such charges are not duplicated in the respective firms' billing rates. A summary chart of Plaintiffs' Counsel's expenses is attached hereto as Exhibit M.

155. Co-Lead Counsel maintained strict control over the litigation expenses. Indeed, many of the litigation expenses were paid out of two litigation funds created by Co-Lead Counsel and maintained by G&E (the "Litigation Funds"). A description of the payments from

the Litigation Funds by category is set forth in the individual firm declaration submitted on behalf of G&E (the "Berger Declaration"). Neither Litigation Fund currently carries a balance. *See* Berger Declaration ¶10-11.

156. Of the total amount of expenses, $452,156.32 was expended on experts and consultants shared with counsel in *Schering* and $1,941,144.47 was expended on experts and consultants for the Merck action alone. As noted above, Co-Lead Counsel retained damages and loss causation experts to assist in the prosecution of the Action as well as to assist in developing a fair and reasonable plan for allocating the net settlement proceeds to eligible Class Members. Co-Lead Counsel also retained experts in statistics and cardiovascular medicine. Co-Lead Counsel also retained a trial consulting firm to prepare exhibits for trial, conduct a mock trial, and analyze the results of the deliberations of mock jurors. These experts and consultants were essential to the overall prosecution of the Action. In total, Co-Lead Counsel retained several experts and consultants to analyze complex matters involved in this Action. In addition to consulting with Co-Lead Counsel in developing the case, Lead Plaintiffs' experts produced a total of 8 expert reports and 4 of Lead Plaintiffs' experts were deposed by Defendants.

157. Another large component of the expenses, $302,237.19 was expended on document review and production. Co-Lead Counsel had to retain the services of vendors to, among other things: (i) maintain the electronic database through which the millions of pages of documents produced were reviewed; (ii) have documents processed so that they would be in searchable format; and (iii) convert and upload hard copy documents so that they would be electronically searchable.

158. Additionally, Co-Lead Counsel paid $186,475 for mediation fees assessed by the various mediators in this and the *Schering* matter.

159. The other expenses for which Plaintiffs' Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, costs of out-of-town travel, copying costs, long distance telephone and facsimile charges and postage and delivery expenses.

160. All of the Litigation Expenses incurred by Plaintiffs' Counsel, which total $4,367,376.95, were necessary to the successful investigation, prosecution and resolution of the claims asserted in the Action against Defendants. Co-Lead Counsel's Expense Application has been approved by Lead Plaintiffs. *See* Exhibits B thru E attached hereto.

161. Additionally, pursuant to 15 U.S.C. § 78u-4(a)(4), Lead Plaintiffs, ABP, IFM, Jacksonville, and Detroit seek reimbursement of their reasonable costs and expenses incurred directly in connection with their representation of the Class in the amounts of $34,557.41, $45,682, $13,455.90, and $16,170, respectively. The amount of time and effort devoted to this Action by the Lead Plaintiffs is detailed in the accompanying declarations of their respective representatives, annexed hereto as Exhibits B, C, D and E. *See* Declarations of J.G.H.C.M. Beris and J.A. Hendriks, Lutz Schleidt, John Keane, and John Riehl. Co-Lead Counsel respectfully submit that these requested amounts are fully consistent with Congressional intent, as expressed in the PSLRA, of encouraging institutional and other highly experienced plaintiffs to take an active role in bringing and supervising actions of this type.

162. As set forth is the Fee Memorandum and in the supporting declarations submitted on behalf of the Lead Plaintiffs herewith, Lead Plaintiffs have been fully committed to pursuing the Class's claims against the Defendants for more than three years. These large institutions have actively and effectively fulfilled their obligations as representatives of the Class, complying with all of the many demands placed upon them during the litigation and settlement of this

Action, and providing valuable assistance to Co-Lead Counsel. The efforts expended by the representatives for the Lead Plaintiffs during the course of this Action are precisely the types of activities Courts have found to support reimbursement to class representatives, and fully support Lead Plaintiffs' requests for reimbursement of costs and expenses. *See* Fee Memorandum Legal Arg. § I.C.

163. The Settlement Notice informed potential Class Members that Co-Lead Counsel would be seeking reimbursement of expenses incurred by Lead Plaintiffs in an amount not to exceed $175,000. The total amount sought by the Lead Plaintiffs (*i.e.*, $109,865.31) is significantly below the total $175,000 in expenses that Class Members were advised could be sought. To date, no objection has been raised as to the maximum amount of Litigation Expenses set forth in the Notice, including the amount sought to be reimbursed to the Lead Plaintiffs.

164. In view of the complex nature of the Action, as well as the fact that this Action was vigorously prosecuted until the eve of trial, the expenses incurred by Plaintiffs' Counsel were reasonable and necessary to pursue the interests of the Class and achieve the present Settlement. Accordingly, Co-Lead Counsel respectfully submit that the expenses incurred by Plaintiffs' Counsel and Lead Plaintiffs are fair and reasonable and should be reimbursed in full from the Settlement Fund.

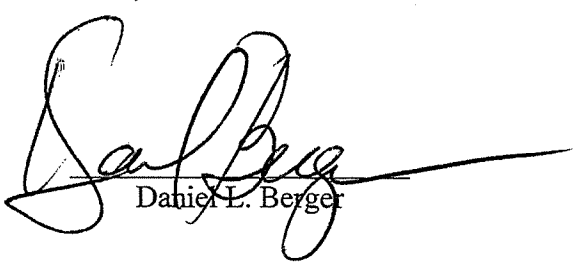
CONCLUSION

165. For all the reasons set forth above, Lead Plaintiffs and Co-Lead Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable and adequate. Co-Lead Counsel further submit that they should be awarded a fee in accordance with the substantial work undertaken, the extraordinary risks involved in the action, and the excellent result achieved. The request for reimbursement of Plaintiffs' Counsel's

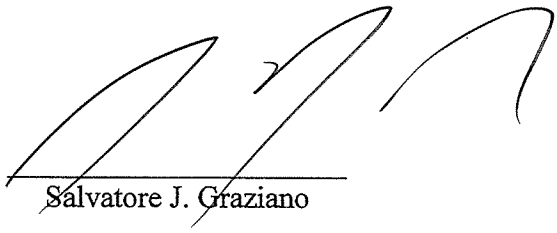
litigation expenses in the amount of $4,367,376.95 and Lead Plaintiffs' costs and expenses in the amount of $109,865.31 should also be approved.

We each declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on July 2, 2013



Daniel L. Berger



Salvatore J. Graziano