UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re Schering-Plough Corporation/ENHANCE Securities Litigation	Case No. 2:08-cv-00397 (DMC) (JAD)

JOINT DECLARATION OF SALVATORE J. GRAZIANO AND CHRISTOPHER J. McDONALD 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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SALVATORE J. GRAZIANO and CHRISTOPHER J. McDONALD declare as follows:

I. INTRODUCTION

1. I, Salvatore J. Graziano, 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 (the "Action"). I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"). I have personal knowledge of the matters set forth herein based on my active participation in the prosecution and settlement of the claims asserted on behalf of the Class (defined below) in this consolidated securities class action lawsuit (the "Action").[1]

2. I, Christopher J. McDonald, am a member of the bars of the State of New York, the Southern and Eastern Districts of New York, the Second, Third, Ninth, and Federal Circuits, and the United States Supreme Court. I have been admitted to appear *pro hac vice* before this Court in the above-captioned action. I am a partner of the law firm of Labaton Sucharow LLP ("Labaton Sucharow"). I have personal knowledge of the matters set forth herein based on my active

[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. 419-1.

participation in the prosecution and settlement of the claims asserted on behalf of the Class in the Action.

3. BLB&G and Labaton Sucharow are the Court-appointed co-lead counsel ("Co-Lead Counsel") for the Court-appointed lead plaintiffs Arkansas Teacher Retirement System, Public Employees' Retirement System of Mississippi, Louisiana Municipal Police Employees' Retirement System and Massachusetts Pension Reserves Investment Management Board (collectively, "Lead Plaintiffs") and the certified Class in the Action.

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 Settlement and the proposed plan for allocating the proceeds of the Settlement to eligible Class Members (the "Plan of Allocation"). 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 Schering common stock, 6% mandatory convertible preferred stock maturing August 13, 2010 ("Preferred Stock"), or call options, and/or sold Schering put options, during the period between January 3, 2007 through and including March 28, 2008 (the "Class Period"), and who did not sell their stock and/or options on or before December 11, 2007, and who were

damaged thereby (the "Class").[2] The Court preliminarily approved the Settlement by its Order entered on June 7, 2013 (the "Preliminary Approval Order").

5. We believe the proposed Settlement achieved in this case is exceptional. It is 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 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 in the amount of 16.92% of the Settlement Fund (*i.e.*, the $473 million Settlement Amount plus interest earned thereon) and reimbursement of Plaintiffs' Counsel's litigation expenses in the amount of $3,620,049.63, as well as an application pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA") for reimbursement of the costs and expenses incurred by Lead Plaintiffs in connection with their

[2] Excluded from the Class are (a) Defendants; (b) members of the immediate families of the Individual Defendants; (c) the subsidiaries and affiliates of Defendants; (d) any person or entity who was a partner, executive officer, director, or controlling person of Schering, M/S-P or Merck (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 on Appendix 1 to the Stipulation who do not opt-back into the Class (*see* ¶ 132, fn. 9 below).

representation of the Class in the total amount of $102,447.26 (the "Fee and Expense Application").

7. For the reasons set forth below and in the accompanying memoranda,[3] 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.

I. THE OUTSTANDING RECOVERY ACHIEVED

8. Lead Plaintiffs have succeeded in obtaining a recovery of $473,000,000.00 (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, the Settlement would place among the twenty-five largest securities class action settlements since the passage of the PSLRA in 1995, according to the latest quarterly report of the Securities Class Action Services. *See* Exhibit 1 hereto. The Settlement is also among the top ten post-PSLRA class action securities

[3] In conjunction with this Joint Declaration, Lead Plaintiffs and Co-Lead Counsel are also submitting (i) the Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (the "Settlement Memorandum") and (ii) the Memorandum of Law in Support of Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee Memorandum").

settlements in cases not involving a restatement of financials, and it is the largest securities fraud class action settlement ever obtained from a pharmaceutical company, and the third largest settlement ever within the Third Circuit. *See id.* 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 the case-specific risks they faced in prosecuting the Action against Defendants. The Parties were approximately three weeks from trial when they reached a settlement in principle. The outcome of a jury trial, especially in a highly complex case such as this one, can never be predicted with reasonable certainty. Even if Lead Plaintiffs prevailed at trial, there is no assurance that they would have recovered an amount equal to, much less greater than, the proposed Settlement Amount. Moreover, even a positive outcome at trial is not a guarantee of an ultimate positive result for the Class. There are several recent instances where plaintiffs' verdicts in securities fraud cases have been 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. The Parties were in their final pre-trial preparations when the Settlement was reached. In 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 (the "Complaint"); (iii) successfully opposed Defendants' multiple motions to dismiss the Complaint and motion for reconsideration; (iv) successfully moved for class certification and opposed Defendants' multiple efforts to seek appellate interlocutory review of the Court's order granting class certification; (v) engaged in an extensive and diligent discovery program, including participating in over ninety (90) depositions, several of which were conducted overseas, and the production and review of more than twelve million pages of documents; (vi) successfully opposed Defendants' multiple motions for summary judgment; and (vii) 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. Lead Plaintiffs also engaged in two multi-day mock trial sessions, which provided them with extensive insight into the risks they faced at trial.

11. The Settlement was ultimately accomplished through arm's-length settlement discussions facilitated by court-appointed mediators, Jonathan Lerner and Stephen Greenberg of the Pilgrim Mediation Group. The settlement discussions included numerous in-person mediation sessions with high-level presentations by attorneys and experts representing each side, focusing first on liability and subsequently on damages, telephonic follow-up and in-person sessions with a prior experienced mediator and, ultimately, numerous meetings and discussions facilitated by the Pilgrim Mediation Group, including an in-Court conference. 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, the Parties continued to negotiate for an additional three months 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 $473 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 follow any success at trial.

13. As set forth in the attached declarations of Laura Gilson, George Neville, R. Randall Roche, Matthew Gendron, and Christopher Supple, Lead Plaintiffs endorse the Settlement and support Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses. *See* Exhs. 2, 3, 4, 5A and 5B.

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 Sections VIII.A and VIII.B below, we respectfully submit that Co-Lead Counsel's request for attorneys' fees and reimbursement of litigation expenses, including the requested PSLRA awards to the Lead Plaintiffs, are also fair and reasonable, and should be approved.

II. 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") and the Securities Act of 1933

("Securities Act"). The Exchange Act Claims were brought against Schering, several of its former senior executives, and a joint venture formed by Schering and Merck ("M/S-P") alleging that they 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)), the commercial prospects of Zetia, and the results of a clinical trial known as ENHANCE that tested whether Vytorin was more effective than Zocor alone in reducing the intima-media thickness of the carotid arteries. The Securities Act claims were brought against Schering, several of its former senior executives and directors, and several investment banks alleging that they were statutorily responsible for false or misleading statements made in connection with Schering's public offering of common stock that occurred on or about August 15, 2007 (the "Common Stock Offering"), and Schering's public offering of 6.00% mandatory convertible preferred stock that occurred on or about August 15, 2007 (the "Preferred Stock Offering," and together with the Common Stock Offering, the "Offerings").

16. The ENHANCE trial, jointly sponsored by Schering and Merck, 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 allege that more than a year before the ENHANCE results were made public, the Exchange Act Defendants conducted improper statistical analyses of ENHANCE trial results and thereby determined that there was no statistically significant difference in cIMT change between subjects receiving Zocor alone and subjects receiving Vytorin. Lead Plaintiffs further allege that the Exchange Act Defendants thereafter made materially false and misleading statements concerning the ENHANCE trial and the commercial prospects of Vytorin and Zetia.

18. Plaintiffs allege that the Securities Act Defendants are liable for similar materially false and misleading statements in the registration statement and prospectus filed with the Securities Exchange Act ("SEC") in relation to the Offerings.

19. The alleged material misstatements and omissions, as set forth in the Complaint, are alleged to have caused Schering's securities to trade at distorted prices during the Class Period. Plaintiffs allege that those who purchased Schering securities at artificially inflated prices or sold Schering puts at artificially depressed

prices were damaged when the truth began to be disclosed in December 2007. The Complaint further alleges that the price distortion caused by the alleged misrepresentations and omissions was allegedly removed through a series of partial disclosures made by Schering, by certain government entities, and through news and analyst reports and press releases between December 2007 and March 2008.

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

B. Co-Lead Counsel's Pre-Filing Investigation and Preparation of the Complaint

21. Prior to filing the 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. 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 ultimately interviewed over 85 former Schering and Merck employees.

22. 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 Schering and Merck; (ii) research reports by securities and financial analysts; (iii) transcripts of

investor conference calls; (iv) publicly available presentations by Schering and Merck; (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 Schering and Merck; and (viii) postings on a medical website called Cafépharma.

23. In addition, prior to the filing of the Complaint, Co-Lead Counsel retained a damages expert and a statistical expert to assist in developing the claims that would ultimately be asserted.

C. The Consolidated Class Action Complaint

24. Beginning on January 18, 2008, two separate class action complaints were filed against Schering, Defendant Hassan and several other defendants in the United States District Court for the District of New Jersey.

25. By Order dated April 18, 2008, Judge Dennis M. Cavanaugh appointed Arkansas Teacher Retirement System ("ATRS"), Public Employees' Retirement System of Mississippi ("MPERS"), Louisiana Municipal Police Employees' Retirement System ("LAMPERS") and the Massachusetts Pension Reserves Investment Management Board ("MassPRIM") to serve as Lead Plaintiffs and approved Lead Plaintiffs' selection of Bernstein Litowitz Berger & Grossmann LLP and Labaton Sucharow LLP, to serve as Co-Lead Counsel. ECF No. 30.

26. On September 15, 2008, Lead Plaintiffs filed the 230-page Complaint that named a total of 37 defendants – including Schering, M/S-P, 17 individuals and 18 investment banks – and asserted 11 causes of action under the Securities Act and the Securities Exchange Act. ECF No. 52.

D. Defendants' Motions to Dismiss the Consolidated Class Action Complaint

27. On December 10, 2008, the Exchange Act Defendants and the Securities Act Defendants separately moved to dismiss the Complaint. Defendants' briefing totaled approximately 80 pages. Hundreds of pages of supporting exhibits were also filed. Schering (and other defendants) argued, *inter alia*, that the Complaint failed to sufficiently allege *scienter*; that the Complaint failed to identify any actionable misstatements or omissions; that Lead Plaintiffs lacked standing to pursue Section 11 and Section 12(a)(2) claims under the Securities Act; and that the Lead Plaintiffs failed to plead a valid Section 20A claim under the Exchange Act against Defendant Cox.

28. On February 6, 2009, Lead Plaintiffs filed their oppositions to Defendants' Motions to Dismiss, arguing among other things that each of the Defendants issued materially false and misleading statements and that each of the Exchange Act Defendants and each of the Securities Act Defendants, respectively, acted with the requisite *scienter* or negligence. ECF Nos. 94, 98.

29. By Order dated September 2, 2009, the Court denied both the Exchange Act Defendants' and the Securities Act Defendants' motions to dismiss in their entirety. ECF No. 121.

30. On September 17, 2009, Defendants moved for reconsideration of the Court's September 2, 2009 Order, claiming that the Court erred by finding that the Complaint alleged actionable false and misleading statements. ECF No. 123.

31. On October 5, 2009, Lead Plaintiffs filed their opposition to Defendants' motion for reconsideration. ECF. No. 125.

32. On November 18, 2009, the Schering-Related Defendants and the Underwriter Defendants separately filed answers to the Complaint. ECF Nos. 131-32.

33. By order dated June 21, 2010, the Court denied Defendants' motion for reconsideration in its entirety. ECF No. 160.

E. Lead Plaintiffs' Motion to Certify the Class

1. Class Discovery

34. On February 1, 2011, the Court issued an order setting the schedule for, among other things, class certification discovery and class certification briefing. ECF No. 189.

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, Schering and other Defendants commenced extensive discovery by serving Lead Plaintiffs with document requests and interrogatories related to class issues. Defendants' discovery requests were broad and all encompassing, including 48 separate requests for documents and nine interrogatories. In response to Defendants' discovery requests, Lead Plaintiffs produced more than 15,000 pages of documents, including account statements, investment guidelines and investment manager reports. Co-Lead Counsel reviewed all of these documents for relevance and privilege.

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

37. Defendants deposed one witness from ATRS. This deposition took place in New York, NY. On February 24, 2011, Defendants deposed Laura Gilson, General Counsel to ATRS, who testified as a Fed. R. Civ. P. 30(b)(6) witness regarding ATRS's investment decisions, including the decision to invest in Schering common stock and Preferred Stock, the allegations in the Complaint, and ATRS's decision to seek lead plaintiff status in this Action. In preparation for the deposition, attorneys from BLB&G met with Ms. Gilson in Little Rock, Arkansas and New York, NY and held other conferences with Ms. Gilson by telephone.

38. Defendants deposed two witnesses from MPERS. Both depositions took place in New York, NY. On March 22, 2011, Defendants deposed George Neville, Special Assistant Attorney General to the State of Mississippi, who testified as a Fed. R. Civ. P. 30(b)(6) witness regarding the allegations in the Complaint, and MPERS's decision to seek lead plaintiff status in this Action. In preparation for the deposition, attorneys from BLB&G met with Mr. Neville in New York, NY and held other conferences with Mr. Neville by telephone.

39. Also on March 22, 2011, Defendants deposed Lorrie Tingle, Chief Investment Officer of MPERS, who testified as a Fed. R. Civ. P. 30(b)(6) witness regarding MPERS's investment decisions, including the decision to invest in Schering common stock. In preparation for the deposition, attorneys from BLB&G met with Ms. Tingle in New York, NY and held other conferences with Ms. Tingle by telephone.

40. Defendants deposed one witness from LAMPERS. The deposition took place in New York, NY. On March 18, 2011, Defendants deposed Robert Randall Roche, General Counsel to LAMPERS, who testified as a Fed. R. Civ. P. 30(b)(6) witness regarding LAMPERS's investment decisions, including the decision to invest in Schering common stock, the allegations in the Complaint, and LAMPERS's decision to seek lead plaintiff status in this Action. In preparation for

the deposition, attorneys from BLB&G met with Mr. Roche in New York, NY and held other conferences with Mr. Roche by telephone.

41. Defendants deposed one witness from MassPRIM. The deposition took place in New York, NY. On July 28, 2011, Defendants deposed Stanley P. Mavromates, Jr., Chief Investment Officer to MassPRIM, who testified as a Fed. R. Civ. P. 30(b)(6) witness regarding MassPRIM's investment decisions, including the decision to invest in Schering common stock, the allegations in the Complaint, and MassPRIM's decision to seek lead plaintiff status in this Action. In preparation for the deposition, attorneys from Labaton Sucharow LLP met with Mr. Mavromates in Boston, Massachusetts and in New York, NY and held other conferences with Mr. Mavromates and counsel for the Commonwealth by telephone.

42. Defendants also sought discovery from the external investment advisers that purchased Schering common stock and Preferred 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 Aberdeen Asset Management, AllianceBernstein,

Allianz Global Investors Capital LLC, Blackrock, Inc., Goldman Sachs Asset Management, INTECH, Jacobs Levy Equity Management, Northern Trust, Oppenheimer Capital LLC, SKBA Capital Management, LLC, Standish Mellon Asset Management Company LLC, State Street Corporation, T. Rowe Price Associates, Inc., UBS Global Asset Management and Wellington Management Company, LLP. Co-Lead Counsel worked closely with representatives of the Lead Plaintiffs' external investment advisors to respond to the extensive discovery subpoenas. In addition, Co-Lead Counsel reviewed approximately 100,000 pages of documents from Lead Plaintiffs' 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) Allianz Global Investors Capital LLC provided Justin Kass as a 30(b)(6) witness regarding its investment policies and procedures, as well as its transactions in Schering common stock on behalf of ATRS;

(b) INTECH Investment Management LLC provided Jennifer Young as a 30(b)(6) witness regarding its investment policies and procedures, as well as its transactions in Schering common stock on behalf of MPERS, LAMPERS and MassPRIM;

(c) Jacobs Levy Equity Management provided Kenneth Levy as a 30(b)(6) witness regarding its investment policies and procedures, as well as its transactions in Schering common stock on behalf of ATRS;

(d) Oppenheimer Capital LLC provided Thomas Scerbo as a 30(b)(6) witness regarding its investment policies and

procedures, as well as its transactions in Schering common stock on behalf of ATRS; and

(e) Wellington provided Jean Hynes as a 30(b)(6) witness regarding its investment policies and procedures, as well as its transactions in Schering common stock on behalf of ATRS.

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 Chad W. Coffman, who conducted detailed event studies concerning Schering's stock price drops. ECF No. 191. Defendants then deposed Mr. Coffman on two separate occasions and Lead Plaintiffs deposed Defendants' expert, Denise Neumann Martin, Ph.D.

2. Class Certification Briefing and Order

46. On February 7, 2011, Lead Plaintiffs moved to certify the class and to be appointed class representatives. ECF Nos. 191 through 193.

47. On September 22, 2011, Lead Plaintiffs filed an amended motion to certify the class. ECF No. 241.

48. On December 6, 2011, the Schering-Related Defendants and the Underwriter Defendants filed separate briefs in opposition to Lead Plaintiffs' motion, totaling 61 pages. ECF Nos. 251 through 256. Defendants challenged class certification on numerous grounds, including the definition of the class, the adequacy and typicality of Lead Plaintiffs, ATRS's standing to assert Securities

Act claims, and loss causation with respect to various disclosures. Specifically, Defendants argued that, even if certified, the proposed class should end on January 11, 2008 (the last trading day before January 14, 2008), because the full truth was disclosed on January 14, 2008 with the release of the top-line ENHANCE results. If Defendants prevailed on their argument and the Class Period ended on January 11, 2008, the potential damages in the case would have been significantly less.

49. On January 31, 2012, Lead Plaintiffs filed their reply brief in further support of their motion. ECF No. 262.

50. By Order filed September 25, 2012, the Court certified the Action for litigation purposes as a class action (the "Initial Class Certification Order"). ECF No. 315. The Court issued a 22-page opinion outlining its reasons for granting Lead Plaintiffs' motion for class certification (the "Class Certification Opinion"). ECF No. 314.

51. On October 1, 2012, Lead Plaintiffs wrote the Court requesting an amendment to the Initial Class Certification Order, which inadvertently omitted to include certain members of the Class in the Class definition. ECF No. 318.

52. In response to Lead Plaintiffs' request, on October 12, 2012, the Court issued an amended order certifying the Action for litigation purposes as a class action (the "Amended Class Certification Order"), which included the previously inadvertently omitted members of the Class. ECF No. 325.

53. On October 9, 2012, the Schering-Related Defendants and the Underwriter Defendants separately 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). The Schering-Related 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. The Underwriter Defendants requested that the Third Circuit review the District Court's ruling on the ground that the district court erred by ruling that ATRS had standing to pursue claims under the Securities Act.

54. After extensive briefing, on January 7, 2013, the Third Circuit issued an Order denying both the Schering-Related Defendants' and the Underwriter Defendants' Rule 23(f) petitions.

55. In connection with the Court's certification of the Class, on December 27, 2012, Lead Plaintiffs filed a motion to approve the Class Notice and Summary Notice of Pendency of Class Action. ECF No. 336. On December 28, 2012, the Court approved the Class Notice prepared by Co-Lead Counsel. ECF No. 337. Beginning with the initial mailing on January 17, 2013, the Class Notice was mailed to over 335,000 potential Class Members. ECF No. 392-1, at ¶ 11. The Class Notice notified potential Class Members of, among other things: (i) the pendency of the Action against 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, fifty-one (51) requests for exclusion from the Class were received in connection with the Class Notice.

F. Lead Plaintiffs' Extensive Fact Discovery Efforts

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

57. On March 6, 2009, Lead Plaintiffs moved to partially lift the automatic discovery stay under the PSLRA in order to obtain from Schering the same documents the Company had produced or would produce in related actions or investigations. ECF No. 101. On May 22, 2009, the Court denied the motion.

58. After the motions to dismiss were decided in September 2009, formal fact discovery began in earnest. Lead Plaintiffs served 34 documents requests on the Schering-Related Defendants and 38 document requests on the Underwriter Defendants. In addition, Lead Plaintiffs served two sets of interrogatories on the Schering-Related Defendants and one set of interrogatories on the Underwriter Defendants and served Defendants with requests for admission.

59. Further, Lead Plaintiffs gathered evidence from numerous non-parties and served subpoenas *duces tecum* on 12 non-parties.

60. By Order dated December 22, 2009, the Court ordered that fact discovery be completed by April 30, 2011. ECF No. 146. By subsequent Order, this date was extended to August 1, 2011. ECF No. 189.

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

62. 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 Merck & Co., Inc. Vytorin/Zetia Securities Litigation*, No. 08-2177 ("*Merck*").

63. Co-Lead Counsel in this Action and in *Merck* developed a joint discovery program for the review of documents and the taking of depositions, through which areas of responsibility both as to document review and depositions were allocated among attorneys in both actions. 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.

64. 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 in *Merck*. Just one hard-copy set, and more than one set would have been needed, of the 12 million pages produced would have cost more than $1 million (at $0.10/page), which is more than the $325,602.86 Co-Lead Counsel incurred in connection with the document depository.

65. The electronic document depository allowed Plaintiffs' Counsel (as well as plaintiffs' counsel in *Merck*) 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 in *Merck*, 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.

66. 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 *Merck*.

67. To review Defendants' enormous document production, a team of attorneys from Plaintiffs' Counsel in this Action as well as a team in *Merck* 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.

68. 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 *Merck* to discuss important documents and case strategy.

69. 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.

70. Co-Lead Counsel reviewed and analyzed more than 12 million pages of documents in the case.

71. 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 45 depositions of fact witnesses and 30(b)(6) witnesses, some of which were two-day depositions.

72. These depositions included, among others:

(a) Defendant Fred Hassan, former Schering CEO;

(b) Defendant Robert J. Bertolini, former Schering CFO;

(c) Defendant Carrie Cox, former Executive Vice President and President of Schering's Global Pharmaceuticals Business;

(d) Defendant Steven H. Koehler, former Schering Controller and Vice President;

(e) Defendant Susan E. Wolf, former Schering Corporate Secretary, Associate General Counsel and Vice President-Corporate governance;

(f) Securities Act Defendants Hans W. Becherer, C. Robert Kidder, Patricia F. Russo and Arthur F. Weinbach, all former directors of Schering;

(g) 30(b)(6) designees from Underwriter Defendants Goldman Sachs, Citigroup, Bear Stearns, Banc of America Securities and Morgan Stanley;

(h) Dr. Enrico Veltri, Schering Vice President of Clinical Research;

(i) Dr. Elizabeth Stoner, former Merck Senior Vice-President of Global Clinical Development Operations;

(j) Robert Spiegel, M.D., former Schering Senior Vice President and Chief Medical Officer;

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

(l) Matthew Arm, M/S-P Director of Marketing;

(m) Arthur Hirt, M/S-P Vice President of Marketing;

(n) Dr. James Stein, an expert consultant to Schering;

(o) Alex Kelly, former Schering Group Vice President for Global Communications and Investor Relations;

(p) Thomas Koestler, M.D., former President of Schering Plough Research Institute; and

(q) 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 before a foreign court.

73. 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 were integral to Lead Plaintiffs' claims, as well as issues related to proving loss causation and damages. Co-Lead Counsel and their experts necessarily 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 clinical trial 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; (vi) information relating to the marketing practices of Schering, Merck and M/S-P relating to their cholesterol franchise; and (vii) internal correspondence and memoranda produced by the Underwriter Defendants to determine whether adequate due diligence was conducted in advance of the Offerings.

74. The Parties also exchanged and served extensive contention interrogatories. Specifically, on June 3, 2011, Defendants served Lead Plaintiffs with 15 contention interrogatories. Lead Plaintiffs served over 138 pages of detailed evidentiary responses, containing citations to deposition transcripts,

documents produced by both Defendants and Lead Plaintiffs, expert reports, and other materials, and also set forth, in detail, each false statement on which Lead Plaintiffs intended to seek relief together with a comprehensive explanation as to the reasons for the falsity of those statements.

G. Extensive Expert Discovery

75. The Parties exchanged 22 opening and rebuttal reports from 11 experts accompanied by thousands of pages of exhibits.

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

Expert	**Subject Area**
Chad Coffman, CFA	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
James F. Miller	Investment Banking, Public Equity Offerings, Underwriter Due Diligence
Allan J. Taylor, M.D., F.A.C.C, F.A.H.A.	Cardiology, Clinical Trial Standards, Imaging Trials, cIMT Methodology, Surrogate Clinical Markers

77. On November 18, 2011, Lead Plaintiffs served a one-page amendment to the expert report of Chad Coffman.

78. 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
Gary M. Lawrence, Esq.	Investment Banking, Public Equity Offerings, Underwriter Due Diligence
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

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

80. Expert depositions commenced in November, 2011. The Parties took and defended a total of 12 expert depositions.

81. 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
Gary M. Lawrence, Esq.	12/20/2011	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.	12/09/2011[4]	New York, NY
Robert Starbuck, Ph.D.	12/15/2011	New York, NY

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

Deponent	Deposition Date(s)	Location
Chad Coffman, CFA	11/15/2011, 11/29/2011	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
James F. Miller	12/14/2011	New York, NY
Allan J. Taylor, M.D., F.A.C.C, F.A.H.A.	12/16/2011	Washington, DC

83. The services of Lead Plaintiffs' scientific, medical, and statistical experts were essential to the development of their claims. Lead Plaintiffs allege that biostatisticians from Schering conducted improper statistical analyses, in violation of accepted clinical trial standards, thereby learning the results of the

[4] Dr. Martin was deposed for two days. One day was in connection with this Action and the other day was in connection with the *Merck* case.

ENHANCE study before it was proper to do so. The opinions of Drs. Madigan, Furburg 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.

H. Defendants' Motion for Summary Judgment

84. On March 1, 2012, the Schering-Related Defendants and the Underwriter Defendants served Lead Plaintiffs with separate summary judgment motions. ECF Nos. 269 through 276. In support, these Defendants submitted briefs totaling 70 pages, Rule 56.1 statements totaling 80 pages, and a combined 190 exhibits.

85. The Schering-Related Defendants argued that partial summary judgment should be granted because Lead Plaintiffs could not prove loss causation as to any alleged corrective disclosure after January 14, 2008. Specifically, Defendants argued that the January 14, 2008 announcement fully corrected any alleged misstatements insofar as it disclosed the "very facts" Plaintiffs claimed were concealed and misrepresented in Schering's public statements. The Underwriter Defendants argued, among other things, that summary judgment should be granted as to the Securities Act claims because (i) the Underwriter Defendants conducted reasonable due diligence on Schering in advance of the

Offerings; and (ii) Lead Plaintiff ATRS did not have standing to pursue these claims.

86. On April 6, 2012, Lead Plaintiffs submitted their oppositions to the motions, including 80 pages of opposition briefing, 180 pages of Rule 56.1 statements and 592 exhibits. ECF Nos. 287, 288.[5]

87. In their opposition to the Schering-Related Defendants' motion, Lead Plaintiffs argued that the Schering-Related Defendants misstated the standard for loss causation, and argued that a reasonable jury would find all alleged disclosures made from December 11, 2007 to March 30, 2008 were corrective disclosures. In their opposition to the Underwriter Defendants' motion, Lead Plaintiffs argued that the reasonableness of the Underwriter Defendants' due diligence activities is a question of fact for trial, and that there was ample evidence for a jury to conclude that the due diligence conducted was unreasonable. Lead Plaintiffs further argued that the Underwriter Defendants misconstrued the requirements for standing to pursue a Securities Act claim, and that Lead Plaintiff ATRS had the standing necessary to bring this Action.

[5] On April 20, 2012, Lead Plaintiffs submitted amended oppositions to both the Schering-Related Defendants' and the Underwriter Defendants' motions for summary judgment in order to fix certain typographical errors. ECF No. 291.

88. Defendants filed a combined 32 pages of reply briefs in further support of their summary judgment motions, reiterating the arguments in their main briefs. ECF Nos. 301, 302.

89. In an Order dated September 25, 2012, the Court denied both of Defendants' motions for summary judgment. ECF No. 316.

I. The Parties' Extensive Pretrial Order

90. By Order dated August 6, 2012, the Court set the trial date for the Action as November 3, 2012. ECF No. 304. At a September 25, 2012 status conference, the Court postponed (at Defendants' request and over Co-Lead Counsel's objection) the trial date for the Action to March 4, 2013. ECF No. 317. 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.

91. On January 8, 2013, the Parties exchanged extensive proposed Pretrial Order materials, including thousands of proposed trial exhibits, designated deposition testimony from 38 deposition transcripts, hundreds of proposed stipulated facts, proposed summaries of expert qualifications, a neutral statement of the case, proposed jury instructions and verdict forms,[6] and eighty-seven

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

proposed legal issues, witness lists, and proposed *voir dire* questions. On January 22, 2013 and January 28, 2013, the Parties exchanged objections to the proposed Pretrial Order materials, including objections to over 2,000 exhibits[7], as well as supplemental exhibits and deposition designations. The Parties thereafter conducted numerous meet and confers.

92. On February 5, 2013, the Parties jointly filed the Pretrial Order with the Court. Lead Plaintiffs identified, among other things, 50 potential witnesses expected to testify live or by video, 213 facts stipulated by Lead Plaintiffs and the Schering-Related Defendants, 156 facts stipulated by Lead Plaintiffs and the Underwriter Defendants, and 51 proposed jury instructions, including 17 jointly proposed with Defendants.

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

J. ***Daubert* Motions**

94. On January 14, 2013, Lead Plaintiffs moved to exclude the testimony and expert report of Gary M. Lawrence. Lead Plaintiffs challenged the opinions offered by Mr. Lawrence on the grounds that (i) his methods were based on intuition, and thus not scientifically or objectively reliable; (ii) his analysis was

[7] This is in addition to the over 500 exhibits the Parties agreed were admissible.

contradicted by prevailing scholarship; and (iii) he was unqualified to offer expert testimony. Lead Plaintiffs filed a 15-page brief and nine exhibits in support of their motion.

95. Also on January 14, 2013, Lead Plaintiffs were served with three motions by Defendants challenging the opinions and qualifications of all five of their expert witnesses. Defendants argued that Drs. Madigan, Furberg, and Taylor should be precluded from testifying, *inter alia*, that the ENHANCE trial was functionally unblinded in the fall of 2006, that Defendants took an unusually long time to publish the ENHANCE results, and that Defendants' method of publication on January 14, 2008 prevented the public from fully learning the trial results. Defendants further argued that Mr. Coffman should be precluded from testifying about, among other things, that certain events subsequent to the January 14, 2008 announcement were foreseeable consequences of Defendants' alleged fraud. Finally, Defendants argued that Mr. Miller should be precluded from testifying about the adequacy of the Underwriter Defendants' due diligence.

96. The Parties served each other with their *Daubert* opposition briefs on February 4, 2013. The Parties reached a settlement in principle prior to the filing of reply papers.

97. Within the very tight constraints of this briefing schedule, the Parties collectively submitted 8 *Daubert* briefs, totaling more than 200 pages of briefing with additional briefing scheduled, and over 80 exhibits.

K. Motions *In Limine*

98. 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 Schering and Merck are good corporate citizens, including references to Schering's and Merck'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; (iv) evidence and argument regarding the size of other pending clinical trials relating to Vytorin; (v) certain lay opinion testimony of the Underwriter Defendants and their counsel; and (vi) evidence and argument relating to Lead Plaintiff ATRS's transactions in Schering securities not at issue in this Action.

99. Lead Plaintiffs filed a 96-page omnibus brief in support of their 23 motions *in limine*, as well as 43 exhibits.

100. Also on February 1, 2013, Lead Plaintiffs were served with seven motions *in limine* from the Schering-Related Defendants, and two motions *in*

limine from the Underwriter Defendants. The Schering-Related 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. The Underwriter Defendants moved to establish that non-lead underwriters in the Offering could rely on the investigations conducted by the Offerings' lead underwriters, and to exclude evidence and argument concerning the Underwriter Defendants' alleged involvement in the credit crisis or other alleged financial wrongdoing. In total Defendants filed over 150 pages of briefing and 57 exhibits in support of their motions *in limine*.

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

L. Trial Preparation and Other Pretrial Motions

102. Lead Plaintiffs retained a jury consultant and trial graphics company for trial. Together with the jury consultant, Lead Plaintiffs conducted two extensive multi-day mock trial exercises 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.

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

104. In addition, on February 1, 2013, Lead Plaintiffs filed a motion to bifurcate the trial. ECF No. 363. 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.

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

IV. RISKS OF CONTINUED LITIGATION

A. Risks Regarding Liability Against the Defendants

106. 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.

107. 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.

108. 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* with respect to the Schering and the individual Exchange Act Defendants, 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.

109. The claims against the Exchange Act Defendants 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 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. Lead Plaintiffs also intended to show that Schering officers learned these results and discussed them in a private CEO meeting that is mostly undocumented and which neither the Schering CEO nor the Merck CEO can recall.

110. These alleged violations of complex practices might not have been easily understood by a jury and were vigorously disputed by Defendants who offered a plausible alternate explanation supported by experts and numerous

exhibits that Defendants were focused on improving data quality and not improperly learning the ENHANCE results.

111. Further, even if improper actions were proven, Lead Plaintiffs faced the very real risk that a jury would conclude that the Exchange Act Defendants did not act with the requisite *scienter*. The statistical analyses described above were conducted by Schering employees who were several steps removed from the senior officers of the Company. Lead Plaintiffs were forced to rely on circumstantial evidence to show that the Exchange Act 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.

112. The difficulty of establishing *scienter* was compounded here by the fact that Defendants would be able to buttress their assertion of no 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, the FDA scrutinized the management of the ENHANCE trial but also made no adverse findings.

113. Lead Plaintiffs also faced risks associated with establishing their Securities Act claims. First, even if Lead Plaintiffs could prove the underlying

misconduct with the ENHANCE trial, Defendants would have argued that there were no misstatements in the Offering Materials. Second, even if the statements identified in the Complaint were found to be misstated, the Securities Act Defendants intended to assert a due diligence defense. Specifically, the Underwriter Defendants would have presented evidence showing that they conducted an investigation into the prospects of Schering's cholesterol franchise, which included discussions specifically related to the ENHANCE study.

114. In addition, Lead Plaintiffs faced a significant risk in establishing loss causation and resulting damages with respect to all claims asserted against Defendants. 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 misstatements were fully cured as of January 14, 2008, when the top-line results of the ENHANCE study were publicly disclosed. Plaintiffs allege 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, materially reducing the damages that could be awarded against the Defendants.

B. Risks Attendant at Trial

115. 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 Lead Plaintiffs would have used to present evidence at trial were adverse witnesses, including Defendants Hassan and Cox, the Schering Board, and current and former Schering and Merck officers.

116. Moreover, given the complex nature of this Action, Lead Plaintiffs intended to rely heavily on their scientific experts. At trial, Lead Plaintiffs intended to present expert testimony to prove that Defendants improperly learned the ENHANCE results early, that Defendants breached established scientific, clinical protocol by looking at the ENHANCE data at that time, and to prove that investors' losses were caused by Defendants' misconduct. This would precipitate a "battle of experts" with no guarantee that the jury would accept Lead Plaintiffs' experts' opinions.

117. Further, 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 Lead Plaintiffs intended to offer through these experts. Had Defendants prevailed in excluding any of this testimony, the presentation of

many aspects of Lead Plaintiffs' case would have been extremely difficult, thereby increasing the risks at trial.

118. In addition, at the time the Settlement was reached, the Parties had also briefed *in limine* motions in which Defendants were seeking to exclude key evidence. If Defendants succeeded on these motions, Lead Plaintiffs would have faced enormous obstacles in presenting their claims.

119. 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 and arduous appellate process. Given the novelty of the issues concerning materiality, damages, and the duties attendant under Section 10(b), an appellate process, likely proceeding to the highest review, with the possibility of reversal, presented a real risk to the Class of obtaining a recovery.

V. THE PARTIES' SETTLEMENT NEGOTIATIONS

120. The $473 million cash Settlement is the largest settlement ever obtained against a pharmaceutical company in a securities fraud class action, among the top 25 securities fraud class action settlements of all time, and the third largest settlement ever within the Third Circuit. 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. 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 Schering and Merck continued to sell billions of dollars worth of the drug during the Class Period and to date.

121. 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.

122. In early 2011, the Parties jointly agreed to mediate before the Honorable Layn R. Phillips, a former United States District Judge.[8] Judge Phillips conducted three mediation sessions in 2011 and spoke with counsel for the Parties on numerous other occasions. The first formal mediation session with Judge

[8] Judge Phillips is a former Assistant United States Attorney in the Central District of California and a former United States Attorney for the Northern District of Oklahoma. He was appointed and served as a United States District Judge in the Western District of Oklahoma. After he resigned from the federal bench, he joined Irell & Manella LLP, where he specializes in complex civil litigation and mediations. Judge Phillips is one of the most experienced and respected mediators in the United States in securities class actions.

Phillips occurred in April 2011. Prior to the initial session with Judge Phillips, Lead Plaintiffs and the Schering-Related Defendants exchanged detailed mediation statements, each attaching more than 100 exhibits. The mediation session was attended by representatives of the Lead Plaintiffs, representatives from Merck and their counsel, representatives and counsel for Lead Plaintiffs in the *Merck* action, and representatives from the Schering-Related Defendants' insurance carriers. That mediation was also 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. In October 2011, a third mediation session took place, where the Parties solely addressed the issue of damages. Lead Plaintiffs' damages expert, Chad Coffman, attended and participated in this mediation session. However, those efforts still left the Parties with unbridgeable differences.

123. 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 settlement discussions.

124. In mid-2012, the Parties began meeting informally with Pilgrim Mediation Group *ex parte*. 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 the *ex parte* mediation discussions. These mediation sessions were also unsuccessful.

125. 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 $473 million. This was the mediators' recommendation of a settlement amount that would be fair to both the Class and Defendants. The mediators informed the Parties that the $473 million recommendation 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.

126. 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.

VI. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

127. 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) any 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.

128. 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 be submitted at trial. Co-Lead Counsel developed the Plan of Allocation in consultation with Lead Plaintiffs' damages expert, and believe it provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

129. 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 Schering common stock and Preferred Stock and call options (and artificial deflation in the per share closing prices of sold Schering put options) throughout the Class Period that was purportedly caused by the alleged misconduct. The damages expert's analysis entailed studying the price decline in the Schering common stock and Preferred Stock and call options (and price increase in the sold Schering 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 Schering common stock and Preferred Stock and call options (and artificial deflation tables in the per share closing prices of Schering put options). These tables will be utilized in calculating Recognized Loss Amounts for Authorized Claimants.

130. 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 Preferred 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, and whether these securities were purchased (or sold) in or traceable to the secondary offering of common stock that occurred on or about August 15, 2007 and/or the initial offering of the Preferred Stock that occurred on or about August 15, 2007.

131. The proposed Plan of Allocation, developed in consultation with Lead Plaintiffs' damages expert, was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants based on the amount of alleged artificial inflation present in Schering common stock, Preferred Stock and call options (and artificial deflation in Schering 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.

VII. LEAD PLAINTIFFS' COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE OF THE SETTLEMENT

132. 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.[9] The Settlement Notice also informs Class Members of Co-Lead Counsel's intention to apply for an award of attorneys' fees in an amount not to exceed 17% of the Settlement Fund (which includes accrued interest), and for reimbursement of litigation expenses in an amount not to exceed $5,250,000, 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 $150,000.

133. 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.

[9] 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 (Exh. A to Exh. 6 hereto at p. 16).

134. 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.

135. On June 21, 2013, Epiq disseminated 325,893 copies of the Settlement Notice Packet by first-class mail. *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, submitted on behalf of Epiq, attached hereto as Exhibit 6, ¶ 6 (the "Thurin Decl."). As of July 1, 2013, Epiq disseminated a total of 346,384 Settlement Notice Packets to potential Class Members and nominees. *Id.* ¶ 8. Epiq disseminated the Settlement Notice Packet to those persons and entities whose names and addresses were included in listings

provided by Merck[10] and its transfer agent and from banks, brokers and other nominees in connection with the mailing of the Class Notice, as well as to additional potential members of the Class whose names and addresses were provided by individuals or nominees or for whom nominees requested additional Settlement Notice Packets. *Id.* ¶¶ 5-7.

136. Epiq has scheduled the publication of the Summary Settlement Notice in the national edition of *The Wall Street Journal* and its transmittal over the *PR Newswire* for July 2, 2013. *Id.* ¶ 9.

137. Epiq also posts information regarding the Settlement on a dedicated website established for the Action, www.scheringvytorinsecuritieslitigation.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.

138. 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. Co-Lead Counsel will file reply papers on August 13, 2013 that will address any objections and opt-in requests that may be received.

[10] In November 2009, Merck and Schering-Plough merged to form a single company operating under the name Merck & Co., Inc.

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

139. In addition to seeking final approval of the Settlement and Plan of Allocation, Co-Lead Counsel is making a collective application on behalf of Plaintiffs' Counsel for a fee award of 16.92% of the Settlement Fund (which includes accrued interest).[11] This request is supported by the multiple institutional investors that served as Lead Plaintiffs throughout the course of this litigation. 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 $3,620,049.63. 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 $102,447.26 (as detailed in paragraphs 177 to 180, below). The total requested as reimbursement for Co-Lead Counsel's expenses and the costs and expenses of Lead Plaintiffs (*i.e.*, $3,722,496.89) is well below the $5,250,000 maximum expense amount that the Class was advised could be requested. The legal authorities supporting the requested fees and expenses are set forth in Co-

[11] Plaintiffs' Counsel include Co-Lead Counsel and the law firm of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Court-appointed liaison counsel to the Class; the law firm of Cohen Milstein Sellers & Toll PLLC; and the law firm of Corlew Munford & Smith PLLC, which served as additional counsel for Lead Plaintiff the Public Employees' Retirement System of Mississippi.

Lead Counsel's separate Fee Memorandum.[12] Below is a summary of the primary factual bases for Co-Lead Counsel's requested fees and expenses.

A. Lead Plaintiffs Support the Fee and Expense Application

140. Lead Plaintiffs are four sophisticated institutional investors. Lead Plaintiffs have evaluated the Fee and Expense Application and believe it to be fair, reasonable and warranting consideration and approval by the Court. In coming to this conclusion, Lead Plaintiffs – each of which was substantially involved in the prosecution of the Action and negotiation of the Settlement – considered the size of the recovery obtained, particularly in light of the considerable risks of litigation, and collectively agreed to allow Co-Lead Counsel to apply for 16.92% of the Settlement Fund. *See* Declarations of Gilson, Neville, Roche, and Gendron attached hereto as Exhibits 2, 3, 4 and 5A. In addition to their responsibilities as certified class representatives, as public pension funds, each of the Lead Plaintiffs has independent duties and obligations to its respective constituents to ensure that it is acting in their best interests and that it is appropriately reviewing counsel's fee and expense application. Accordingly, Lead Plaintiffs' endorsement of Co-Lead Counsel's fee and expense application is significant.

141. ATRS is a public pension fund organized in 1937 for the benefit of the current and retired public school teachers of the State of Arkansas. ATRS

[12] Annexed hereto as Exhibit 11 is a compendium of unreported cases, in alphabetical order, cited in the Fee Memorandum.

purchased shares of Schering common stock, as well as common shares and preferred shares issued pursuant to the Offering during the Class Period and alleges that it suffered damages as a result of the alleged misconduct.

142. MPERS is a pension fund established for the benefit of the current and retired public employees of the State of Mississippi. MPERS purchased shares of Schering common stock during the Class Period and alleges that it suffered damages as a result of the alleged misconduct.

143. LAMPERS is a public pension fund organized for the benefit of the current and retired police employees of the State of Louisiana. LAMPERS purchased shares of Schering common stock during the Class Period and alleges that it suffered damages as a result of the alleged misconduct.

144. MassPRIM is charged with overseeing the Pension Reserves Investment Trust ("PRIT") Fund, a pooled investment fund established by the Massachusetts Legislature with a mandate to invest Massachusetts' pension assets and also to invest pension assets on behalf of local participating retirement systems. MassPRIM purchased shares of Schering common stock during the Class Period and alleges that it suffered damages as a result of the alleged misconduct.

145. Lead Plaintiffs played a central role in monitoring and participating in the Action, including, among other things, reviewing pleadings, motions and other court filings, participating in the discovery process, attending mediation sessions in

person or by telephone, and participating in frequent conference calls and/or in-person meetings with Co-Lead Counsel.

B. The Requested Fee is Fair and Reasonable

146. Based on the extensive efforts expended on behalf of the Class, the extraordinary result achieved, the risks of the litigation and the contingent nature of their representation, Co-Lead Counsel submit that their request for an award of attorneys' fees in the amount of 16.92% of the Settlement Fund is justified and should be approved. As set forth in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances. The percentage method is also supported by public policy, has been recognized as appropriate by the United States Supreme Court for cases of this nature, is the authorized method under the PSLRA, and represents the overwhelmingly current trend in the Third Circuit and most other Circuits.

147. Moreover, as discussed in the accompanying Fee Memorandum, Co-Lead Counsel's request for a fee award of 16.92% of the Settlement Fund is below many of the fee percentages customarily sought and awarded in federal securities law class actions, and comparable to fees awarded in similar settlements that are in the hundreds of millions of dollar or greater range.

1. The Significant Time and Labor Devoted to the Action by Co-Lead Counsel

148. 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' multiple motions to dismiss and motion for reconsideration; successfully moved for class certification, and opposed Defendants' multiple efforts 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 or defended 90 depositions; successfully opposed Defendants' multiple motions for summary judgment; prepared for trial scheduled to begin on March 4, 2013, including preparing for and conducting two multi-day mock trials; and engaged in a hard-fought and protracted settlement process with experienced defense counsel.

149. 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 Plaintiffs' Counsel have achieved precisely such an outcome, and accordingly, this factor weighs strongly in favor of Co-Lead Counsel's Fee Application.

2. A Lodestar Cross-Check Confirms the Reasonableness of Co-Lead Counsel's Fee Application

150. As described in the Fee Memorandum, the requested fee percentage is not only fair and reasonable under the percentage method but a lodestar cross-check confirms the reasonableness of the fee.

151. Attached hereto as Exhibits 7A to 7E are declarations from Plaintiffs' Counsel 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").[13] 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 regularly prepared and

[13] Attached as the first page to Exhibit 7 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.

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. 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.

152. As summarized in Exhibit 7 hereto, Plaintiffs' Counsel have expended 126,177.49 hours in the investigation, prosecution and resolution of the Action against Defendants, for a collective lodestar value of $59,450,367.00 through May 31, 2013.[14] Under the lodestar approach, the requested fee yields a multiplier of approximately 1.3 on the lodestar. This multiplier is within the range of multipliers awarded in actions where similar settlements have been achieved. *See* Fee Memorandum at § III.B.

3. The Quality of Co-Lead Counsel's Representation

153. 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

[14] 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.

opposing counsel. Ultimately, however, the acid test for evaluating "quality of the representation" is the result achieved for the class members whom class counsel were appointed to represent.

4. The Excellent Result Obtained for the Class

154. Here, for the reasons previously detailed above, Co-Lead Counsel respectfully submit that the Settlement, consisting of $473 million in cash – the 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.

155. 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 in the absence of either a financial restatement or criminal convictions related to the alleged misconduct.

5. The Court's Observations as to the Quality of Co-Lead Counsel's Work

156. 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 January 18, 2008, Co-Lead Counsel have appeared on multiple occasions before the Court, and the Court has reviewed pleadings, numerous motions and briefs submitted by Co-Lead Counsel,

including, *inter alia*, a detailed amended complaint, briefing in opposition to Defendants' multiple motions to dismiss and motion for reconsideration, briefing in support of class certification, briefing in opposition to Defendants' motions for summary judgment, and the submissions in connection with both preliminary and final approval of the Settlement. Although the work represents 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 is 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.

6. The Standing and Expertise of Co-Lead Counsel

157. 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 7A and 7B hereto), Co-Lead Counsel – the law firms of BLB&G and Labaton Sucharow – 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.

7. Standing and Caliber of Defense Counsel

158. The quality of the work performed by Co-Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition.

Defendants were represented by multiple law firms, which include many of the nation's most elite firms. Defense counsel included Paul, Weiss, Rifkind, Wharton & Garrison LLP; Shearman & Sterling LLP; Lowenstein Sandler LLP; Tompkins, McGuire, Wachenfeld, & Barry LLP; Sills Cummis & Gross P.C.; Pepper Hamilton, LLP; and Krovatin Klingeman, LLC. 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.

8. The Risks and Unique Complexities of the Litigation

159. This Action presented exceedingly novel procedural and substantive legal challenges from the outset. As discussed in Sections III and IV 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 relying only on circumstantial evidence.

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

9. The Risks of Contingent Litigation

161. As a general matter, it should be observed that 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 Plaintiffs' Counsel on a contingent-fee basis, and the risks assumed by Plaintiffs' Counsel (as described above), and the time and expenses incurred without any payment (as described above), were substantial.

162. From the outset, Plaintiffs' 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 that 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 over $3.6 million in expenses in prosecuting this Action for the benefit of the Class.

163. Plaintiffs' 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.

164. 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.

165. 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, the requested fee of 16.92% of the Settlement Fund, as detailed below, is reasonable and should be approved.

10. Awards in Similar Cases

166. 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 § III. For the reasons set forth therein, Co-Lead Counsel's 16.92% fee award request is comparable to fee awards that have been approved in other similarly sized litigations.

11. The Reaction of the Class to the Fee Application

167. In accordance with the Preliminary Approval Order, more than 346,000 Settlement 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 17% 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 $5,250,000, plus accrued interest. *See* Thurin Decl. ¶ 8 and Exh. A at pp. 2, 17. Additionally, Epiq has scheduled the publication of the Court-approved Summary Settlement Notice in the national edition of *The Wall Street Journal* and its transmittal over

the Internet via *PRNewswire* for July 2, 2013. *Id.* at ¶ 9. The Settlement Notice, Claim Form, Complaint, Preliminary Approval Order and Stipulation and Agreement of Settlement have also been posted on the website for this Action, www.scheringvytorinsecuritieslitigation.com. *Id.* at ¶ 13. Copies of the Settlement Notice and Claim Form were also posted on Co-Lead Counsel's websites, www.blbglaw.com and www.labaton.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* ¶ 138 above. Co-Lead Counsel will address all objections received in their reply papers to be filed with the Court on or before August 13, 2013.

C. The Requested Reimbursement of Litigation Expenses Is Fair and Reasonable

168. Co-Lead Counsel also seek reimbursement from the Settlement Fund in the total aggregate amount of $3,620,049.63 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 $102,447.26 for the costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Class (the "Expense Application").

169. 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.

170. As set forth in the Fee and Expenses Schedules (attached to Exhibit 7 hereto), Plaintiffs' Counsel have incurred a total of $3,620,049.63 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 declarations, 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. Further, there is no expense for

general overhead incurred to outside vendors. Accordingly, the amounts requested reflect the actual amounts billed by the providers. A summary chart of Plaintiffs' Counsel's expenses is attached hereto as Exhibit 8.

171. 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 in this Action and Co-Lead Counsel in the *Merck* action. The litigation fund that paid expenses that were exclusively related to this Action was maintained by BLB&G (the "Schering Litigation Fund"). As noted above, because of the related nature of this Action and the *Merck* action, there was an opportunity to achieve significant cost savings through the coordinated prosecution of the actions. Expenses that applied to both actions were paid from a joint litigation fund that was maintained by Grant & Eisenhofer, which, along with BLB&G, was co-lead counsel in the *Merck* action (the "Joint Litigation Fund"). Contributions to the Joint Litigation Fund came from the separate litigation funds maintained in each action. Co-Lead Counsel collectively contributed $2,389,500.00 to the Schering Litigation Fund and $515,000.00 was contributed from the Schering Litigation Fund to the Joint Litigation Fund. A description of the payments from the Schering Litigation Fund by category is set forth in Exhibit 9 hereto and the disbursements from the Joint Litigation Fund are set forth in Exhibit 10 hereto (which is a copy of Exhibit 5 to Declaration of Daniel

L. Berger in Support of Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Grant & Eisenhofer, P.A., filed in the *Merck* Action). The disbursements from the Joint Litigation Fund, in proportion to the contributions to that fund from the Schering Litigation Fund, are included in the statement of "line-item expenses" incurred in connection with this Action set forth in Exhibit 8 and discussed below.

172. Of the total amount of expenses, $2,225,217.91 or approximately 61%, was expended on experts and consultants. As noted above in ¶¶ 23, 45, 75-83, 128-129, 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 multiple statistical experts, multiple medical experts, and a due diligence expert. Co-Lead Counsel also retained a trial consulting firm to prepare exhibits for trial, conduct jury focus groups and mock trials, 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 eleven 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 10 expert reports and five of Lead Plaintiffs' experts were deposed by Defendants.

173. Another large component of the expenses, $624,873.25 for approximately 17% of the total expense amount, related to the document production and copying. 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. Additionally, given the volume of documents and the extensive number of depositions there were also significant costs related to reproducing the documents.

174. Additionally, Co-Lead Counsel paid $146,305.58 for mediation fees assessed by the various mediators in this matter.

175. 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.

176. All of the Litigation Expenses incurred by Plaintiffs' Counsel, which total $3,620,049.63, 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 2, 3, 4 and 5A attached hereto.

177. Additionally, pursuant to 15 U.S.C. § 78u-4(a)(4), Lead Plaintiffs, ATRS, MPERS, LAMPERS and MassPRIM, seek reimbursement of their reasonable costs and expenses incurred directly in connection with their representation of the Class in the amounts of $8,020.00, $39,080.00, $19,575.00, and $35,772.26, 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 2, 3, 4 and 5B. *See* Declaration of Laura Gilson, Esq., General Counsel of ATRS at ¶¶ 9-10; Declaration of George W. Neville, Esq., Special Assistant Attorney General to the State of Mississippi on behalf of MPERS at ¶¶ 10-12; Declaration of R. Randall Roche, Esq., General Counsel of LAMPERS at ¶¶ 9-10; and Declaration of Christopher J. Supple, Deputy Executive Director and General Counsel of MassPRIM at ¶¶ 8-10. Co-Lead Counsel respectfully submit that these requested amounts are fully consistent with Congress's 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.

178. As set forth in 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 five 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 of 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 at § VI.

179. The Settlement Notice informed potential Class Members that Co-Lead Counsel would be seeking reimbursement of expenses in an amount not to exceed $5,250,000 and that the costs and expenses of the Lead Plaintiffs in an amount not to exceed $150,000 would be sought as part of the request for reimbursement of Litigation Expenses. The total amount sought by the Lead Plaintiffs (*i.e.*, $102,447.26), is below the $150,000 in total that Class Members were advised could be sought for them. 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.

180. 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.

IX. CONCLUSION

181. 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 the requested fee in the amount of 16.92% of the Settlement Fund should be approved as fair and reasonable, and the request for reimbursement of Plaintiffs' Counsel's litigation expenses in the amount of $3,620,049.63, and Lead Plaintiffs' costs and expenses in the amount of $102,447.26 should also be approved.

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

Executed on July 2, 2013

Salvatore J. Graziano

Christopher J. McDonald

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