IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MYLAN PHARMACEUTICALS, INC., et al. **Plaintiff,** **v.** **WARNER CHILCOTT PUBLIC LIMITED COMPANY, et al.,** **Defendants.**	**Civ. No. 12-3824** **CONSOLIDATED**

DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES

Direct purchaser plaintiffs Rochester Drug Co-Operative, Inc. ("RDC"), American Sales Company, Inc. ("American Sales"); Meijer, Inc., and Meijer Distribution, Inc. ("Meijer") (collectively, "plaintiffs") respectfully move for an order:

- awarding attorneys' fees to class counsel of one-third of the settlement fund of $15 million, plus accrued interest thereon;
- reimbursing class counsel for the costs and expenses incurred through November 13, 2014[1] in the amount of $1,111, 284.11; and
- approving incentive awards of $50,000 to each of the Class Representatives.

[1] Each firm that is seeking reimbursement of its time and expenses is only including time and expense incurred from inception through November 13, 2013, the date the parties accepted the mediator's settlement proposal and a pens down provision. However, Co-Lead Class Counsel is seeking reimbursement of some expenses paid from the litigation fund that were incurred after November 13, 2013 and were reasonable and necessary to the administration of the settlement such as the costs of notice and claims administration by the court-appointed claims administrator Rust Consulting, Inc., economic expert fees incurred in administering the settlement and the document hosting/management fees incurred in hosting the document production of defendants and third parties in this case.

In support of this motion, plaintiffs submit herewith a memorandum of law and a declaration of Co-Lead Class Counsel, Peter Kohn. A proposed order granting this motion will be incorporated into and submitted with plaintiffs' motion for final approval of the settlement which is due April 24, 2014 (51 days from March 4, 2014 the date the class notice was mailed to class members). Order, Feb. 18, 2014 (ECF No. 484), at 10.

Dated: March 19, 2014

Respectfully submitted,

/s/ Peter Kohn

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Co-Lead Counsel for the Direct Purchaser Class

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed and served through the Court's ECF system a true and correct copy of the foregoing.

/s/Neill W. Clark
Neill W. Clark

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MEMORANDUM IN SUPPORT OF DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES

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I. INTRODUCTION

Co-Lead Counsel for the Class of Direct Purchasers ("Co-Lead Counsel")[1] submit this memorandum to support their request for an order (i) awarding attorneys' fees in the amount of one-third of the settlement fund of $15 million (plus accrued interest), (ii) reimbursing Class Counsel for litigation expenses in the amount of $1,111,284.11 incurred through November 13, 2013,[2] and (iii) approving incentive awards to each of the three class representatives in the amount of $50,000.[3]

From the beginning, Class Counsel pursued this action vigorously, committing their services, applying their highly specialized expertise in the field of pharmaceutical antitrust litigation, and advancing substantial funds to prosecute this case. To date, Class Counsel have neither been paid for their efforts nor reimbursed for their payment of litigation expenses. Instead, their compensation and expense reimbursements have been contingent on obtaining a recovery on behalf of the Class. Class Counsel have now achieved a positive cash settlement of $15 million in exchange for release of Plaintiffs' and the Class's claims (the "Settlement" or "Settlement Fund") that will provide immediate,

[1] Co-Lead Counsel for the Class are Berger & Montague, P.C., Faruqi & Faruqi, LLP, Grant & Eisenhofer, P.A., and Hagens Berman Sobol Shapiro LLP. Order, February 18, 2014 (ECF No. 484), at 6. The following non-lead firms also contributed to the prosecution of this case and are seeking attorneys' fees and reimbursement of expenses: Cafferty Clobes Meriwether & Sprengel LLP, Hilliard & Shadowen LLP, Radice Law Firm, P.C., Spector Roseman Kodroff & Willis, P.C., Taus, Cebulash & Landau, LLP, and Vanek, Vickers & Masini, P.C. These firms and Co-Lead Counsel are collectively "Class Counsel." *See Declaration of Co-Lead Counsel for the Class Peter Kohn In Support of Direct Purchaser Class Plaintiffs' Motion for An Award of Attorneys' Fees, Reimbursement of Expenses and Payment of Incentive Awards to the Class Representatives* ("Co-Lead Decl."), at 1.

[2] On this date Plaintiffs and Defendants agreed to the mediator's settlement proposal and stopped prosecuting the case except for settlement purposes. The only expenses incurred after this date for which Class Counsel currently seek reimbursement are for settlement administration. Should the Court grant final approval of the Settlement, Class Counsel will then seek reimbursement of additional settlement administration expenses incurred after the date of this motion when they file their motion for distribution of the Settlement Fund.

[3] The class representatives are Rochester Drug Co-Operative, Inc. ("RDC"), American Sales Company, LLC ("American Sales"), Meijer, Inc. and Meijer Distribution, Inc. ("Meijer") (collectively "Class Representatives" or "Plaintiffs").

meaningful, and certain benefit to the Class.

Class Counsel's request for a one-third fee is appropriate. In more than a dozen analogous direct purchaser class actions involving similar allegations of suppressed generic competition brought on behalf of virtually identical classes of sophisticated institutional drug purchasers, including from district courts in the Third Circuit, courts have awarded class counsel fees of one-third of the settlement.[4] *See* table of cases at 14-15, *infra*. The request is particularly appropriate here in that the requested fee is less than Class Counsel's lodestar.

Class Counsel's request for reimbursement of expenses is similarly appropriate. All expenses were necessarily incurred in the prosecution of the case, and minimized through cost-sharing agreements with other plaintiff groups.

Finally, the requested incentive awards of $50,000 for each Class Representative are appropriate. Class Representatives took the risk of filing complaints against prescription drug suppliers, and each participated throughout the litigation by producing documents and discovery, submitting to deposition, providing information to prosecute the case, and overseeing Class Counsel. These amounts are in line with awards in prior cases with similar settlement amounts.[5]

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[4] *E.g.*, *In re Flonase Antitrust Litig.*, No. 08-cv-3149 (ECF No. 496) (E.D. Pa. June 14, 2013) (Brody, J.) ("*Flonase*"); *In re Wellbutrin XL Antitrust Litig.*, No. 2: 08-cv-2431 (ECF No. 485) (E.D. Pa. Nov. 7, 2012) (McLaughlin, J.) ("*Wellbutrin XL*"); *In re Wellbutrin SR Antitrust Litig.*, C.A. No. 04-5525 (ECF No. 413) (E.D. Pa. Nov. 21 2011) (Stengel, J.) ("*Wellbutrin SR*"); *Rochester Drug Co-Operative, Inc. v. Braintree Laboratories, Inc.*, C.A. No. 07-142-SLR (ECF No. 243) (D. Del. May 31, 2012) (Robinson, J.) ("*Miralax*"); *In re Metoprolol Succinate Antitrust Litig.*, No. 06-52-MPT (ECF No. 193) (D. Del. Feb. 21, 2012) (Thynge, J.) ("*Toprol*"); *In re Tricor Direct Purchaser Antitrust Litig.*, C.A. No. 05-340-SLR (ECF No. 543) (D. Del. April 23, 2009) (Robinson, J.) ("*Tricor*").

[5] *E.g.*, *Flonase*, No. 08-cv-3149 (ECF No. 496) ($50,000 to one class representative and $40,000 to other class representative); *Wellbutrin XL*, No. 2: 08-cv-2431 (ECF No. 485) ($50,000 to class representative); *Wellbutrin SR*, C.A. No. 04-5525 (ECF No. 413) ($25,000 to each of two class representatives); *Miralax*, No. 07-142-SLR (ECF No. 243) ($60,000 to each of the three class representatives); *Toprol*, No. 06-52-MPT (ECF No. 193) ($50,000 to each of the three class

II. BACKGROUND

This is an antitrust class action brought on behalf of direct purchasers of Doryx, a delayed-release doxycycline hyclate prescription drug used to treat moderate to severe acne.

A. Direct Purchasers' Claims

Plaintiffs allege that Defendants repeatedly reformulated and switched to different versions of Doryx and undertook other efforts to impair the process by which AB-rated generic pharmaceutical drugs are automatically substituted for their brand name counterparts. As a result of the alleged anticompetitive conduct, it is alleged that Defendants: (a) unlawfully maintained monopoly power in the market for delayed-release doxycycline hyclate in the United States; (b) maintained the price of Doryx at supra-competitive levels; and (c) overcharged Plaintiffs and members of the Class by depriving them of the benefits of unimpaired competition and access to less expensive generic Doryx.

B. Procedural Background

The Court is familiar with the progress of this action from its supervision of the case and review of the parties' monthly status reports.

Following pre-complaint investigation and the commencement of an antitrust action by generic manufacturer Mylan Pharmaceuticals, Inc., Plaintiffs filed complaints against Defendants beginning July 18, 2012.[6] The Court consolidated the Plaintiffs' complaints with Mylan's on July 24, 2012, amended the case caption on July 25, 2012, and entered a Stipulated Order on July 26, 2012 ordering Defendants to answer, plead, or otherwise move with respect to Mylan and the Plaintiffs' complaints.[7]

Fact Discovery: Discovery was extensive, including production of millions of documents by

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representatives); *Tricor*, C.A. No. 05-340-SLR (ECF No. 543) ($50,000 to each of the three class representatives).

[6] Mylan Pharmaceuticals, Inc. ("Mylan") filed its complaint against Defendants on July 6, 2012.

[7] Order, July 24, 2012 (ECF No. 4); Order, July 26, 2012 (ECF No. 12); Order, July 25, 2012 (ECF No. 6-1); [Proposed] Case Management Order, Aug. 24, 2012 (ECF No. 71).

Plaintiffs, Defendants, and Mylan. There was also substantial third party document production by brand and generic manufacturers of acne medications, health insurance payors, marketing firms for Warner Chilcott , Pharmacy Benefit Managers, research companies, and vendors that assisted Mylan with its generic products.

Document discovery began in fall 2012. Class Counsel reviewed and selected documents for use in motions to dismiss and class certification briefing, depositions, and expert reports. Class Counsel spent thousands of hours analyzing the documents. Defendants also pressed Plaintiffs for production, requiring extensive searches and production of Plaintiffs' documents and data.

Plaintiffs began depositions in March 2013 and, as required by the Court's orders, concluded the depositions of Defendants' witnesses by the June 19, 2013 deadline (ECF No. 71 at 3-4).[8] Class Counsel, collaborating with other plaintiffs, was the primary questioner in over half of the Warner Chilcott depositions and three-quarters of the Mayne depositions. Class Counsel also defended Class Representative depositions, and prepared for and appeared at virtually every other deposition, *i.e.*, retailers, absent class members/assignors, Mylan personnel, other generic manufacturers, PBMs, and TPPs. Class Counsel also took or defended the depositions of experts on class certification.[9]

Class Certification: Class certification also was hard-fought. Plaintiffs filed class certification papers on April 1, 2014 (ECF Nos. 153-154). Defendants filed their opposition on May 16, 2013 along with a motion to exclude the testimony of Jeffrey Leitzinger, Ph.D. (ECF Nos. 233, 235, 247, 249 & 250). Defendants' voluminous filing included 117 exhibits and three reports from experts in

[8] The Parties sought, and were granted, an extension with respect to taking certain third party depositions after this deadline. *See* Order, June 26, 2013 (ECF No. 326). The parties also sought and were granted extensions for the submission of expert reports and completion of expert discovery. *See* Amended Case Management Order, July 16, 2013 (ECF No. 378); Amended Case Management Order, October 28, 2013 (ECF No. 431).

[9] The remainder of Defendants' merits expert depositions had not yet been scheduled as of the date that the parties agreed to the Mediator's Proposal and put pens down.

economics, dermatology, and pharmaceutical manufacturing and supply.[10] After taking the depositions of Defendants' experts and preparing for and defending the deposition of Dr. Leitzinger, on July 16, 2013, Plaintiffs filed their reply papers, including a memorandum,[11] an opposition to Defendants' motion to exclude Dr. Leitzinger,[12] and a Rebuttal Declaration of Dr. Leitzinger.[13] Plaintiffs' reply included an 87 page memorandum of law and three volumes of exhibits.[14]

Following briefing on class certification, the Court ordered the parties to produce "[m]arket capitalization, annual profit, annual revenue, and number of employees for each of the 23 members of the proposed Direct Purchaser class . . . [and] direct purchases of Doryx by month for the proposed class period and the percentage of all direct purchases of Doryx made by each class member during the proposed class period."[15] Plaintiffs filed a notice of compliance with that Order on August 20, 2013.[16]

At the time the parties entered into mediation, the class certification motion was pending. On February 18, 2014, the Court certified the Class for purposes of settlement.[17]

Experts: Along with Dr. Leitzinger, Plaintiffs retained six additional experts who collectively served 10 reports on antitrust injury and damages, pharmacoeconomics, pharmaceutics, FDA

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[10] ECF Nos. 247, 247-117, 237-238, 241, 253-254. Plaintiffs also filed a motion to file a Sur-Reply in opposition to Defendants' motion to strike the Declaration of Jeffrey Leitzinger (ECF No. 350), in addition to filing a motion to strike certain portions of Defendants' Memorandum of Law in support of their motion to strike Jeffrey Leitzinger's declaration. (ECF No. 367).

[11] ECF Nos. 336-339.

[12] ECF Nos. 335 & 382.

[13] ECF Nos. 379 & 383.

[14] ECF Nos. 336-339.

[15] ECF No. 404.

[16] ECF No. 408.

[17] Order, Feb. 18, 2014 (ECF No. 484), at 3.

regulations and drug manufacturing, dermatology, and gastroenterology.[18] In addition to the three reports Defendants had previously served, Defendants served an additional 19 merits reports. At the time the parties agreed to the mediator's settlement proposal, Plaintiffs had already taken depositions of two of Defendants' merits experts, were preparing for depositions of Defendants' other experts, and were working with Plaintiffs' own experts to prepare rebuttal reports.

Settlement Negotiations: The settlement negotiations unfolded in phases. Early discussions were unproductive, but in October 2013, the parties agreed to private mediation with nationally recognized mediator Jonathan Marks (the "Mediator"). Following submission of materials to the Mediator, the parties participated in a day-long face-to-face mediation. On November 8, 2013, the Mediator submitted a settlement recommendation to each side of $15 million. Following consultation with their clients and deliberation among Class Counsel, on November 13, 2013, Co-Lead Counsel notified the Mediator that they accepted the Mediator's settlement proposal. The parties' continued negotiations over other terms, and executed the Settlement Agreement on December 24, 2013.

III. ARGUMENT

The United States Supreme Court has "recognized consistently that a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." [19] A Court determining the reasonableness of an attorney's

[18] In connection with Plaintiffs' motion for class certification, Dr. Leitzinger filed an opening expert report on April 1, 2013 and a rebuttal report on July 16, 2013. (ECF Nos. 154 & 379). His merits expert report was served on August 9, 2013. Aaron S. Kesselheim M.D., J.D., M.P.H., plaintiffs' pharmacoeconomics expert, submitted reports on August 9, 2013 and October 18, 2013. Plaintiffs' five other experts submitted their reports on August 9, 2013.

[19] *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). *See also Boone v. City of Phila.*, 668 F. Supp. 2d 693, 713 (E.D. Pa. 2009) (citing *Boeing Co.*, 444 U.S. at 478); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.").

fee is guided by the factors set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) – the length and complexity of the case, the benefit conferred on the class, the skill and efficiency of counsel, the risk of non-recovery, the amount of time devoted to the litigation, the fees paid in comparable cases, and the presence or absence of substantial objections by class members to the settlement terms and/or fees requested. The Third Circuit urges district courts to perform a lodestar cross-check to ensure that application of the percentage method results in a "sensible" recovery.[20]

Under these standards, Class Counsel's request for a fee of one-third of the $15 million settlement fund for this complex and demanding matter is reasonable. Class Counsel spent over 20,860 hours through November 2013 on the case. If awarded, the requested fee would amount to a negative multiplier of 44 percent of the total loadstar.

Class Counsel's request for reimbursement of expenses, totaling $1,111,284.11 is also reasonable. These costs were incurred by counsel for the benefit of the class, and are reasonable for a complex, deposition and expert-intensive case such as this. Class Counsel achieved efficiencies on behalf of the class by sharing expert and other expenses with other plaintiffs.

Class Counsel's request for incentive awards of $50,000 for each Class Representative is also reasonable given the demands of this case and consistent with similar cases.

A. Class Counsel Have Created a Common Fund and the Percentage-Of-Recovery Approach Should Be Used to Compensate Class Counsel.

The Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases. The common fund doctrine is based on the inherent powers of the federal court to "prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit."[21] Unlike in cases in which fees are

[20] *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305-06 (3d Cir. 2005).

[21] *Boeing Co.*, 444 U.S. at 478.

assessed under a statute, fees in common fund cases "are not assessed against the unsuccessful litigant (fee shifting), but rather are taken from the fund or damage recovery (fee spreading), thereby avoiding the unjust enrichment of those who otherwise would be benefited by the fund without sharing in the expenses incurred by the successful litigant."[22] This allows courts to reward litigation success and penalize failure.[23] Courts in the Third Circuit and elsewhere routinely employ the percentage-of-the-fund method in pharmaceutical antitrust class actions.[24]

B. The Fee Requested by Class Counsel is Fair and Reasonable.

Courts in the Third Circuit historically consider the following seven factors when evaluating the reasonableness of a fee request under the percentage-of-recovery method:

> (1) the size of the fund created and the number of persons benefited; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.[25]

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[22] *Fickinger v. C.I. Planning Corp.*, 646 F. Supp. 622, 632 (E.D. Pa. 1986).

[23] *See In re OSB Antitrust Litig.*, No. 06-826, (E.D. Pa. 2006) (ECF No. 947 at 3-4) (internal quotations and citations omitted) ("The percentage-of-recovery method is generally preferred in common fund class actions, however, because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure."); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 300 (distinguishing the alternative lodestar method of determining attorneys' fees, which is more commonly applied in statutory fee-shifting cases)).

[24] *See, e.g.*, *Flonase*, 951 F. Supp. 2d at 746 ("The latter method [i.e., percentage-of-recovery], is 'generally favored in cases involving a common fund . . . .'") (quoting *In re Rite Aid Corp. Sec. Litig*, 396 F.3d at 300); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 U.S. Dist. LEXIS 27013, at *32 (D.N.J. Nov. 9, 2005) ("*Remeron*") ("the percentage of fund method is the proper method for compensating Plaintiffs' Counsel in this common fund case"); *see also* table of cases at 14-15 *infra* (identifying 16 direct purchaser antitrust pharmaceutical cases in which courts have awarded attorneys' fees based on percentage-of-the-fund method).

[25] *Gunter*, 223 F.3d at 195 n.1. Even if one factor disfavors a requested fee award, other factors often outweigh an outlier. *See, e.g.*, *Meijer, Inc. v. 3M*, No. 04-5871, 2006 WL 2382718, at *21-22 (E.D. Pa. Aug. 14, 2006) (although time devoted to litigation was relatively low when case settled after one year, other *Gunther* considerations outweighed that fact).

More recently, the Third Circuit has suggested additional factors for consideration:

> (1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations; (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and (3) any "innovative" terms of settlement.[26]

Both the *Gunter* and *Prudential* factors support the fee requested.

1. Application of the *Gunter* factors

(a) The complexity and duration of the litigation

Complexity and duration of the litigation is "the first factor that a district court can and should consider in awarding fees."[27] An "antitrust class action [is] perhaps the most complex case[] to litigate."[28] This is particularly so in a "product hopping" case such as this one, where the case law is not well-developed and dependent on a fact-intensive inquiry.[29] Thus, assessing whether the anticompetitive harm from the formulation changes outweighed the benefits presented by Defendants required Class Counsel to master complex legal and scientific matters. Among other things, Class Counsel:

- Investigated the Class's claims of antitrust violation and injury;

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[26] *In re Prudential Ins. Co. of American Sales Practices Litig.*, 148 F.3d 283, 340 (3d Cir. 1998) (*Prudential*); *see also In re AT & T Corp.*, 455 F.3d 160, 165-66 (3d Cir. 2006) ("In reviewing an attorneys' fees award in a class action settlement, a district court should consider the *Gunter* factors, the *Prudential* factors, and any other factors that are useful and relevant") (citations omitted).

[27] *Gunter*, 223 F.3d at 197.

[28] *Bradburn Parent Teacher Store v. 3M*, 513 F. Supp. 2d 322, 338-39 (E.D. Pa. 2007) ("*Bradburn*"); *see also In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577 (E.D. Pa. 2003).

[29] *Abbott Labs. Co., v. Teva Pharms. USA, Inc*. 432 F. Supp. 2d 408 (D. Del. 2006) ("*Tricor*") ("([I]f plaintiffs show anticompetitive harm from the formulation changes, that harm will be weighed against any benefits presented by the Defendants").

- Conducted extensive research and analysis concerning antitrust liability for product hopping, conspiracy, statute of limitations, relevant market and the *Noerr-Pennington* doctrine as it relates to filings with the FDA;

- Opposed Defendants' motion to dismiss which included briefing and exhibits totaling hundreds of pages;

- Filed and briefed class certification, including taking and defending four expert depositions and replying to Defendants' response in opposition to class certification that included three separate expert reports and 117 exhibits;

- Prepared for and defended the depositions of Class Representatives;

- Assisted Class Representatives and absent class members with discovery including opposing Defendants' motion to compel absent class member discovery[30] and providing the Court with additional class member data;[31]

- Litigated other discovery motions and negotiated stipulations concerning Defendants' extensive document and data demands;

- Pursued discovery from and conducted substantial negotiations with 32 subpoenaed third parties;

- Reviewed and analyzed millions of pages of documents and data produced by Defendants and third parties;

- Conducted or appeared at dozens of depositions of current and former employees of Defendants, other plaintiffs, and third parties;

- Oversaw the preparation of 10 expert reports;[32]

- Conducted depositions of 5 Defendants' experts;[33]

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[30] *See Letter Brief Regarding Discovery*, May 02, 2013 (ECF No. 186); *Opposition to Letter Brief*, May 6, 2013, (ECF No. 193). Class Counsel also worked with counsel for absent class members in response to Defendants' motion to compel the Retailer Plaintiffs to produce documents related to assignments from some of the wholesaler members of the Class. *See Letter Brief Motion to Compel the Four Retailers*, April 30, 2013 (ECF No. 184).

[31] Order, August 16, 2013 (ECF No. 404).

[32] Plaintiffs' economic expert Jeffrey Leitzinger, Ph.D. submitted three expert reports, two related to class certification and one opening merits report; Plaintiffs' pharmaceutical economic expert, Aaron S. Kesselheim, M.D., J.D., M.P.H., submitted two expert reports; the five other opening merits reports were submitted by Plaintiffs' dermatology, pharmaceutics, pharmaceutical manufacturing and supply, gastroenterology and FDA regulatory experts.

- Submitted a mediation statement and participated in mediation that yielded a $15 million settlement for the Class; and
- Developed and drafted the settlement and class notice documents, and will assist in overseeing the notice and claims process to ensure swift and accurate distribution of settlement proceeds to the Class.

Co-Lead Decl. ¶¶ 11-12. Without the prospect of further compensation, Class Counsel will continue to devote time to settlement approval (preparation for the final approval hearing and responding to class member inquiries) and administration. *Id.* at ¶ 13. Due to the compressed nature of the schedule and Class Counsel's extensive efforts, this case resolved within 17 months of being filed, half of the time for an average antitrust case.[34] Class Counsel's efficient and effective litigation of this complex case establishes that this factor is met.[35]

(b) The skill and efficiency of counsel

Class Counsel includes some of the preeminent plaintiffs' firms in the country, with decades of experience prosecuting and trying complex pharmaceutical antitrust actions.[36] They applied their knowledge and experience in this specific area to obtain a positive result for the class. Along with

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[33] Class Counsel worked with experts in connection with their reports and depositions relating to class certification and merits. At the time the parties accepted the Mediator's settlement proposal, Class Counsel was assisting the experts in preparation for their upcoming rebuttal reports and depositions.

[34] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 Journal of Empirical Legal Studies 811, 820 (December 2010) (finding that the average time for an antitrust case to resolve is 3.1 years).

[35] *Tricor*, No. 05-340-SLR (ECF No. 543) (D. Del. Apr. 23, 2009) (awarding one-third fee where class counsel "effectively and efficiently prosecuted this difficult and complex action on behalf of members of the Class for over three and one-half years"); *In re Am. Investors Life Ins. Co. Marketing and Sales Practices Litig.*, 263 F.R.D. 226, 243 (E.D. Pa. 2009) (fee request supported where case involved complex RICO allegations, and class counsel had conducted extensive discovery, retained experts, and filed and defended several complex motions).

[36] The background, experience, and qualifications, including firm resumes of Class Counsel, are included in the Co-Counsel Decl. at Exhibits A-J.

Class Counsel's particular experience, the high "quality of opposing counsel" further supports the fee request.[37] Moreover, Class Counsel worked closely with the other plaintiff groups to avoid duplication of effort and reduce expenses.

(c) The risk of non-payment

"A determination of a fair fee must include consideration of the sometimes undesirable characteristics of a contingent antitrust action[], including the uncertain nature of the fee, the wholly contingent outlay of large out of pocket sums by plaintiffs, and the fact that the risk of failure and nonpayment in an antitrust case are extremely high."[38] The risk of non-payment in this matter was considerable.[39] At the time Plaintiffs filed their complaints, only two courts had ruled in a direct purchaser pharmaceutical product hopping case, one with a favorable outcome, and the other failing to survive a motion to dismiss.[40] Indeed, the Court characterized plaintiffs' theory as "novel" and Defendants' arguments as "compelling," expressed skepticism that the "product hopping alleged here

[37] *Am. Investors*, 263 F.R.D. at 244 (where class counsel were skilled in litigating class actions against insurance companies, defendants were represented by a leading law firm, and the case was vigorously litigated by both sides, class counsel's fee request was supported); *In re Corel Corp. Inc. Sec. Litig*. 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003) (where counsel primarily practiced in the field of shareholder securities litigation, had considerable experience, and faced formidable legal opposition, this supported awarding the requested fees).

[38] *Remeron*, 2005 U.S. Dist. LEXIS 27013, at *39.

[39] The history of antitrust litigation is replete with cases in which plaintiffs succeeded at trial on liability but recovered no, or very small, damages at trial or after appeal. *See, e.g.*, *U.S. Football League v. Nat'l Football League*, 644 F. Supp. 1040, 1042 (S.D.N.Y. 1986) ("the jury chose to award plaintiffs only nominal damages, concluding that the USFL had suffered only $1.00 in damages"); *MCI Commc'ns Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 116-67 (7th Cir. 1983) (antitrust judgment remanded for new trial and damages); *Eisen v. Carlisle & Jacquelin*, 479 F.2d 1005 (2d Cir. 1973) (after two trips to the Second Circuit and one to the Supreme Court, plaintiffs and the proposed class recovered nothing in an antitrust class case).

[40] *Tricor*, No. 05-340-SLR, (ECF No. 543) at 9-10 (D. Del. Apr. 23, 2009) (awarding 33 1/3 % fee after parties litigated for three and half years and trial had begun); *Walgreen v. AstraZeneca*, 534 F. Supp. 2d 146 (D.D.C. 2008) (granting motion to dismiss).

constitutes anticompetitive conduct," and invited Defendants to renew their arguments in support of their motion to dismiss at summary judgment.[41] Even if Plaintiffs had brought their case to trial and succeeded, they still would have faced certain and lengthy appeals. As Judge Pratter recently observed, attorneys who undertake the representation of a class are "unable to mitigate any of the risk of nonpayment; instead, they [a]re required to spend or incur obligations to effectively litigate th[e] case."[42] And, as Judge Stengel explained in awarding a one-third fee in *Wellbutrin SR*:

> Class Counsel faced numerous risks in preparing and litigating this case, including the risks associated with the motion to dismiss, class certification, summary judgment, and – had the case continued – ultimately proving liability and damages at trial and potentially surviving any appeals. Underlying all of these risks was the enormous one of handling this case for its entire duration on a contingent basis, doing everything necessary to honor Class Counsel's commitment and obligations to the class. . . . The substantial risk of nonpayment that Class Counsel faced throughout this litigation strongly supports their fee request.[43]

And so it is here. Having now recovered a positive settlement for the Class considering the multiple and significant risks faced, Class Counsel should be compensated for their efforts.

(d) The amount of time devoted to the litigation

Class Counsel expended over 20,860 hours preparing, litigating, and negotiating the settlement of this case.[44] Class Counsel's commitment continues without the prospect of being

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[41] Order, June 12, 2013 (ECF No. 280), at 3-4. Plaintiffs respectfully disagree with the Court's expressed view. The Court's assessment, however, underscores the benefits to the class of the Settlement.

[42] *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 423 (E.D. Pa. 2010).

[43] *Wellbutrin SR Antitrust Litig.*, at 11-12 (citations omitted).

[44] The time that Class Counsel devoted to this litigation also supports approval of their fee request. *See, e.g.*, *Boone*, 668 F. Supp. 2d at 714 (where class counsel spent roughly 2,858 hours of contingent work on the litigation, this justified their fee request); *Bradburn*, 513 F. Supp. 2d at 339 (where class counsel spent more than four years, including more than 9,000 attorney hours and roughly 2,000 paralegal hours, on the case, weighed in favor of awarding the requested fees).

further compensated because their lodestar calculation does not include any time after the parties agreed to the Mediator's proposal. As a result, the lodestar calculation does not include time related to: (i) negotiations over the December 24, 2013 Settlement Agreement that occurred after November 13, 2013, (ii) preparing and filing the settlement and attorneys' fees and expenses papers, (iii) preparing for and participating in preliminary and final approval hearings, and (iv) handling any claims administration and distribution of the Settlement Fund. That Class Counsel's fee request covers not only work that has been done to date but also any future work supports the reasonableness of Plaintiffs' fee request.[45]

(e) The size of the fund and the number of people that benefit

The settlement provides the entire class of Doryx direct purchasers with immediate and certain payment of $15 million, plus accrued interest, less attorneys' fees, expenses, administration costs, and incentive awards to the three Class Representatives, as may be awarded by the Court ("Net Settlement Fund"). Members of the Class will receive their *pro rata* share of the Net Settlement Fund based on their purchases of Doryx during the Class Period.

(f) Consistency with fee awards in comparable cases

The requested fee is consistent with other direct purchaser class actions involving allegations of overcharges arising from impeded generic drug competition. The following table summarizes sixteen cases in which the courts awarded a one-third attorneys' fee:

Date	Case Name	Settlement Amount
6-14-13	*In re Flonase Antitrust Litig*., E.D. Pa. 08-3149	$150M
11-07-12	*In re Wellbutrin XL Antitrust Litig.*, E.D. Pa. 08-2431	$37.5M

[45] *See Remeron*, 2005 U.S. Dist. LEXIS 27013, at *42 (observing that class counsel would "likely incur hundreds of additional hours in connection with administering the settlement, without prospect for further fees").

05-31-12	*Rochester Drug Co-Operative, Inc., v. Braintree Laboratories, Inc.*, D. Del. 07-142-SLR	$17.5M
01-12-12	*In re Metoprolol Succinate Antitrust Litig.*, D. Del. 06-52-MPT	$20M
11-28-11	*In re DDAVP Direct Purchaser Antitrust Litig.*, S.D.N.Y. 05-2237	$20.25M
11-21-11	*In re Wellbutrin SR Antitrust Litig.*, E.D. Pa. 04-5525	$49M
08-11-11	*Meijer, Inc. v. Abbott Labs.*, N.D. Cal. 07-05985-CW	$52M
01-31-11	*In re Nifedipine Antitrust Litig.*, D.D.C. 03-mc-223-RJL	$35M
01-25-11	*In re Oxycontin Antitrust Litig.*, S.D.N.Y. 04-md-1603-SHS	$16M
04-23-09	*In re Tricor Direct Purchaser Litig.*, D. Del. 05-340-SLR	$250M
04-20-09	*Meijer, Inc. v. Warner Chilocott and Barr Pharms., Inc.*, D.D.C. 05-2195	$22M
11-09-05	*In re Remeron Direct Purchaser Antitrust Litig.*, D.N.J. 03-0085	$75M
04-19-05	*In re Terazosin Hydrochloride Antitrust Litig.*, S.D. Fla. 99-MDL-1317	$74M
09-28-04	*North Shore Hematology-Oncology Assoc., P.C. v. Bristol-Myers Squibb Co.*, D.D.C. 04-248-EGS	$50M
04-09-04	*In re Relafen Antitrust Litig.*, D. Mass. 01-12239-WHY	$175M
04-11-03	*La. Wholesale Drug Co. v. Bristol-Myers Squibb Co.*, S.D.N.Y. 01-MD-1410-JGK	$220M

As these cases illustrate, a one-third fee award is consistent with and justified by the awards in analogous cases with similar settlement amounts.

(g) Presence or absence of objections

Because the deadline to object to/opt-out of the Settlement is not until April 4, 2014, this factor does not apply at this time.

2. Application of the *Prudential* factors

(a) The value of benefits accruing to class members attributable to the efforts of Class Counsel, as opposed to the efforts of others

While Mylan was the first to file, Class Counsel coordinated with counsel for other private plaintiffs in developing and investigating this case. Moreover, once the litigation commenced, Class Counsel led many of the joint litigation efforts. This factor militates in favor of the requested award.

(b) The percentage fee that would have been privately negotiated

A one-third contingency is standard in individual litigation, and could be more in an antitrust case, given the complexities and risks.[46] As evidenced by the table *supra* at 14-15, a one-third fee request represents the market rate for fee awards in this type of litigation and thus would likely be the benchmark by which the parties would have privately negotiated a fee.

(c) Innovative terms

The terms of the Settlement, while providing a benefit to the class, are otherwise standard. Therefore, this factor neither supports nor detracts from the fee request.[47]

3. A lodestar cross-check confirms the reasonableness of the fee request.

A lodestar cross-check ensures that application of the percentage method results in a recovery that is "sensible."[48] Because the fee sought is less than Class Counsel's collective

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[46] *See Remeron*, 2005 U.S. Dist. LEXIS 27013, at *46 ("[a]ttorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation," and in a direct purchaser pharmaceutical antitrust class action, the "requested 33⅓% fee reflects the market rate in other litigation of this type").

[47] *Bradburn*, 513 F. Supp. 2d at 340 (counsel's fee request not adversely affected by settlement without innovative terms).

[48] *Rite Aid*, 396 F.3d at 305-06; *see also Warfarin*, 212 F.R.D. at 263 ("The Third Circuit suggests that the district court cross-check the percentage award against the 'lodestar' award to help ensure the reasonableness of the fee.").

lodestar, it is less than the range normally approved, and Class Counsel will not receive a risk premium for their efforts in this contingent litigation. Class Counsel's lodestar is $11,296,550.25. Co-Lead Decl. ¶ 18. Thus, the requested fee is less than lodestar, *i.e.*, there is a negative multiplier of 44 percent, and below the range normally approved in comparable cases. The lodestar cross-check confirms the reasonableness of the fee request.

4. Court intervention into distributing the attorneys' fees amongst Class Counsel is unnecessary.

Unlike in *In re OSB Antitrust Litig*., there is no dispute among the firms comprising Co-Lead Counsel or between Co-Lead Counsel and other Class Counsel over the method and process of dividing the attorneys' fees.[49] Therefore, it is unnecessary for the Court to require Co-Lead Counsel to develop and submit a proposed plan of distribution on attorneys' fees.

C. The Court Should Approve the Request for Reimbursement of Expenses.

Class Counsel incurred $1,111,284.11 for expenses in litigating the case. The largest component was paid to experts who were essential to the prosecution of this case, particularly given the need to respond to Defendants' 22 experts. These expenses, as well as others routinely charged to hourly-fee-paying parties, were reasonable.[50] Given that the expenses here were

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[49] *OSB*, No. 06-826 (ECF No. 947) at 8 ("Prudence suggests that judicial review of that process is warranted, especially in light of the dispute between Co-Lead Counsel").

[50] *See id.* at 9 (approving class counsel's fee request because "[t]his complex lengthy matter involved some eighty depositions, the creation and maintenance of a huge case database, and the preparation and review of expert economic analysis and reports."); *Remeron* 2005 U.S. Dist. LEXIS 27013, at *49 (finding the following expenses to be reasonable: "(1) travel and lodging, (2) local meetings and transportation, (3) depositions, (4) photocopies, (5) messengers and express services, (6) telephone and fax, (7) Lexis/Westlaw legal research, (8) filing, court and witness fees, (9) overtime and temp work, (10 postage, (11) the cost of hiring a mediator, and (12) NJ Client Protection Fund-pro-hac vice.")). A breakdown of the litigation expenses incurred, by category is provided. *See* Co-Lead Decl. at ¶ 21.

incurred with no guarantee of recovery, Class Counsel had a strong incentive to incur only reasonable and necessary expenses, and did so.

Attorneys who create a common fund for the benefit of a class are entitled to reimbursement of their reasonable litigation expenses.[51] The expenses sought in this case are roughly comparable to those reimbursed in other antitrust litigation,[52] and should be allowed.

D. The Requested Incentive Award to Each Class Representative is Reasonable.

Plaintiffs request that each Class Representative receive an incentive award of $50,000. In the Third Circuit, incentive awards may be paid to class representatives to reward efforts that benefit the class.[53] In evaluating the appropriateness of an award, courts consider (i) the financial, reputational and personal risks to the plaintiff; (ii) the degree of plaintiffs' litigation responsibilities; (iii) the length of litigation; and (iv) the degree to which the plaintiffs benefited as class members.[54]

The requested awards are well-deserved. First, the Class Representatives stepped in despite the obvious risk inherent in suing a supplier. By instituting this case, the Class

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[51] *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 n.12 (3d Cir. 2001) (quoting the 1985 Task Force Report for the conclusion that the "common-fund doctrine . . . allows a person who maintains a lawsuit that results in the creation, preservation, or increase of a fund in which others have a common interest, to be reimbursed from that fund for litigation expenses incurred."); *see also AT&T Corp.*, 455 F.3d at 172 n.8 (litigation "[e]xpenses are generally considered and reimbursed separately from attorneys' fees").

[52] *See, e.g.*, *Remeron*, 2005 U.S. Dist. LEXIS, at ** 49-50 (awarding reimbursement of $1,925,667.53 in expenses incurred in approximately three years); *In re Relafen Antitrust Litig.*, No. 01-12239-WHY, at 7-8 (D. Mass. Apr. 9, 2004) (awarding $1.799 million in expenses incurred in 28 months).

[53] *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 220 (E.D. Pa. 2011); *Bradburn*, 513 F. Supp. 2d at 342 ("It is particularly appropriate to compensate named representative plaintiffs with incentive awards when they have actively assisted plaintiffs' counsel in their prosecution of the litigation for the benefit of the class.").

[54] *See Chakejian*, 275 F.R.D. at 220; *see also Bradburn*, 513 F. Supp. 2d at 342.

Representatives performed a "public service of contributing to the enforcement of mandatory laws."[55] Without them, the Class would have nothing. Second, the Class Representatives assisted in the prosecution of the case by searching for, collecting, and producing voluminous documents and data, using both electronic and manual means, preparing for and giving depositions, and conferring with Co-Lead Counsel on developments in the case. All of these efforts required the Class Representatives to turn their attention away from their daily business of purchasing and selling pharmaceutical products. Third, the amounts requested are within the acceptable range of payments awarded by courts within the Third Circuit in other direct purchaser antitrust litigation,[56] even in settlements of $20 million or less.[57]

[55] *Chakejian*, 275 F.R.D. at 220.

[56] *See* note 5 above.

[57] *See Miralax*, 07-142-SLR (ECF No. 243) ($60,000 to each of the three Class Representatives in $17.5 million settlement); *Toprol*, No. 06-52 GMS-MPT (ECF No. 193) ($50,000 each to three Class Representatives in $20 million settlement).

IV. CONCLUSION

Co-Lead Counsel respectfully requests that the Court approve the attorneys' fee and expense application and enter an order awarding counsel fees of $5,000,000 (plus a proportionate share of the interest thereon through the date of the award) and reimbursement of expenses in the amount of $1,111,284.11. Co-Lead Counsel also request that RDC, Meijer, and American Sales each receive an incentive award of $50,000.[58]

Dated: March 19, 2014

Respectfully submitted,

/s/ _Peter Kohn

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Co-Lead Counsel for the Direct Purchaser Class

[58] A proposed order containing these requests, among others, will be provided with Plaintiffs' forthcoming motion for final approval of the Settlement, currently due 51 days from the date of the March 4, 2013 Disseminated Notice, *i.e.*, April 24, 2014.

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed and served through the Court's ECF system a true and correct copy of the foregoing.

/s/Neill W. Clark
Neill W. Clark

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MYLAN PHARMACEUTICALS, INC., et al. **Plaintiff,** **v.** **WARNER CHILCOTT PUBLIC LIMITED COMPANY, et al.,** **Defendants.**	**Civ. No. 12-3824** **CONSOLIDATED**

DECLARATION OF CO-LEAD COUNSEL PETER KOHN IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES

Peter Kohn, being duly sworn, deposes and says as follows:

1. I am a partner at Faruqi & Faruqi, LLP and along with certain counsel from Hagens Berman Sobol Shapiro LLP, Berger & Montague, P.C., and Grant & Eisenhofer, P.A., was appointed Co-Lead counsel for the Class of direct purchasers of Doryx certified for purposes of settlement by this Court on February 18, 2014 ("Co-Lead Counsel").[1] I submit this declaration on behalf of Co-Lead Counsel and other Class Counsel,[2] in support of Direct

[1] Order, February 18, 2014 (ECF No. 484) at 6. In that same Order, the Court also certified for settlement purposes the following class:

> All persons and entities in the United States who purchased Doryx directly from one or more of the Defendants at any time from July 18, 2008 through December 31, 2013 (the "Class Period"). Excluded from the class are Defendants, their parents, employees, subsidiaries and affiliates, and federal government entities (the "Class").

Id. at 1.

[2] Class Counsel refers to Co-Lead Counsel and the other firms experienced in pharmaceutical antitrust litigation that made substantial contributions to the prosecution of this case: Taus, Cebulash & Landau, LLP, Cafferty Clobes Meriwether & Sprengel LLP, Spector Roseman

Purchaser Plaintiffs' Motion for An Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Incentive Awards to the Class Representatives.[3] I make this declaration based on personal knowledge of these matters and based on affidavits Class Counsel attached as Exhibits A-J hereto.

2. Co-Lead Counsel has been responsible for overseeing the litigation and settlement of this action with defendants Warner Chilcott (US) LLC, Warner Chilcott Public Limited Company, Warner Chilcott Company LLC, Warner Chilcott Holdings Company III, Ltd., and Warner Chilcott Laboratories Ireland Limited (collectively, "Warner Chilcott"), and Mayne Pharma Group Limited and Mayne Pharma International Pty. Ltd. (collectively, "Mayne") (together, "Defendants").

A. The Litigation and Settlement of this Action Were Intensive and Complex.

3. This is an antitrust class action brought on behalf of direct purchasers of the prescription drug Doryx, a delayed-release doxycycline hyclate product used to treat moderate to severe acne. The action was commenced in July, 2012. It alleges that Defendants repeatedly reformulated and switched to different versions of Doryx, and undertook other efforts, merely to impede generic competition to Doryx, by impairing the process by which AB-rated generic pharmaceutical drugs are automatically substituted for their brand-name counterparts.

4. The litigation was factually complex and resource-intensive: the Class's claims required Class Counsel to analyze (a) the medical, pharmaceutical, economic, regulatory and statistical bases of Defendants' claims that each Doryx reformulation was procompetitive and an

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Kodroff & Willis, P.C., Hilliard & Shadowen LLP, Vanek, Vickers & Masini, P.C., and The Radice Law Firm, P.C.

[3] The Class Representatives are: Rochester Drug Co-Operative, Inc. ("RDC"), American Sales Company, LLC ("American Sales"), and Meijer, Inc. and Meijer Distribution, Inc. ("Meijer") (collectively "Class Representatives" or "Plaintiffs").

improvement over the prior version; (b) the law, regulation and practice concerning FDA review of NDAs, ANDAs and citizen petitions, as they applied to Doryx and generic Doryx; (c) technical pharmaceutical manufacturing and supply issues related to the impact of Defendants' Doryx reformulations on the readiness, willingness and ability of Mylan Pharmaceuticals, Inc. ("Mylan") and other potential manufacturers of generic Doryx to manufacture and sell a generic version of Doryx; and (d) pharmaceutical pricing and distribution of Doryx and generic Doryx.

5. The prosecution of this case required extensive discovery within a compressed time period. Document discovery began in the fall of 2012, and depositions began in March 2013. Document and deposition discovery both were substantially completed by the Court's discovery deadline of June 19, 2013, except for some discovery of third parties. Class Counsel's discovery efforts resulted in the production of over six million documents, including documents produced by Plaintiffs, Defendants and many of the nearly 100 third parties that were subpoenaed by Plaintiffs and Defendants. Class Counsel reviewed, analyzed and selected documents for use in connection with briefing on the motion to dismiss, class certification briefing, depositions (including the numerous fact witnesses, the three experts that Defendants relied upon in their opposition to class certification and two of Defendants' merits experts), and opening and rebuttal expert reports, as well as building an evidentiary record for trial to support Plaintiffs' claims and rebut Defendants' proposed procompetitive justifications relating to the medical, bio-statistic, economic and pharmaceutical bases for the reformulations.

6. Given the highly technical nature of the case, Class Counsel engaged experts in economics, pharmacoeconomics, pharmaceutics, FDA regulations and drug manufacturing, dermatology, biostatistics and gastroenterology. These experts addressed such subjects as the purported medical benefit conferred by Defendants' reformulations, the alleged scientific and regulatory merit of Defendants' reformulations, the readiness of Mylan and other prospective

manufacturers of generic Doryx to market a generic version of Doryx, the harm to competition caused by Defendants' conduct, Defendants' market power, and the provable amount of overcharges incurred by the Class.

7. Following extensive briefing, the Court denied Defendants' Motions to dismiss on June 12, 2013. Plaintiffs moved for class certification on April 1, 2013, and the parties completed briefing on class certification on June 27, 2013. Additionally, briefing on Defendants' motion to strike the report of Plaintiffs' expert economist on *Daubert* grounds was completed on July 16, 2013. The parties exchanged opening and responsive merits expert reports on August 9, 2013 and October 18, 2013, respectively. In total, including the expert reports submitted with the motion for class certification, Plaintiffs served 10 expert reports and Defendants served 22.

8. Productive settlement negotiations began in October 2013, with the parties agreeing to private mediation with highly experienced and nationally recognized mediator Jonathan Marks (the "Mediator"). Following the submission of a mediation statement and other materials to the Mediator, the parties participated in a full-day mediation session on November 7, 2013. The mediation session concluded without agreement, but the parties agreed to advance the mediation through a Mediator's proposal. On November 8, 2013 the Mediator submitted a proposal to each side, recommending that the parties settle for $15 million. The parties accepted the Mediator's proposal on November 13, 2013 and continued negotiations over other settlement terms. The parties executed the Settlement Agreement on December 24, 2013. The agreement provides, among other things, that Plaintiffs and the Class release their claims in exchange for $15,000,000 paid by Defendants (the "Settlement").

9. Plaintiffs moved for preliminary approval of the Settlement on January 10, 2014. The court granted preliminary approval of the Settlement on February 18, 2014 ("Preliminary

Approval Order"). Pursuant to the Preliminary Approval Order, the claims administrator, Rust Consulting, Inc., mailed notice of the Settlement to the Class on March 4, 2014. The deadline for members of the Class to opt out of or object to the Settlement is April 3, 2014.

B. Class Counsel Advanced the Litigation Efficiently and Expeditiously.

10. This action involved complex antitrust, regulatory, medical, and pharmaceutical issues that were investigated and litigated intensely within a tight timeframe.

11. Class Counsel performed detailed analyses of the facts of the case both before and after filing complaints, including, among other things, Defendants' claims of improvement relating to each new formulation of Doryx, the impact of each formulation change on generic competition, the relative ability of various generic manufacturers to gain FDA approval for their generic applications, and Defendants' claims concerning the appropriate relevant market. Additionally, Class Counsel conducted extensive analyses of the law concerning antitrust liability for product hopping, conspiracy, statute of limitations, relevant market and the *Noerr-Pennington* doctrine as it relates to filings with the FDA.

12. Among other things, Class Counsel advanced the case by:[4]

- Successfully opposing Defendants' motion to dismiss, which included briefing and exhibits totaling hundreds of pages;
- Filing and briefing a motion and reply in support of class certification, which required replying to Defendants' response in opposition to class certification that included three separate expert reports and 117 exhibits, and required and the taking and defending of four expert depositions;
- Assisting Class Representatives and absent class members in complying with discovery, including the opposition to Defendants' motion to compel discovery from absent class members, and complying with the Court's Order for additional information regarding class members;

[4] A further description of Class Counsel's efforts to advance the case are set forth in the Memorandum In Support of Direct Purchaser Class Plaintiffs' Motion for An Award of Attorneys' Fees, Reimbursement of Expenses, And Payment of Incentive Award to the Class Representatives, filed contemporaneously herewith.

- Negotiating and resolving with Defendants' counsel an extensive production of documents and data;

- Pursuing discovery from and conducting substantial negotiations with 32 third-parties that Plaintiffs subpoenaed, including brand and generic doxycycline manufacturers, marketing firms and research institutions that assisted Defendants with Doryx;

- Reviewing and analyzing millions of pages of documents and data produced by Defendants and third parties that Plaintiffs subpoenaed, and many of the third parties that Defendants subpoenaed;

- Conducting depositions of current and former employees of the Defendants and of third parties, including taking the lead questioner position for 7 of the 13 depositions of Warner Chilcott witnesses and 6 of the 8 Mayne witnesses (3 of whom required Class Counsel to travel to Adelaide, Australia) regarding complex medical, regulatory, pharmaceutical manufacturing and supply, corporate decision-making, sales, marketing and financial issues;

- Retaining and overseeing the preparation of reports by experts in economics, dermatology, gastroenterology, pharmaceutics, FDA regulations and policies, pharmaceutical economics, biostatistics, pharmaceutical manufacturing and supply, and conducting depositions of Defendants' dermatology, economics, pharmaceutics, and pharmaceutical manufacturing and supply experts;

- Deposing five of Defendants' experts;

- Submitting 10 expert reports;

- Submitting a mediation statement and preparing for and participating in mediation and conducting complex and successful settlement discussions that yielded a $15 million settlement for the class; and

- Developing and drafting the Settlement Agreement and associated documents, class notice documents, and a preliminary settlement approval submission, and continuing to oversee the notice and claims process to ensure swift and accurate distribution of settlement proceeds to the class.

13. After having prepared the preliminary settlement approval papers and obtained the Court's preliminary approval on February 18, 2014, Class Counsel has been continuing to oversee the notice and settlement administration process, and will continue to devote time to settlement approval, including the final approval hearing and responding to any class member inquiries involving settlement administration.

C. Class Counsel Litigated the Case Skillfully, Vigorously, Efficiently and Expeditiously, Devoting Many Hours and Advancing Substantial Funds to Prosecute the Case Despite the Risk of Non-Payment.

14. As set forth above, from the inception of this case, Class Counsel vigorously pursued this action, committing their services and resources and advancing substantial funds to prosecute the case. Class Counsel also proceeded with skill and efficiency. The attorneys who prosecuted this case have particular expertise in impeded generic competition cases on behalf of direct purchasers. In fact, many have been involved in similar actions for over a decade. Class Counsel's knowledge and experience in this specific kind of litigation were essential to prosecuting this case effectively and obtaining a positive result for the Class.

15. Class Counsel provided legal services to the Class and advanced necessary litigation expenses with no assurance of repayment. To date, Class Counsel have neither been paid for their efforts nor reimbursed for their out-of-pocket expenses. Instead, their compensation and expense reimbursement were entirely contingent upon obtaining a recovery on behalf of the Class.

16. Class Counsel pursued this action vigorously and resourcefully by collaborating and sharing certain expenses with other plaintiff groups, *i.e.*, Mylan, the Retailer Plaintiffs, and the Indirect Purchaser Plaintiffs. Specifically, expenses related to the document hosting database, certain experts, and deposition services were shared with those other plaintiff groups, thereby reducing the potential expenses to the Class.

D. Class Counsel's Lodestar and Expenses in Detail.

17. Annexed hereto as Exhibits A-J are the sworn declarations of each Class Counsel specifying (by professional) the number of hours and total lodestar based on current rates that each firm recorded in its prosecution of this case; the amounts (by category) each advanced for litigation expenses; and the professional qualifications and experience of each firm.

18. Based on these sworn declarations which I and others in my firm have carefully reviewed, the table below sets forth, in summary, each of Class Counsel's total hours and lodestar through November 13, 2013 (the date the parties accepted the Mediator's proposal and agreed with Defendants to a "pens down" provision), based on the contemporaneous, daily time records regularly prepared and maintained by each firm. The table also sets forth each of Class Counsel's total expenses, through November 13, 2013,[5] as reflected on each firm's books and records, which are prepared from expense vouchers, receipts, and other source materials and represent an accurate recording of the expenses incurred. Each Class Counsel's detailed time and expense records are available for review should the Court wish to examine them.

CLASS COUNSEL'S FEES AND EXPENSES BY FIRM			
Firm	**Total Hours**	**Total Lodestar Based on Current Rates**	**Total Expenses**
Berger & Montague, P.C.	3,969.1	$1,697,879.25	$205,167.94
Cafferty Clobes Meriweather & Sprengel, LLP	960	$656,075.50	$50,569.48
Faruqi & Faruqi, LLP	5,912	$3,939,982.50	$179,835.84

[5] Each firm's expenses are included from inception through November 13, 2013. However, there are certain reasonable and necessary expenses that Class Counsel have continued to, and will in the future, incur after this date, such as notice/settlement administration costs incurred by the court-appointed claims administrator, Rust Consulting Inc. ("Rust"), expert fees related to settlement negotiations and claims administration and the costs of maintaining the document hosting database for Defendants' and third parties' document production. To the extent already incurred, these expenses are included in the amounts paid by the Litigation Fund listed below. Should the Court grant final approval of the Settlement, then Class Counsel will also seek a distribution from the Settlement fund to cover any additional costs of administering the settlement that are incurred after the parties file this motion for attorneys' fees and reimbursement of expenses, including additional claims administration costs incurred by Rust.

Grant & Eisenhofer, PA	1,704.2	$1,090,569.00	$191,087.05
Hagens Berman Sobol Shapiro, LLP	3,823.2	$1,627,482.75	$261,498.37
Hilliard & Shadowen, LLP	1015.8	$385,675.00	$44,937.90
The Radice Law Firm, P.C.	3.5	$2,188.00	$67.08
Spector Roseman Kodroff & Willis, P.C.	984.10	$546,955.75	$52,745.86
Taus Cebulash & Landau, LLP	1,848.10	$1,016,995.00	$74,049.23
Vanek, Vickers & Masini, P.C.	640.5	$332,747.5	$44,233.22
TOTAL	20,860.5	$11,296,550.25	1,104,191.97

19. In sum, Class Counsel invested a total of 20,860.5 hours prosecuting this complex, contingent litigation, resulting in a lodestar of 11,296,550.25 and advanced a total of $1,104,192.97 in out-of pocket expenses.

20. With respect to expenses, based on each Class Counsel's sworn declaration, the table below sets forth, by category, Class Counsel's expenses as a whole.

CLASS COUNSEL'S EXPENSES BY CATEGORY	
Category	**Expenses**
Litigation Fund	$835,000
Travel/Hotels/Meals	$76,101.47
Copying Services	$33,580.37
Research Services	$23,176.35

Telephone/Teleconference/Fax	$5,666.45
Fed Ex/Messenger/Postage	$7,013.07
Court Fees	$1,081.00
Other (e.g., E-Discovery Platform for Plaintiffs' production)	$122,573.26
Total	**$1,104,191.97**

21. As demonstrated by the table above summarizing expense by category, the largest expense of each firm is its contribution to the Litigation Fund. From the inception of the litigation, the books and records of the Litigation Fund were maintained by the accounting department of Faruqi & Faruqi, LLP. Expenses incurred by the litigation fund, by category are as follows:[6]

LITIGATION FUND EXPENSES BY CATEGORY	
Category	**Expenses**
Document Management/Hosting	$30,187.77
Deposition Services	$89,401.72
Legal Services/Process Service	$2,625.75
Experts	$703,190.85
Presentation/Copying Services	$3,391.15
Claims Administration/Notice	$5,365.92

[6] Because other plaintiff groups contributed to the expert, document management/hosting and deposition services expenses, the costs below only reflect Class Counsel's contribution to these shared expense and not the entire expense. Except for claims administration/class notice, document management/hosting of Defendants' and third party documents and economic expert services related to settlement administration, these expenses are from inception through November 13, 2013. The claims administration/class notice, document management/hosting and economic expert expenses after November 13, 2013 are included because those expenses are reasonable and necessary for administering the Settlement.

Mediation Services	$7,928.98
TOTAL	**$842,092.14**

22. In sum, a total of $842,092.14 was incurred by the Litigation Fund. Based on the records of the Litigation Fund, of that amount, $752,690.42 was paid to vendors by the Litigation Fund and $82,309.58 remains in the Litigation Fund. However, $89,401.72 remains outstanding to vendors owed from the Litigation Fund. As a result, the amount required by the Litigation Fund to meet outstanding obligations is $7,092.14.

23. Class Counsel has incurred and seeks reimbursement of expenses in the amount of $ 1,111,284.11, which is calculated by adding the expense incurred by Class Counsel to date ($ 1,104,191.97) and the additional funds required by the Litigation Fund to meet outstanding obligations ($7,092.14).

E. Class Representatives' Direct Participation and Efforts Provided a Substantial Benefit to the Class

24. The Class Representatives, American Sales, RDC and Meijer, expended significant time and effort in prosecuting this action for the benefit of the Class. Each filed a case despite the risk of retaliation inherent in suing prescription drug suppliers. Without their participation the Class would have recovered nothing. Moreover, the Class Representatives actively assisted in the preparation and prosecution of the case by searching for, collecting, and producing voluminous documents and data and assisting Co-Lead Counsel in understanding and interpreting those documents, consulting with Co-Lead Counsel concerning the progress of the litigation, preparing for and giving multiple depositions, and agreeing to participate in what could have been a several-week trial, turning their attention away from their business as distributors of pharmaceutical products.

25. In recognition of the Class Representatives' service to the class, and the risk they took, Co-Lead counsel request incentive awards of $50,000 to be paid to each Class Representative, proposed amounts of which the Class members have been notified by way of the Class Notice. In Co-Lead Counsel's experience, and as the data in the accompanying memorandum of law shows, the amounts requested are well within the acceptable range of payments awarded by courts in the Third Circuit in other recent direct purchaser antitrust cases, and are well-deserved.

Respectfully submitted,

Dated: March 19, 2013

/s/ Peter Kohn
Peter Kohn
FARUQI & FARUQI, LLP
101 Greenwood Ave., Suite 600
Jenkintown, PA 19046
Tel: (215) 277-5770
Co-Lead Counsel for the Direct Purchaser Class

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MYLAN PHARMACEUTICALS, INC., et al. **Plaintiff,** **v.** **WARNER CHILCOTT PUBLIC LIMITED COMPANY, et al.,** **Defendants.**	**Civ. No. 12-3824** **CONSOLIDATED**

DECLARATION OF DAVID F. SORENSEN IN SUPPORT OF DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES

I, David F. Sorensen, declare as follows:

1. I am a shareholder at the law firm of Berger & Montague, P.C. I submit this declaration in support of Direct Purchaser Class Plaintiffs' ("Class Plaintiffs") motion for an award of attorneys' fees, reimbursement of expenses and payment of incentive awards to the class representatives in connection with services rendered in prosecuting this action.

2. My firm was appointed Co-Lead Counsel for the Class Plaintiffs in this litigation by Order dated February 18, 2014, ECF No. 484. During the course of this litigation, my firm has been involved in the following activities:

- Reviewed, analyzed, summarized and organized hundreds of thousands of pages of documents and data produced by Defendants Warner Chilcott Public Limited Company, Warner Chilcott (US) LLC, Warner Chilcott Company LLC, Warner Chilcott Holdings Company III, Ltd., and Warner Chilcott Laboratories Ireland Limited (collectively, "Warner Chilcott"), and Mayne Pharma Group Limited and

Mayne Pharma International Pty, Ltd. (collectively, "Mayne") (collectively "Defendants"), as well as documents produced by multiple third parties;

- Played a principal role in briefing Class Plaintiffs' Opposition to Defendants' Motions to Dismiss;
- Negotiated with defense counsel concerning discovery, including participation in numerous meetings and conferences with Defendants concerning the scope of requested discovery;
- Prepared for and took the depositions of three Mayne fact witnesses and Defendants' economist expert witness, in addition to two third party depositions;
- Briefed motions relating to "downstream discovery" and discovery from absent class members;
- Played a principal role in briefing Class Plaintiffs' Motion for Class Certification;
- Played a leading role in working with economic experts regarding the underlying theories of antitrust violation, class certification, economic impact, and assessment of damages;
- Played a leading role in settlement discussions, actively participating in the mediation process constructing damage models for litigation and Settlement, communicating regularly with our client absent class members regarding the settlement, and negotiating and drafting the terms of the Settlement Agreements; and
- Actively participated in briefing the Motion for Preliminary Approval of the Settlement and for Class Certification.

3. Exhibit 1 attached hereto is a summary of the time spent by my firm's attorneys and professional support staff who were involved in this litigation, and the lodestar calculation

based on my firm's usual and customary hourly billing rates. The total number of hours expended by my firm from inception through November 13, 2013 is 3,969.07 hours. The total lodestar for my firm is $1,697,879.25.

4. The hourly rates for the partners, attorneys and professional support staff included in Exhibit 1 are the usual and customary current hourly rates charged for their services in non-contingent matters, which have been accepted and approved in other complex class action litigations. The exhibit was prepared at my request from contemporaneous, daily time records regularly prepared and maintained by my firm.

5. Exhibit 2 attached hereto is a summary by category of the unreimbursed expenses incurred by my firm connection with the prosecution of this litigation. The expenses incurred in this action are reflected on my firm's books and records, which are prepared from invoices, receipts, credit card bills, cancelled checks and wire transfer notices expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred. The expenses incurred by my firm total $205,167.94.

6. Exhibit 3 sets forth the biographies of the principal attorneys from my firm who were involved in this case.

BERGER & MONTAGUE, P.C.

David F. Sorensen

Dated: March 18, 2014

EXHIBIT 1

DORYX ANTITRUST LITIGATION
TIME REPORT

Firm Name: Berger & Montague, P.C.
Reporting Period: Inception through November 13, 2013

PROFESSIONAL	STATUS	TOTAL HOURS	CURRENT HOURLY RATE	TOTAL LODESTAR
Eric L. Cramer	S	7.2	$875	$6,300.00
David F. Sorensen	S	506.8	$775	$392,770.00
Dan Simons	A	27.1	$550	$14,905.00
Andrew C. Curley	A	316	$525	$165,900.00
Sarah Schalman-Bergen	A	23	$475	$10,925.00
Caitlin G. Coslett	A	1,191.1	$450	$535,995.00
Nick Urban	A	58.5	$450	$26,325.00
Isabel Daniels	A	157	$410	$64,370.00
Michael Twersky	A	125.6	$350	$43,960.00
Patricia L. Frohbergh	PL	332.7	$300	$99,810.00
Jim Cook, Ph.D.	O	32.17	$275	$8,846.75
Diane R. Werwinski	PL	977.6	$275	$268,840.00
Shawn Matteo	PL	214.3	$275	$58,932.50
TOTALS		3,969.07		$1,697,879.25

S = Shareholder
C = Counsel
A = Associate
PL = Paralegal
O = Consultant

EXHIBIT 2

DORYX ANTITRUST LITIGATION
EXPENSE REPORT

Firm Name: Berger & Montague, P.C.
Reporting Period: Inception through November 13, 2013

EXPENSE	AMOUNT
Litigation Fund	$150,000
Travel/Hotel/Meals	$9,936.20
Copying Services	$17,279.85
Research Services	$15,492.53
Telephone/Teleconference/Fax	$310.94
FedEx/Messengers/Postage	$197.59
Court Fees	$0
Other (IMS Health, Inc. data)	$11,950.83
TOTAL	$205,167.94

EXHIBIT 3

Berger&Montague,P.C.

ATTORNEYS AT LAW

THE FIRM:

Berger & Montague has been engaged in the practice of complex and class action litigation from its Center City Philadelphia office for over 40 years. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or lead role. The firm has achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell*. Currently, the firm consists of 68 lawyers; 18 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

The *National Law Journal* has selected Berger & Montague in nine out of the last ten years (2003-05, 2007-12) for its "Hot List" of top plaintiffs' oriented litigation firms in the United States with a history of high achievement and significant, groundbreaking cases. Normally 15 or fewer firms are chosen for this honor. The *Legal 500*, a guide to worldwide legal services providers, has repeatedly cited Berger & Montague's antitrust practice as "stand[ing] out by virtue of its first-class trial skills." For four straight years, Berger & Montague has been selected by *Chambers and Partners' USA's* America's Leading Lawyers for Business as one of Pennsylvania's top antitrust firms. Also in 2009, The Public Justice Foundation awarded its prestigious Trial Lawyer of the Year Award on the Berger & Montague trial team in the Rocky Flats mass environmental tort class action, for their "long and hard-fought" victory against "formidable corporate and government defendants," the second time Berger & Montague has won this honor. The jury verdict in that case was vacated on appeal, and proceedings are continuing in the district court.

Berger & Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm's complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas, and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger & Montague has established new law and forged the path for recovery.

The firm has been involved in a series of notable cases, some of them among the most important in the last 40 years of civil litigation. For example, the firm was one of the principal counsel for plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately $2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980's. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of $5 billion against Exxon, later reduced by the U.S. Supreme

Court to $507.5 million. Berger & Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of $300 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger & Montague was also lead/liaison counsel in the *Three Mile Island Litigation* arising out of a serious nuclear incident.

In antitrust litigation, the firm has served as lead, co-lead or co-trial counsel on many of the most significant civil antitrust cases over the last 40 years, including *In re Corrugated Container Antitrust Litigation* (recovery in excess of $366 million), the *Infant Formula* case (recovery of $125 million), the *Brand Name Prescription Drug* price fixing case (settlement of more than $700 million), the *State of Connecticut Tobacco Litigation* (settlement of $3.6 billion), the *Graphite Electrodes Antitrust Litigation* (settlement of more than $134 million), and the *High-Fructose Corn Syrup Litigation* ($531 million). The firm has also played a leading role in cases in the pharmaceutical arena, especially in cases involving the delayed entry of generic or other rival drug competition, having achieved over hundreds of millions in settlements in such cases over the past decade.

In the area of securities litigation, the firm has represented public institutional investors – such as the retirement funds for the States of Pennsylvania, Connecticut, New Hampshire, New Jersey, Louisiana and Ohio, as well as the City of Philadelphia and numerous individual investors and private institutional investors. The firm was co-lead counsel in the *Melridge Securities Litigation* in the Federal District Court in Oregon, in which jury verdicts of $88.2 million and a RICO judgment of $239 million were obtained. Berger & Montague has served as lead or co-lead counsel in numerous other major securities class action cases where substantial settlements were achieved on behalf of investors.

Additionally, in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a $1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm also played an instrumental role in bringing about a $4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

JUDICIAL PRAISE FOR BERGER & MONTAGUE ATTORNEYS

Berger & Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

Antitrust Litigation

From **Judge William H. Pauley, III**, of the U.S. District Court of the Southern District of New York:

> "Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression."
>
> * * *
>
> "Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues …. The law firms of Berger & Montague and Coughlin Stoia were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

In re Currency Conversion Fee Antitrust Litigation, 263 F.R.D. 110, 129 (2009).

From **Judge Faith S. Hochberg** of the United States District court for the District of New Jersey:

> "[W]e sitting here don't always get to see such fine lawyering, and it's really wonderful for me both to have tough issues and smart lawyers … I want to congratulate all of you for the really hard work you put into this, the way you presented the issues, … On behalf of the entire federal judiciary I want to thank you for the kind of lawyering we wish everybody would do."

In re Remeron Antitrust Litig., Civ. No. 02-2007 (Nov. 2, 2005).

From U.S. District **Judge Jan DuBois**, of the U.S. District Court of the Eastern District of Pennsylvania:

> "[T]he size of the settlements in absolute terms and expressed as a percentage of total damages evidence a high level of skill by petitioners … The Court has

> repeatedly stated that the lawyering in the case at every stage was superb, and does so again."

In Re Linerboard Antitrust Litig., 2004 WL 1221350, at *5-*6 (E.D. Pa. 2004).

From **Judge Nancy G. Edmunds**, of the U.S. District Court of the Eastern District of Michigan:

> "[T]his represents an excellent settlement for the Class and reflects the outstanding effort on the part of highly experienced, skilled, and hard working Class Counsel….[T]heir efforts were not only successful, but were highly organized and efficient in addressing numerous complex issues raised in this litigation[.]"

In re Cardizem CD Antitrust Litig., MDL No. 1278 (E.D. Mich., Nov. 26, 2002).

From **Judge Charles P. Kocoras** of the U.S. District Court for the Northern District of Illinois:

> "The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . . There is no question that the results achieved by class counsel were extraordinary[.]"

Regarding the work of Berger & Montague in achieving more than $700 million in settlements with some of the defendants in ***In Re Brand Name Prescription Drugs Antitrust Litigation***, 2000 U.S. Dist. LEXIS 1734, at *3-*6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte** of the U.S. District Court for the District of Maryland:

> "The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs' counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded."

Settlement Approval Hearing, Oct. 28, 1994, in ***Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.***, CA No. PJM-92-3624 (D. Md.).

From **Judge Donald W. Van Artsdalen** of the U.S. District Court for the Eastern District of Pennsylvania:

> "As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs' counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure."

Bogosian v. Gulf Oil Corp., 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Krupansky**, who had been elevated to the Sixth Circuit Court of Appeals:

> Finally, the court unhesitatingly concludes that the quality of the representation rendered by counsel was uniformly high. The attorneys involved in this litigation are extremely experienced and skilled in their prosecution of antitrust litigation and other complex actions. Their services have been rendered in an efficient and expeditious manner, but have nevertheless been productive of highly favorable result.

In re Art Materials Antitrust Litigation, 1984 CCH Trade Cases ¶65,815 (N.D. Ohio 1983).

From **Judge Joseph Blumenfeld** of the U.S. District Court for the District of Connecticut:

> "The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions."

In re Master Key Antitrust Litigation, 1977 U.S. Dist. LEXIS 12948, at *35 (Nov. 4, 1977).

Securities Litigation

From **Judge Jed Rakoff** of the U.S. District Court for the Southern District of New York:

> Court stated that lead counsel had made "very full and well-crafted" and "excellent submissions"; that there was a "very fine job done by plaintiffs' counsel in this case"; and that this was "surely a very good result under all the facts and circumstances."

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y., July 27, 2009).

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger & Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive."

In re CIGNA Corp. Sec. Litig., 2007 U.S. Dist. LEXIS 51089, at *17-*18 (E.D. Pa. July 13, 2007).

From **Chancellor William Chandler, III** of the Delaware Chancery Court:

> "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case. And I think that's a testimony – Mr. Valihura correctly says that's what they are supposed to do. I recognize that; that is their job, and they were doing it professionally."

Ginsburg v. Philadelphia Stock Exchange, Inc., No. 2202 (Del. Ch., Oct. 22, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "Thanks to the nimble class counsel, this sum, which once included securities worth $149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11,

> 2003, Rite Aid redeemed those Notes from the class, which then received $145,754,922.00. The class also received $14,435,104 in interest on the Notes."
>
> "Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over $1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here."

In re Rite Aid Corp. Securities Litigation, 269 F. Supp. 2d 603, 605, n.1, 611 (E.D. Pa. 2003).

From **Judge Helen J. Frye**, United States District Judge for the U.S. District Court for the District of Oregon:

> "In order to bring about this result [partial settlements then totaling $54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District."
>
> * * *
>
> "Throughout the course of their representation, the attorneys at Berger & Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence."

In Re Melridge, Inc. Securities Litigation, No. CV 87-1426-FR (D. Ore. April 15, 1996).

From **Judge Marvin Katz** of the U.S. District Court for the Eastern District of Pennsylvania:

> "[T]he co-lead attorneys have extensive experience in large class actions, experience that has enabled this case to proceed efficiently and professionally even under short deadlines and the pressure of handling thousands of documents in a large multi-district action... These counsel have also acted vigorously in their clients' interests...."
>
> * * *
>
> "The management of the case was also of extremely high quality.... [C]lass counsel is of high caliber and has extensive experience in similar class action litigation.... The submissions were of consistently high quality, and class counsel

> has been notably diligent in preparing filings in a timely manner even when under tight deadlines."

Commenting on class counsel, where the firm served as both co-lead and liaison counsel in ***In re Ikon Office Solutions, Inc. Securities Litigation***, 194 F.R.D. 166, 177, 195 (E.D. Pa. 2000).

From **Judge William K. Thomas,** Senior District Judge for the United States District Court for the Northern District of Ohio:

> "In the proceedings it has presided over, this court has become directly familiar with the specialized, highly competent, and effective quality of the legal services performed by Merrill G. Davidoff, Esq. and Martin I. Twersky, Esq. of Berger & Montague...."
>
> * * *
>
> "Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich."

Commenting in ***In re Revco Securities Litigation***, Case No. 1:89CV0593, Order (N.D. Oh. September 14, 1993).

PROMINENT JUDGMENTS AND SETTLEMENTS

The firm has a wide breadth of achievement in many significant areas of complex and business-related litigation. The following is a partial list of some of the more notable judgments and settlements in antitrust and securities litigation.

Antitrust Litigation

In re Currency Conversion Fee Antitrust Litigation: Berger & Montague, as one of two co-lead counsel, spearheaded a class action lawsuit alleging that the major credit cards had conspired to fix prices for foreign currency conversion fees imposed on credit card transactions. After eight years of litigation, a settlement of $336 million was approved in October, 2009, with a Final Judgment entered in November, 2009. Following the resolution of eleven appeals, the District Court, on October 5, 2011, directed distribution of the settlement funds to more than 10 million timely filed claimants, among the largest class of claimants in an antitrust consumer class action. (MDL No. 1409 (S.D.N.Y)).

Ross, et al. v. Bank of America (USA) N.A., et al.: Berger & Montague, as lead counsel for the cardholder classes, obtained final approval of settlements reached with Chase, Bank of America, Capital One and HSBC, on claims that the defendant banks unlawfully acted in concert to require cardholders to arbitrate disputes, including debt collections, and to preclude cardholders from participating in any class actions. The case was brought for injunctive relief only. The settlements remove arbitration clauses nationwide for 3.5 years from the so-called "cardholder agreements" for over 100 million credit card holders. This victory for consumers and small businesses came after nearly five years of hard-fought litigation, including obtaining a decision by the Court of Appeals reversing the order dismissing the case, and will aid consumers and small businesses in their ability to resist unfair and abusive credit card practices. A proposed settlement has been reached with the non-bank defendant arbitration provider (NAF), and, after defeating summary judgment, Berger & Montague is preparing the case for trial against the remaining two bank defendants.

In re High Fructose Corn Syrup Antitrust Litigation: Berger & Montague was one of three co-lead counsel in this nationwide class action alleging a conspiracy to allocate volumes and customers and to price-fix among five producers of high fructose corn syrup. After nine years of litigation, including four appeals, the case was settled on the eve of trial for $531 million. (MDL. No. 1087, Master File No. 95-1477 (C.D. Ill.)).

In re Linerboard Antitrust Litigation: Berger & Montague was one of a small group of court-appointed executive committee members who led this nationwide class action against producers of linerboard. The complaint alleged that the defendants conspired to reduce production of linerboard in order to increase the price of linerboard and corrugated boxes made therefrom. At

the close of discovery, the case was settled for more than $200 million. (98 Civ. 5055 and 99-1341 (E.D. Pa.)).

Meijer, Inc., et al. v. Abbott Laboratories: Berger & Montague served as co-lead counsel in a class action on behalf of pharmaceutical wholesalers and pharmacies charging Abbott Laboratories with illegally maintaining monopoly power and overcharging purchasers in violation of the federal antitrust laws. Plaintiffs alleged that Abbott had used its monopoly with respect to its anti-HIV medicine Norvir (ritonavir) to protect its monopoly power for another highly profitable Abbott HIV drug, Kaletra. This antitrust class action settled for $52 million after four days of a jury trial in federal court in Oakland, California. (Case No. 07-5985 (N.D. Cal.)).

In re Nifedipine Antitrust Litigation: Berger & Montague played a major role (serving on the executive committee) in this antitrust class action on behalf of direct purchasers of generic versions of the anti-hypertension drug Adalat (nifedipine). After eight years of hard-fought litigation, the court approved a total of $35 million in settlements. (Case No. 1:03-223 (D.D.C.)).

Johnson, et al. v AzHHA, et al.: Berger & Montague is co-lead counsel in this litigation on behalf of a class of temporary nursing personnel, against the Arizona Hospital and Healthcare Association, and its member hospitals, for agreeing and conspiring to fix the rates and wages for temporary nursing personnel, causing class members to be underpaid. The case settled for $24 million on behalf of this class of nurses. (Case No. 07-1292 (D. Ariz.)).

In re DDAVP Direct Purchaser Antitrust Litigation: Berger & Montague served as co-lead counsel in a case that charged defendants with using sham litigation and a fraudulently obtained patent to delay the entry of generic versions of the prescription drug DDAVP. Berger & Montague achieved a $20.25 million settlement only after winning a precedent-setting victory before the United States Court of Appeals for the Second Circuit that ruled that direct purchasers had standing to recover overcharges arising from a patent-holder's misuse of an allegedly fraudulently obtained patent. (Case No. 05-2237 (S.D.N.Y.)).

In re Terazosin Antitrust Litigation: Berger & Montague was one of a small group of counsel in a case alleging that Abbott Laboratories was paying its competitors to refrain from introducing less expensive generic versions of Hytrin. The case settled for $74.5 million. (Case No. 99-MDL-1317 (S.D. Fla.)).

In re Remeron Antitrust Litigation: Berger & Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from introducing less expensive generic versions of Remeron. The case settled for $75 million. (2:02-CV-02007-FSH (D. N.J.).

In re Tricor Antitrust Litigation: Berger & Montague was one of a small group of counsel in a case alleging that the manufacturer of this drug was paying its competitors to refrain from

introducing less expensive generic versions of Tricor. The case settled for $250 million. (No. 05-340 (D. Del.)).

In re Relafen Antitrust Litigation: Berger & Montague was one of a small group of firms who prepared for the trial of this nationwide class action against GlaxoSmithKline, which was alleged to have used fraudulently-procured patents to block competitors from marketing less-expensive generic versions of its popular nonsteroidal anti-inflammatory drug, Relafen (nabumetone). Just before trial, the case was settled for $175 million. (No. 01-12239-WGY (D. Mass.)).

In re Microcrystalline Antitrust Litigation: Berger & Montague was one of two co-lead counsel in this class action alleging a conspiracy to fix the price of microcrystalline cellulose, used in the manufacture of many pharmaceuticals. The case was settled shortly before trial for a total of $50 million. (MDL No. 1402 (E.D. Pa.)).

In re Graphite Electrodes Antitrust Litigation: Berger & Montague was one of the four co-lead counsel in a nationwide class action price-fixing case. The case settled for in excess of $134 million and over 100% of claimed damages. (02 Civ. 99-482 (E.D. Pa.)).

In re Buspirone Antitrust Litigation: The firm served on the court-appointed steering committee in this class action, representing a class of primarily pharmaceutical wholesalers and resellers. The Buspirone class action alleged that pharmaceutical manufacturer BMS engaged in a pattern of illegal conduct surrounding its popular anti-anxiety medication, Buspar, by paying a competitor to refrain from marketing a generic version of Buspar, improperly listing a patent with the FDA, and wrongfully prosecuting patent infringement actions against generic competitors to Buspar. On April 11, 2003, the Court finally approved a $220 million settlement**.** (MDL No. 1410 (S.D.N.Y.)).

In re Cardizem CD Antitrust Litigation: Berger & Montague served on the executive committee of firms appointed to represent the class of direct purchasers of Cardizem CD. The suit charged that Aventis (the brand-name drug manufacturer of Cardizem CD) entered into an illegal agreement to pay Andrx (the maker of a generic substitute to Cardizem CD) millions of dollars to delay the entry of the less expensive generic product. On November 26, 2002, the district court approved a final settlement against both defendants for $110 million. (No. 99-MD-1278, MDL No. 1278 (E.D. Mich.)).

In re Brand Name Prescription Drugs Antitrust Litigation: The firm served as co-lead counsel in this antitrust price-fixing class action on behalf of a class of purchasers of brand name prescription drugs. Following certification of the class by the district court, settlements exceeded $717 million. (No. 94 C 897 (M.D. Ill.)).

North Shore Hematology-Oncology Assoc., Inc. v. Bristol-Myers Squibb Co.: The firm was one of several prosecuting an action complaining of Bristol Myers's use of invalid patents to

block competitors from marketing more affordable generic versions of its life-saving cancer drug, Platinol (cisplatin). The case settled for $50 million. (No. 1:04CV248 (EGS) (D.D.C.)).

In re Catfish Antitrust Litig. Action: The firm was co-trial counsel in this action which settled with the last defendant a week before trial, for total settlements approximating $27 million. (No. 2:92CV073-D-O, MDL No. 928 (N.D. Miss.)).

In re Carbon Dioxide Antitrust Litigation: The firm was co-trial counsel in this antitrust class action which settled with the last defendant days prior to trial, for total settlements approximating $53 million, plus injunctive relief. (MDL No. 940 (M.D. Fla.)).

***In re Infant Formula Antitrust Litigation*:** The firm served as co-lead counsel in an antitrust class action where settlement was achieved two days prior to trial, bringing the total settlement proceeds to $125 million. (MDL No. 878 (N.D. Fla.)).

Red Eagle Resources Corp., Inc., v. Baker Hughes, Inc.: The firm was a member of the plaintiffs' executive committee in this antitrust class action which yielded a settlement of $52.5 million. (C.A. No. H-91-627 (S.D. Tex.)).

In re Corrugated Container Antitrust Litigation: The firm, led by H. Laddie Montague, was co-trial counsel in an antitrust class action which yielded a settlement of $366 million, plus interest, following trial. (MDL No. 310 (S.D. Tex.)).

Bogosian v. Gulf Oil Corp.: With Berger & Montague as sole lead counsel, this landmark action on behalf of a national class of more than 100,000 gasoline dealers against 13 major oil companies led to settlements of over $35 million plus equitable relief on the eve of trial. (No. 71-1137 (E.D. Pa.)).

In re Master Key Antitrust Litigation: The firm served as co-lead counsel in an antitrust class action that yielded a settlement of $21 million during trial. (MDL No. 45 (D. Conn.)).

Securities Litigation

In re Merrill Lynch Securities Litigation: Berger & Montague, as co-lead counsel, obtained a recovery of $475 million for the benefit of the class in one of the largest recoveries among the recent financial crisis cases. (Civil Action No. 07-CV-09633 (S.D.N.Y.)).

In re NetBank, Inc. Securities Litigation: Berger & Montague served as lead counsel in this certified class action on behalf of the former common shareholders of NetBank, Inc. The $12.5 million settlement, which occurred after class certification proceedings and substantial discovery, is particularly noteworthy because it is one of the few successful securities fraud class actions

litigated against a subprime lender and bank in the wake of the financial crisis. (Case No. 07-2298 (D. Ga.)).

In re KLA Tencor Securities Litigation: The firm, as a member of Plaintiffs' Counsel's Executive Committee, obtained a cash settlement of $65 million in an action on behalf of investors against KLA-Tencor and certain of its officers and directors. (No. 06-cv-04065 (N.D. Cal.)).

***In re Sotheby's Holding, Inc. Securities Litigation*:** The firm, as lead counsel obtained a $70 million settlement, of which $30 million was contributed, personally, by an individual defendant (No. 00 Civ. 1041 (DLC) (S.D.N.Y.)).

Ginsburg v. Philadelphia Stock Exchange, Inc., et al.: The firm represented certain shareholders of the Philadelphia Stock Exchange in the Delaware Court of Chancery, and obtained a settlement valued in excess of $99 million settlement. (C.A. No. 2202-CC (Del. Ch.)).

In re Sepracor Inc. Securities Litigation: The firm, as co-lead counsel, obtained a settlement of $52.5 million for the benefit of bond and stock purchaser classes. (Civil Action No. 02-12235-MEL (D. Mass.)).

In re CIGNA Corp. Securities Litigation: The firm, as co-lead counsel, obtained a settlement of $93 million for the benefit of the class. (Master File No. 2:02-CV-8088 (E.D. Pa.)).

In re Fleming Companies, Inc. Securities Litigation: The firm, as lead counsel, obtained a class settlement of $94 million for the benefit of the class. (Civil Action No. 5-03-MD-1530 (TJW) (E.D. Tex.)).

In re Xcel Energy Inc. Securities, Derivative & "ERISA" Litigation: The firm, as co-lead counsel in the securities actions, obtained a cash settlement of $80 million on behalf of investors against Xcel Energy and certain of its officers and directors. (Civil Action No. 02-2677 (DSD/FLN) (D. Minn.)).

Brown v. Kinross Gold U.S.A. Inc.: The firm represented lead plaintiffs as co-lead counsel and obtained $29.25 million cash settlement and an additional $6,528,371 in dividends for a gross settlement value of $35,778,371. (No. 02-CV-0605 (D. Nev.)) All class members recovered 100% of their damages after fees and expenses.

In re Alcatel Alsthom Securities Litigation: In 2001, the firm, as co-lead counsel, obtained a class settlement for investors of $75 million cash. (MDL Docket No. 1263 (PNB) (E.D. Tex.)).

In re Rite Aid Corp. Securities Litigation: The firm, as co-lead counsel, obtained settlements totaling $334 million against Rite Aid's outside accounting firm and certain of the company's former officers. (99 CV 1349 (E.D. Pa.)).

In re Sunbeam Inc. Securities Litigation: As co-lead counsel, the firm obtained a settlement on behalf of investors of $141 million in the action against Sunbeam's outside accounting firm and Sunbeam's officers. (98 CV 8258 (S.D. Fla.)).

In re Waste Management, Inc. Securities Litigation: In 1999, the firm, as co-lead counsel, obtained a class settlement for investors of $220 million cash which included a settlement against Waste Management's outside accountants. (97 CV 7709 (N.D. Ill.)).

In re IKON Office Solutions Inc. Securities Litigation: The firm, serving as both co-lead and liaison counsel, obtained a cash settlement of $111 million in an action on behalf of investors against IKON and certain of its officers. (MDL Dkt. No. 1318 (E.D. Pa.)).

In re Melridge Securities Litigation: The firm served as lead counsel and co-lead trial counsel for a class of purchasers of Melridge common stock and convertible debentures. A four-month jury trial yielded a verdict in plaintiffs' favor for $88.2 million, and judgment was entered on RICO claims against certain defendants for $239 million. The court approved settlements totaling $57.5 million. (CV-87-1426 FR (D. Ore.)).

Walco Investments, Inc. et al. v. Kenneth Thenen, et al. (Premium Sales): The firm, as a member of the plaintiffs' steering committee, obtained settlements of $141 million for investors victimized by a Ponzi scheme. Reported at: 881 F. Supp. 1576 (S.D. Fla. 1995); 168 F.R.D. 315 (S.D. Fla. 1996); 947 F. Supp. 491 (S.D. Fla. 1996)).

In re The Drexel Burnham Lambert Group, Inc.: The firm was appointed co-counsel for a mandatory non-opt-out class consisting of all claimants who had filed billions of dollars in securities litigation-related proofs of claim against The Drexel Burnham Lambert Group, Inc. and/or its subsidiaries. Settlements in excess of $2.0 billion were approved in August 1991 and became effective upon consummation of Drexel's Plan of Reorganization on April 30, 1992. (90 Civ. 6954 (MP), Chapter 11, Case No. 90 B 10421 (FGC), Jointly Administered, reported at, *inter alia*, 960 F.2d 285 (2d Cir. 1992), *cert. dismissed*, 506 U.S. 1088 (1993) ("Drexel I") and 995 F.2d 1138 (2d Cir. 1993) ("Drexel II")).

In re Michael Milken and Associates Securities Litigation: As court-appointed liaison counsel, the firm was one of four lead counsel who structured the $1.3 billion "global" settlement of all claims pending against Michael R. Milken, over 200 present and former officers and directors of Drexel Burnham Lambert, and more than 350 Drexel/Milken-related entities. (MDL Dkt. No. 924, M21-62-MP (S.D.N.Y.).

RJR Nabisco Securities Litigation: In this action, Berger & Montague represented individuals who sold RJR Nabisco securities prior to the announcement of a corporate change of control. This securities case settled for $72 million. (88 Civ. 7905 MBM (S.D.N.Y.)).

New Jersey v. Qwest Communications International: The Berger firm represented the pension funds for public employees in the State of New Jersey seeking to recover losses on their investments in Qwest common stock. The opt-out action settled for $45 million. (MER-L-3738-02 (N.J. Super. Ct., Mercer Cty.)).

BIOGRAPHIES OF PRINCIPAL ATTORNEYS INVOLVED IN THIS CASE:

Eric L. Cramer

Eric L. Cramer is a shareholder with the Philadelphia law firm of Berger & Montague, P.C., where he has practiced since 1995. He has repeatedly been selected by Chambers USA *America's Leading Lawyers for Business* as one of Pennsylvania's top antitrust lawyers; has been deemed a "Super Lawyer" by Philadelphia Magazine; was highlighted in 2011 as one of the top lawyers in the country by *the Legal 500* in the field of complex antitrust litigation; and, was selected as a "*Rising* Star" and "antitrust ace" by *Lawdragon.com*. Mr. Cramer has focused his practice on complex litigation in the antitrust arena, including prosecuting antitrust class actions in the pharmaceutical and medical device industries. In the last several years, Mr. Cramer and his colleagues have won substantial settlements for their clients and class members from pharmaceutical industry defendants for a combined total of nearly $1 billion.

Among other writings, Mr. Cramer has co-authored *Antitrust, Class Certification, and the Politics of Procedure*, 17 George Mason Law Review 4 (2010) (http://ssrn.com/abstract=1578459); co-wrote *Of Vulnerable Monopolists?: Questionable Innovation in the Standard for Class Certification in Antitrust Cases*, to be published in the Rutgers Camden Law Review (Fall 2010) (http://ssrn.com/abstract=1542143); co-authored a Chapter of *American Antitrust Institute's Private International Enforcement Handbook* (2010), entitled "*Who May Pursue a Private Claim?*"; contributed to a chapter of the American Bar Association's *Pharmaceutical Industry Handbook* (July 2009), entitled "*Assessing Market Power in the Prescription Pharmaceutical Industry*"; and co-authored an article entitled *The Superiority of Direct Proof of Monopoly Power and Anticompetitive Effects in Antitrust Cases Involving Delayed Entry of Generic Drugs*, 39 U.S.F. Law Rev. 81 (Fall 2004).

He is a *summa cum laude* graduate of Princeton University (1989), where he was elected to Phi Beta Kappa. He graduated *cum laude* from Harvard Law School with a J.D. in 1993. He is a Senior Fellow of the American Antitrust Institute, a member of the Advisory Board of the Institute of Consumer & Antitrust Studies at Loyola University Chicago School of Law, a member of the Boards of Public Justice (formerly known as Trial Lawyers for Public Justice) and the Center for Literacy.

David F. Sorensen

Mr. Sorensen graduated from Duke University (B.A. *magna cum laude* 1983) and from Yale University (J.D. 1989). He was Law Clerk to the Hon. Norma L. Shapiro (E.D. Pa.), in 1990-1991. He is admitted to practice law in the Commonwealth of Pennsylvania, the United States Supreme Court, and numerous federal Courts of Appeal.

Mr. Sorensen practices in the areas of complex mass tort and antitrust class action litigation. He helped try a class action property damage case, *Cook v. Rockwell Corp.,* that resulted in a jury verdict of $554 million on February 14, 2006, after a four-month trial, on behalf of thousands of property owners near the former Rocky Flats nuclear weapons plant located outside Denver, Colorado. In July 2009, the trial team, including Mr. Sorensen, won the "Trial Lawyer of the Year" award from the Public Justice Foundation, for its work on the *Cook* case. The jury verdict in that case was vacated on appeal, and proceedings are continuing.

Mr. Sorensen also played a major role in the firm's representation of the State of Connecticut in *State of Connecticut v. Philip Morris, Inc., et al.*, in which Connecticut recovered approximately $3.6 billion from certain manufacturers of tobacco products.

Mr. Sorensen also has played major roles in a number of antitrust cases representing direct purchasers of prescription drugs. These cases have alleged that pharmaceutical manufacturers have wrongfully kept less expensive generic drugs off of the market, in violation of federal antitrust laws. Several of these cases have resulted in substantial cash settlements, including *In re Terazosin Hydrochloride Antitrust Litigation*, MDL 1317 (S.D. Fla.) ($75 million); and *In re Remeron Antitrust Litig.* (D.N.J.) ($75 million). Mr. Sorensen also argued and won class certification in *In re K-Dur Antitrust Litigation,* 2008 WL 2699390 (D.N.J. April 14, 2008), and *In re Nifedipine Antitrust Litigation*, 246 F.R.D. 365 (D.D.C. 2007); and argued and obtained a precedent-setting victory in *In re DDAVP Direct Purchaser Antitrust Litigation,* 585 F.3d 679 (2d Cir. 2009), in which the Second Circuit held that direct purchasers had standing to seek antitrust damages relating to *Walker Process* patent fraud. He also argued on behalf of direct purchaser plaintiffs in *King Drug Co. v. Cephalon, Inc.,* __ F. Supp. 2d __, 2010 WL 1221793 (E.D. Pa. March 29, 2010), in which the court denied defendants' motions to dismiss antitrust claims arising from agreements between Cephalon and its generic competitors that, plaintiffs allege, have wrongfully blocked generic competition. He is currently serving as co-lead counsel in the following cases involving allegations of unlawfully delayed generic competition: *In re Nexium (Esomeprazole) Antitrust Litigation*, No.12-md-2409-WGY (D. Mass.) (co-lead counsel, with HBSS and others) (representing class of direct purchasers of AstraZeneca's Nexium to recover overcharge damages from unlawful agreements to delay generic versions of Nexium); *In re Loestrin 24 FE Antitrust Litigation*, No. 13-md-2472 (D.R.I) (co-lead counsel, with HBSS and others) (representing proposed class of pharmaceutical wholesalers to recover overcharge damages from unlawful agreements to delay entry of generic versions of Loestrin 24); *In re Lipitor Antitrust Litig.*, MDL No. 2332 (D.N.J.) (co-lead counsel) (representing proposed class of pharmaceutical wholesalers to recover overcharge damages incurred by the proposed class due to defendants' conduct that allegedly delayed market entry of less expensive generic versions of Lipitor (generic name: atorvastatin calcium)-the largest selling prescription drug in U.S. history); *In re K-Dur Antitrust Litigation*, No. 01-01652 (D. N.J.) (co-lead counsel) (representing class of direct purchasers of the brand-name drug K-Dur 20; defendant American Home Products previously settled for $2.1 million. The Third Circuit recently reinstated its class certification ruling in favor of plaintiffs (*In re K-Dur Antitrust Litig*., 686 F.3d 197, 223 (3d Cir. 2012),

vacated, *Merck & Co., Inc. v. Louisiana Wholesale Drug Co., Inc.*, 133 S.Ct. 2849 (2013) & *Upsher-Smith Labs., Inc. v. Louisiana Wholesale Drug Co., Inc.*, 133 S.Ct. 2849 (2013), reinstating class certification on remand, *In re K-Dur Antitrust Litig*., Nos. 10-2077, 10-2078, 10-4571, 2013 WL 5180857 (3d Cir. Sept. 9, 2013); *In re Niaspan Antitrust Litigation*, No. 2:13-md-2460 (E.D. Pa.) (co-lead and liaison counsel) (representing proposed class of pharmaceutical wholesalers to recover overcharge damages from unlawful agreements to delay market entry of generic versions of Niaspan); *In re Effexor XR Antitrust Litigation*, No. 11-05479 (D. N.J.) (member of executive committee, with HBSS and others) (representing proposed class of direct purchasers of the brand-name drug Effexor XR and alleging that patents were fraudulently procured, wrongfully listed in the FDA Orange Book and used to bring serial sham litigation to block and delay generic competition); *In re Wellbutrin XL Antitrust Litig*., No. 08-2431 (E.D. Pa.) (co-lead counsel, with HBSS) (representing class of direct purchasers of GlaxoSmithKline's Wellbutrin XL alleging sham patent infringement litigation under § 2 of the Sherman Act and unlawful agreements in violation of §1 of the Sherman Act; settled with one defendant for $37.5 million); *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company*, No. 12-3824 (E.D. Pa.) (co-lead counsel, with HBSS and others) (representing a proposed class of pharmaceutical wholesalers who allege that they overpaid for delayed-release doxycycline hydrate-under the brand name Doryx-because of wrongful conduct by defendants); *King Drug Company of Florence, Inc. v. Cephalon, Inc., et al*., No.06-cv-1797 (E.D. Pa.) (liaison counsel and executive committee member); *In re Prandin Antitrust Litigation*, No. 10-cv-12141-AC-DAS (E.D. Mich.) (co-lead); *In re Androgel Antitrust Litigation (II)*, MDL Docket No. 2084 (N.D. Ga.) (co-lead); *Rochester Drug Co-Operative, Inc., v. Braintree Laboratories, Inc.*, No. 07-cv-0142 (D. Del.) ($17.25 million settlement) (co-lead); *In re Metoprolol Succinate Direct Purchaser Antitrust Litig*., No. 06-52 (D. Del.) ($20 million settlement) (co-lead); *Meijer, Inc., et al., v. Abbott Laboratories*, Civil Action No. 07-cv-5985 (N.D. Ca.) ($52 million settlement) (co-lead); *In re DDAVP Direct Purchaser Antitrust Litigation*, Civil Action No. 05-cv-2237 (S.D.N.Y.) ($20.25 million settlement) (co-lead); *In re Tricor Antitrust Litig*., Civil Action No. 05-cv-340 (D. Del.) ($250 million settlement) (member of trial team); *In re OxyContin Antitrust Litigation*, MDL No. 04-md-1603 (S.D.N.Y.) ($16 million settlement) (co-lead); *In re Nifedipine Antitrust Litigation*, MDL No. 1515 (D.D.C.) ($35 million settlement) (executive committee); *In re Remeron Antitrust Litig*., Civil Action No. 03-cv-323 (D. N.J.) ($75 million settlement); *In re Buspirone Antitrust Litig*., MDL Docket No. 1410 (S.D.N.Y.) ($220 million settlement) (steering committee); *In re Cardizem CD Antitrust Litig*., MDL Docket No. 1278 (E.D. Mich.) ($110 million settlement) (executive committee); and *In re Terazosin Hydrochloride Antitrust Litig*., MDL Docket No. 1317 (S.D. Fla.) ($75 million settlement) (executive committee).

Mr. Sorensen presented at symposia in November 2004, and in September 2009, focusing on antitrust issues in the pharmaceutical industry, at the University of San Francisco School of Law, and co-authored, with one of the school's law professors, Joshua P. Davis, *Chimerical Class Conflicts in Federal Antitrust Litigation: The Fox Guarding the Chicken House in Valley Drug*, 39 U.S.F. Law Review 141 (Fall 2004).

In October, 2007, Mr. Sorensen was on the faculty of a continuing education program for all Pennsylvania Common Pleas judges (trial court). He also has been a guest lecturer at the University of Colorado Law School.

Mr. Sorensen has been named as one Pennsylvania's "SuperLawyers," every year since 2005 in the Philadelphia Magazine; and has received the highest peer-review rating, "AV," in Martindale-Hubbell.

Daniel Simons

Mr. Simons is an associate in Berger & Montague's antitrust department. He received a Bachelor of Arts in Political Science, magna cum laude, from Yeshiva University in l997. In addition to winning the Political Science departmental award two years running, Mr. Simons also garnered three awards for scholastics and student leadership upon graduation.

He earned his J.D. with honors, at Temple Law School, where he headed three student groups, served on Temple Law Review, and interned in the Health Care Fraud Unit of the United States Attorney's Office. Following graduation, he clerked for the Honorable Berle M. Schiller of the Eastern District of Pennsylvania. He has also served as a volunteer in the Philadelphia Reads Program.

Mr. Simons's practice focuses on complex commercial litigation in the pharmaceutical and health care sectors. He has worked on several highly-watched pieces of litigation, including *In re Nifedipine Antitrust Litigation*, 246 F.R.D. 365 (D.D.C. 2007); *In re DDAVP Direct Purchaser Antitrust Litigation*, 585 F.3d 679 (2d Cir. 2009); and *King Drug Co. v. Cephalon, Inc*., 2010 WL 1221793 (E.D. Pa. Mar. 29, 2010). He has also co-authored a chapter in *The International Handbook on Private Enforcement of Competition Law* (2010), entitled "*Parties Entitled to Pursue a Claim*."

Mr. Simons is licensed to practice in Pennsylvania and New Jersey, and has been admitted to the bar of the United States Supreme Court, the Courts of Appeal for the Second, Third, Ninth, and D.C. Circuits, as well as the United States District Courts for the Eastern District of Pennsylvania and for the District of New Jersey. He is a member of the American Bar Association and its Antitrust Section. He helped found the Old York Road Revitalization Group – a project aimed at commercial development of a collection of northern Philadelphia suburbs – and serves on its governing board.

Andrew C. Curley

Andrew C. Curley is an associate with Berger & Montague. Mr. Curley received his J.D., *cum laude*, from the University of Pennsylvania. In 2000, Mr. Curley received a B.S. in finance and economics, *magna cum laude*, from the University of Delaware. Prior to joining Berger &

Montague, Mr. Curley practiced in the commercial litigation department of a large Philadelphia law firm. In 2010 and 2011, Mr. Curley was named as a Pennsylvania Super Lawyer - Rising Star. The designation of "Rising Star" is an honor conferred upon only the top 2.5% of attorneys in Pennsylvania who are 40 or younger. Mr. Curley is admitted to practice in Pennsylvania, the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit.

Sarah R. Schalman-Bergen

Sarah R. Schalman-Bergen is a member of Berger & Montague's antitrust department. Ms. Schalman-Bergen is a graduate of Harvard Law School (J.D. *cum laude*, 2007), where she served as an executive editor of the *Harvard Civil Rights-Civil Liberties Law Review*. She is also a graduate of Tufts University (B.A. *summa cum laude*, 2001).

Prior to joining Berger & Montague in 2009, Ms. Schalman-Bergen was an associate in the litigation department of WolfBlock LLP. While at WolfBlock, Ms. Schalman-Bergen served as the Shestack Public Interest Fellow, and divided her caseload between general commercial litigation and HIV discrimination litigation on behalf of the AIDS Law Project of Pennsylvania. Ms. Schalman-Bergen is admitted to practice law in Pennsylvania.

Caitlin Goldwater Coslett

Caitlin Goldwater Coslett concentrates her practice on complex litigation, including antitrust, environmental and mass tort litigation. Since joining Berger & Montague in 2009, she has worked on a variety of matters, including *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, *Cook v. Rockwell International Corp.* (mass tort litigation), *and In re Urethane [Polyether Polyols] Antitrust Litigation.* Ms. Coslett has also worked on a number of antitrust class actions on behalf of direct purchasers of prescription drugs in which the purchasers allege that pharmaceutical manufacturers have wrongfully kept less expensive generic drugs out of the market. *E.g.*, *In re Modafinil Antitrust Litigation*.

Ms. Coslett was a Lederman/Milbank Fellow in Law and Economics at New York University School of Law where she was also an articles selection editor for the *NYU Review of Law and Social Chang*e.

Ms. Coslett is one of the top 100 rated female chess players in the U.S.

Nick Urban

Nick Urban joined Berger & Montague's antitrust department as an associate in September, 2009. Mr. Urban is a graduate of the University of Pennsylvania Law School where he was a

Senior Editor for the *Journal of Law and Social Change*. Mr. Urban graduated from the University of San Diego with a B.A. in Sociology.

Isabel M. Daniels

Isabel M. Daniels is an associate at Berger & Montague, where she is a member of the firm's Antitrust and Employment practice groups. Before joining Berger, Ms. Daniels was an associate in the Los Angeles office of Irell & Manella LLP, where she was a member of the Intellectual Property and Litigation workgroups.

Before joining Irell, Ms. Daniels clerked for the Honorable Cormac J. Carney, District Judge of the U.S. District Court for the Central District of California.

Ms. Daniels earned her J.D., magna cum laude, from the University of Michigan Law School, where she was elected to Order of the Coif. While in law school, Ms. Daniels served as a Note Editor for the University of Michigan Journal of Law Reform and represented clients as a student attorney in the Child Advocacy Law Clinic. Ms. Daniels also won Best Brief and argued before a panel of federal court of appeals judges as a Finalist in the Henry M. Campbell Moot Court Competition.

Yechiel Michael Twersky

Yechiel Michael Twersky is an associate at Berger & Montague. Since beginning work at the firm in 2011, Mr. Twersky has been involved in numerous complex litigations, including antitrust, insurance, and other consumer cases. Mr. Twersky graduated from Temple University Beasley School of Law in 2011, where he was a member of the Rubin Public Interest Law Honors Society and a Class Senator. In addition Mr. Twersky advised various clients in business matters as part of Temple University's Business Law Clinic.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MYLAN PHARMACEUTICALS, INC., et al. **Plaintiff,** **v.** **WARNER CHILCOTT PUBLIC LIMITED COMPANY, et al.,** **Defendants.**	**Civ. No. 12-3824** **CONSOLIDATED**

DECLARATION OF PATRICK E. CAFFERTY IN SUPPORT OF DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES

I, Patrick E. Cafferty, declare as follows:

1. I am a partner at the law firm of Cafferty Clobes Meriwether & Sprengel LLP. I submit this declaration in support of Direct Purchaser Class Plaintiffs' ("Class Plaintiffs") motion for an award of attorneys' fees, reimbursement of expenses and payment of incentive awards to the class representatives in connection with services rendered in prosecuting this action.

2. My firm has acted as counsel to the Class Plaintiffs in this litigation. During the course of this litigation, my firm has been involved in the following activities:

- Investigation of the underlying facts and background;
- Participation in third party discovery, including negotiating with counsel for third parties concerning document production and depositions;
- Targeted research in document database in connection with preparion of issue-specific memoranda related to evidence of the underlying facts;
- Targeted research in document database on witness-specific documents and preparation of witness outlines for depositions;

- Preparion for and appearance at depositions for third-party witnesses, including taking the deposition of Sandoz, Inc.'s Rule 30(b)(6) witness;
- Consultation with expert witnesses in connection with opening and responsive expert reports regarding but-for generic entry and damages.

3. Exhibit 1 attached hereto is a summary of the time spent by my firm's attorneys and professional support staff who were involved in this litigation, and the lodestar calculation based on my firm's usual and customary current hourly billing rates. The total number of hours expended by my firm from inception through November 13, 2013 is 960.0 hours. The total lodestar for my firm is $656,075.50.

4. The hourly rates for the partners, attorneys and professional support staff included in Exhibit 1 are the usual and customary current hourly rates charged for their services in non-contingent matters, which have been accepted and approved in other complex class action litigations. The exhibit was prepared at my request from contemporaneous, daily time records regularly prepared and maintained by my firm.

5. Exhibit 2 attached hereto is a summary by category of the unreimbursed expenses incurred by my firm connection with the prosecution of this litigation. The expenses incurred in this action are reflected on my firm's books and records, which are prepared from invoices, receipts, credit card bills, cancelled checks and wire transfer notices expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred. The total amount of expenses incurred by my firm is $50,569.48.

6. Exhibit 3 attached hereto is a firm resume that includes the biographies of the principal attorneys who were involved in this case.

CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP

Dated: March 18, 2014

Patrick E. Cafferty

EXHIBIT 1

DORYX ANTITRUST LITIGATION
TIME REPORT

Firm Name: **Cafferty Clobes Meriwether & Sprengel LLP**
Reporting Period: **Inception through November 13, 2013**

PROFESSIONAL	STATUS	TOTAL HOURS	CURRENT HOURLY RATE	TOTAL LODESTAR
Patrick E. Cafferty	P	938.9	$690.00	$647,841.00
Daniel O. Herrera	A	10.4	$550.00	$5,720.00
Kathryn R. Hollenstine	PL	10.7	$235.00	$2,514.50
TOTALS		960.0		$656,075.50

P = Partner
C = Counsel
A = Associate
PL = Paralegal

EXHIBIT 2

DORYX ANTITRUST LITIGATION
EXPENSE REPORT

Firm Name: **Cafferty Clobes Meriwether & Sprengel LLP**
Reporting Period: **Inception through November 13, 2013**

EXPENSE	AMOUNT
Litigation Fund	$45,000.00
Travel/Hotel/Meals	$3,164.68
Copying Services	$2,046.00
Research Services	$253.60
Telephone/Teleconference/Fax	$9.14
FedEx/Messengers/Postage	$96.06
TOTAL	$50,569.48

EXHIBIT 3

CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP

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Cafferty Clobes Meriwether & Sprengel LLP, which has offices in Chicago, Philadelphia, and Ann Arbor, combines the talents of attorneys with a wide range of experience in complex civil litigation. The skill and experience of CCMS attorneys has been recognized on repeated occasions by courts that have appointed these attorneys to major positions in complex multidistrict or consolidated litigation. As the cases listed below demonstrate, these attorneys have taken a leading role in numerous important actions on behalf of investors, employees, consumers, businesses, and others. In addition, CCMS attorneys are currently involved in a number of pending class actions, as described on the Firm's web page.

I. Antitrust Class Actions

❒ ***In re Insurance Brokerage Antitrust Litig.***, MDL No. 1663 (D.N.J.). CCMS was appointed Co-Lead Counsel for plaintiffs who alleged that insurance brokers and insurers conspired to allocate customers in a complicated scheme to maximize their own revenues at the expense of class members. The litigation concluded in August 2013 with final approval of last of five separate settlements that, in aggregate, exceeded $270 million. *See*: (**1**) *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 542227, (D.N.J. Feb. 16, 2007) (approving $121.8 million settlement with the Zurich Defendants), *aff'd*, 579 F.3d 241(3d Cir. 2009); (**2**) *In re Insurance Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 2589950 (D.N.J. Sept. 4, 2007) (approving $28 million settlement with the Gallagher Defendants), *aff'd*, 579 F.3d 241(3d Cir. 2009); (**3**) *In re Insurance Brokerage Antitrust Litig*., MDL No. 1663, 2009 WL 411877 (D.N.J. Feb. 17, 2009) (approving $69 million settlement with Marsh & McLennan Cos. Inc.); (**4**) *In re Insurance Brokerage Antitrust Litig*., MDL No. 1663, 2012 WL 1071240 (D.N.J. Mar. 30, 2012) (approving $41 million settlement with several defendants, including AIG, Hartford, Fireman's Fund and Travelers); and (**5**) *In re Insurance Brokerage Antitrust Litig*., MDL No. 1663, __ F.R.D. __, 2013 WL 3956378 (D.N.J. Aug. 1, 2013) (approving $10.5 million settlement with ACE defendants, Chubb defendants and Munich Re defendants). Judge Claire C. Cecchi recently observed that "Class counsel include notably skilled attorneys with experience in antitrust, class actions and RICO litigation." *Id.* at *17; *see also In re Insurance Brokerage Antitrust Litig*., MDL No. 1663, 2007 WL 1652303, at *6 (D.N.J. June 5, 2007).

❒ ***In re New Motor Vehicles Canadian Export Antitrust Litig.***, MDL No. 1532 (D. Me.). CCMS was appointed Class Counsel, together with other firms, in multidistrict litigation alleging that automobile manufacturers and other parties conspired to prevent lower priced new motor vehicles from entering the American market during certain periods, thereby artificially inflating prices. *In re New Motor Vehicles Canadian Export Antitrust Litig*., 270 F.R.D. 30, 35 (D. Me. 2010). On February 3, 2012, the court approved a $37 million settlement with Toyota and the Canadian Automobile Dealers' Association. *In re New Motor Vehicles Canadian Export Antitrust Litig*., MDL 1532, 2012 WL 379947 (D. Me. Feb. 3, 2012).

❒ ***In re TriCor Indirect Purchaser Antitrust Litig.***, No. 05-360 (D. Del). CCMS was appointed Co-Lead Counsel for consumer and third-party payor plaintiffs who alleged that defendants engaged in unlawful monopolization in the market for fenofibrate products, which are used to treat high cholesterol and high triglyceride levels. *See Abbott Laboratories v. Teva Pharmaceuticals, Inc*., 432 F. Supp. 2d 408 (D. Del. 2006) (denying defendants' motions to dismiss). On October 28, 2009, the court granted final approval to a $65.7 million settlement (an amount that excludes an initial payment to opt-out insurance companies).

❒ ***Nichols v. SmithKline Beecham Corp.***, No. Civ.A.00-6222 (E.D. Pa.). CCMS served as Co-Lead Counsel for consumers and third-party

payors who alleged that the manufacturer of the brand-name antidepressant Paxil misled the U.S. Patent Office into issuing patents that protected Paxil from competition from generic substitutes. On April 22, 2005, Judge John R. Padova granted final approval to a $65 million class action settlement for the benefit of consumers and third-party payors who paid for Paxil. *Nichols v. SmithKline Beecham Corp*., No. Civ.A.00-6222, 2005 WL 950616, 2005-1 Trade Cas. (CCH) ¶74,762 (E.D. Pa. April 22, 2005). *See also Nichols v. SmithKline Beecham Corp.*, No. Civ.A.00-6222, 2003 WL 302352, 2003-1 Trade Cas. (CCH) ¶ 73,974 (E.D. Pa. Jan. 29, 2003) (denying defendant's motion to strike expert testimony).

❒ ***In re Relafen Antitrust Litig.*** No. 01-12239 (D. Mass.). On September 28, 2005, Judge William G. Young of the United States District Court for the District of Massachusetts granted final approval to a $75 million class action settlement for the benefit of consumers and third-party payors who paid for branded and generic versions of the arthritis medication Relafen. In certifying an exemplar class of end-payors, the court singled out our Firm as experienced and vigorous advocates. *See In re Relafen Antitrust Litig*., 221 F.R.D. 260, 273 (D. Mass. 2004). In the opinion granting final approval to the settlement, the court commented that "Class counsel here exceeded my expectations in these respects [*i.e.*, experience, competence, and vigor] in every way." *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85 (D. Mass. 2005); *see also id.* at 80 ("The Court has consistently noted the exceptional efforts of class counsel."). The litigation resulted in many significant decisions including: 286 F. Supp. 2d 56 (D. Mass. 2003) (denying motion to dismiss); 346 F. Supp. 2d 349 (D. Mass. 2004) (denying defendant's motion for summary judgment).

❒ ***VisaCheck/MasterMoney Antitrust Litig.,*** Master File No. 96-5238 (E.D.N.Y.). CCMS's client, Burlington Coat Factory Warehouse, and the other plaintiffs alleged that Visa and MasterCard violated the antitrust laws by forcing retailers to accept all of their branded cards as a condition of acceptance of their credit cards. On June 4, 2003, the parties entered into settlement agreements that collectively provided for the payment of over $3.3 billion, plus widespread reforms and injunctive relief. On December 19, 2003, the Settlement was finally approved by Judge John Gleeson. On January 4, 2005, the Second Circuit Court of Appeals affirmed Judge Gleeson's decision.

❒ ***In re Warfarin Sodium Antitrust Litig.***, MDL 98-1232 (D. Del.). Multidistrict class action on behalf of purchasers of Coumadin, the brand-name warfarin sodium manufactured and marketed by DuPont Pharmaceutical Company. Plaintiffs alleged that the defendant engaged in anticompetitive conduct that wrongfully suppressed competition from generic warfarin sodium. On August 30, 2002, the Court granted final approval to a $44.5 million settlement. *See In re Warfarin Sodium Antitrust Litig*., 212 F.R.D. 231 (D. Del. 2002). On December 8, 2004, the Third Circuit upheld approval of the settlement. 391 F.3d 516 (3d Cir. 2004).

❒ ***In re Cardizem CD Antitrust Litig.***, MDL No. 1278 (E.D. Mich.). Multidistrict class action on behalf of purchasers of Cardizem CD, a brand-name heart medication manufactured and marketed by Hoechst Marion Roussel, Inc. Plaintiffs alleged that an agreement between HMR and generic manufacturer Andrx Corp. unlawfully stalled generic competition. On October 1, 2003, Judge Nancy Edmunds granted final approval to an $80 million settlement for the benefit of consumers, third-party payors and state attorneys general. *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508 (E.D. Mich. 2003), *app. dismissed*, 391 F.3d 812 (6th Cir. 2004). The litigation resulted in several significant decisions, including: 105 F. Supp. 618 (E.D. Mich. 2000) (denying motions to dismiss); 105 F. Supp. 2d 682 (E.D. Mich. 2000) (granting plaintiffs' motions for partial summary judgment and holding agreement *per se* illegal under federal and state antitrust law); 200 F.R.D. 326 (E.D. Mich. 2001) (certifying exemplar end-payor class); 332 F.3d 896 (6th Cir. 2003) (upholding denial of motion to dismiss and grant of partial summary judgment).

❒ ***Blevins v. Wyeth-Ayerst Labs.,*** No. 324380 (Sup. Ct. San Francisco Cty. CA). Plaintiff alleged that Wyeth-Ayerst unlawfully monopolized the market for conjugated estrogen drug products through exclusive contracts with health benefit providers and pharmacy benefit managers. On October 30, 2007, the court approved a $5.2 million settlement for a class of California purchasers of Wyeth-Ayerst's conjugated estrogen drug product.

❒ ***House v. GlaxoSmithKline PLC***, No. 2:02-cv-442 (E.D. Va.). Plaintiffs alleged that GSK, which makes Augmentin, misled the United States Patent Office into issuing patents to protect Augmentin from competition from generic substitutes. On January 10, 2005, the court entered and order approving a $29 million settlement for the benefit of consumers and third-party payors.

❒ ***In re Synthroid Marketing Litig.***, MDL No. 1182 (N.D. Ill). This multidistrict action arises out of alleged unlawful activities with respect to the marketing of Synthroid, a levothyroxine product used to treat thyroid disorders. On August 4, 2000, the court granted final approval of a consumer settlement in the amount of $87.4 million. *See* 188 F.R.D. 295 (N.D. Ill. 1999). On August 31, 2001, approval of the settlement was upheld on appeal. *See* 264 F.3d 712 (7th Cir. 2001).

❒ ***In re Lorazepam & Clorazepate Antitrust Litig.,*** MDL 1290 (D.D.C.). This multidistrict class action arose out of an alleged scheme to corner the market on the active pharmaceutical ingredients necessary to manufacture generic clorazepate and lorazepam tablets. After cornering the market on the supply, defendants raised prices for generic clorazepate and lorazepam tablets by staggering amounts (*i.e.*, 1,900% to over 6,500%) despite no significant increase in costs. On February 1, 2002, Judge Thomas F. Hogan approved class action settlements on behalf of consumers, state attorneys general and third party payors in the aggregate amount of $135 million. *See* 205 F.R.D. 369 (D.D.C. 2002).

❒ ***In re Lithotripsy Antitrust Litig.,*** No. 98 C 8394 (N.D. Ill.). Antitrust class action arising out of alleged stabilization of urologist fees in the Chicago metropolitan area. In granting class certification, Judge George Lindberg stated that "Miller Faucher [as CCMS was then known] is experienced in antitrust class action litigation and defendants do not dispute that they are competent, qualified, experienced and able to vigorously conduct the litigation." *Sebo v. Rubenstien*, 188 F.R.D. 310, 317 (N.D. Ill. 1999). On June 12, 2000, the court approved a $1.4 million settlement. *In re Lithotripsy Antitrust Litig.*, 2000 WL 765086 (N.D. Ill. June 12, 2000).

❒ ***Brand-Name Prescription Drug Indirect Purchaser Actions***. Coordinated antitrust actions against the major pharmaceutical manufacturers in ten states and the District of Columbia. The actions were brought under state law on behalf of indirect purchaser consumers who obtained brand name prescription drugs from retail pharmacies. In 1998, the parties agreed to a multistate settlement in the amount of $64.3 million, which was allocated among the actions. In approving state-specific settlements, the courts were highly complementary of the performance of counsel. In approving the Wisconsin Settlement, for example, Judge Moria G. Krueger commented that "this Court, in particular, has been helped along every step of the way by some outstanding lawyering and I believe that applies to both sides. ... You can hardly say that there's been anything but five star attorneys involved in this case". *Scholfield v. Abbott Laboratories*, No. 96 CV 0460, Transcript of Hearing at 31 & 33 (Cir. Ct., Dane Co., Wisc., Oct. 5, 1998). *See also McLaughlin v. Abbott Laboratories*, No. CV 95-0628, Transcript of Proceedings at 28 (Super. Ct., Yavapai County, Oct. 28, 1998) ("I think the quality of counsel is excellent."). Reported decisions include: *Goda v Abbott Labs*, No. 01445-96, 1997 WL 156541, 1997-1 Trade Cas. (CCH) ¶71,730 (Superior Court D.C., Feb 3, 1997) (granting class certification); *In re Brand Name Prescription Drugs Antitrust Litig.* (*Holdren, Yasbin, Meyers*), 1998 WL 102734, 1998-1 Trade Cas. (CCH) ¶72,140 (N.D. Ill.,

Feb. 26, 1998) (remanding three actions to state courts).

❒ ***In Re Cellular Phone Cases***, Coordination Proceeding No. 4000 (Superior Court, San Francisco County, Cal.). Class action under California's Cartwright Act, which alleged price-fixing of cellular telephone service in the San Francisco area market. On March 27, 1998, the court granted final approval to a settlement that provides $35 million in in-kind benefits to the Class and a release of debt in the amount of $35 million.

❒ ***Garabedian v. LASMSA Limited Partnership***, No. 721144 (Superior Court, Orange County, Cal.). Class action under California's Cartwright Act which alleged price-fixing of cellular telephone service in the Los Angeles area market. By order of January 27, 1998, the court granted final approval to two settlements that provide $165 million in in-kind benefits.

❒ ***Lobatz v. AirTouch Cellular***, 94-1311 BTM (AJB) (S.D. Cal.) Class action alleging price-fixing of cellular telephone service in San Diego County, California. On June 11, 1997, the court approved a partial settlement in the amount of $4 million. On October 28, 1998, the Court approved another settlement that entailed $4 million worth of in-kind benefits. In an order entered May 13, 1999, Judge Moskowitz stated that "[t]hrough the course of this complex and four-year long litigation, Class Counsel demonstrated in their legal briefs and arguments before this Court their considerable skill and experience in litigating anti-trust class actions..."

❒ ***In re Airline Ticket Commission Antitrust Litig.***, MDL No. 1058 (D. Minn.) Antitrust class action on behalf of travel agents against the major airlines for allegedly fixing the amount of commissions payable on ticket sales. The action settled for $87 million. *See* 953 F. Supp. 280 (D. Minn. 1997).

II. Employee Benefits Class Actions

❒ ***Polk v. Hecht***, No. 92-1340 (D.N.J.). Class action brought under the Employee Retirement Income Act of 1974 on behalf of all participants or beneficiaries under the Mutual Benefit Life Savings and Investment Plan for Employees on July 16, 1991, when Mutual Benefit Life Insurance Corporation was placed in rehabilitation. On April 12, 1995, Judge Harold A. Ackerman approved a $4.55 million settlement, noting that "[c]ounsel did a darn good job, and the record should be clear on that point, that that is the opinion, for what it's worth, of this Court."

❒ ***In re Unisys Retiree Medical Benefits ERISA Litig.,*** MDL No. 969 (E.D. Pa). Class action on behalf of over 25,000 retirees of Unisys Corporation concerning entitlement to retiree medical benefits. After trial, in November 1994, Chief Judge Cahn approved a partial settlement in the amount of $72.9 million. *See* 57 F.3d 1255 (3d Cir. 1995).

III. Securities and Commodities Class Actions and Shareholder Derivative Suits

❒ ***In re Kaiser Group International***, Case No. 00-2263 (Bankr. D. Del.). On December 7, 2005, Chief Judge Mary F. Walrath of the United States Bankruptcy Court for the District of Delaware granted final approval to a settlement that produced 175,000 shares of common stock for a class of former shareholders of ICT Spectrum Contructors, Inc. (a company that merged with ICF Kaiser Group International and ICF Kaiser Advanced Technology in 1998). The settlement followed Judge Joseph J. Farnan's ruling which upheld the Bankruptcy Court's decision to award common stock of the new Kaiser entity (Kaiser Group Holdings, Inc.) to the Class of former Spectrum shareholders based on contractual provisions within the merger agreement. *See Kaiser Group International, Inc. v. James D. Pippin* (*In re Kaiser Group International*), 326 B.R. 265 (D. Del. 2005).

❒ ***Danis v. USN Communications, Inc.,*** No. 98 C 7482 (N.D. Ill.). Securities fraud class action arising out of the collapse and eventual bankruptcy of USN Communications, Inc. On

May 7, 2001, the court approved a $44.7 million settlement with certain control persons and underwriters. Reported decisions: 73 F. Supp. 2d 923 (N.D. Ill. 1999); 189 F.R.D. 391 (N.D. Ill. 1999); 121 F. Supp. 2d 1183 (N.D. Ill. 2000).

❒ ***In re Sumitomo Copper Litig.***, 96 Civ. 4584(MP) (S.D.N.Y.). Class action arising out of manipulation of the world copper market. On October 7, 1999, the court approved settlements aggregating $134.6 million. *See* 189 F.R.D. 274 (S.D.N.Y. 1999). In awarding attorneys' fees, Judge Milton Pollack noted that it was "the largest class action recovery in the 75 plus year history of the Commodity Exchange Act". 74 F. Supp. 2d 393 (S.D.N.Y. Nov. 15, 1999). Additional reported opinions: 995 F. Supp. 451 (S.D.N.Y. 1998); 182 F.R.D. 85 (S.D.N.Y. 1998).

❒ ***In re Exide Corp. Sec. Litig.,*** No. 98-CV-60061 (E.D. Mich.). Securities fraud class action arising out of sales and financial practices of leading battery manufacturer. On September 2, 1999, Judge George Caram Steeh approved a settlement in the amount of $10.25 million.

❒ ***In re Caremark International Inc. Sec. Litig.***, No. 94 C 4751 (N.D. Ill.). Securities fraud class action arising out of Caremark's allegedly improper financial arrangements with physicians. On December 15, 1997, the court approved a $25 million settlement.

❒ ***In re Nuveen Fund Litig.***, No. 94 C 360 (N.D. Ill.). Class action and derivative suit under the Investment Company Act arising out of coercive tender offerings in two closed-end mutual funds. On June 3, 1997, the court approved a $24 million settlement. Magistrate Judge Edward A. Bobrick commented that "there's no question that the attorneys for the plaintiffs and the attorneys for the defendants represent the best this city [Chicago] has to offer ... this case had the best lawyers I've seen in a long time, and it is without question that I am committed to a view that their integrity is beyond reproach." (6/3/97 Tr. at 5-6.)

❒ ***In re Archer-Daniels-Midland, Inc. Sec. Litig.***, No. 95-2287 (C.D. Ill.). Securities fraud class action arising out of the Archer-Daniels-Midland price-fixing scandal. On April 4, 1997, the court approved a $30 million settlement.

❒ ***In re Soybean Futures Litig.***, No. 89 C 7009 (N.D. Ill.). A commodities manipulation class action against Ferruzzi Finanziaria SpA and related companies for unlawfully manipulating the soybean futures market in 1989. In December 1996, the court approved a settlement in the amount of $21.5 million. *See* 892 F. Supp. 1025 (N.D. Ill. 1995).

❒ ***In re Prudential Securities Incorporated Limited Partnerships Litig.***, MDL 1005 (S.D.N.Y.). A massive multidistrict class action arising out of Prudential Securities Incorporated's marketing and sale of speculative limited partnership interests. On November 20, 1995, the court approved a partial settlement, which established a $110 million settlement fund. *See* 912 F. Supp. 97 (S.D.N.Y. 1996). On August 1, 1997, the court approved a partial settlement with another defendant in the amount of $22.5 million.

❒ ***Feldman v. Motorola, Inc.***, No. 90 C 5887 (N.D. Ill.) Securities fraud class action against Motorola, Inc. and its high ranking officers and directors. In June 1995, the court approved a $15 million settlement. *See* [1993 Transfer Binder], Fed. Sec. L. Rep. (CCH) ¶97,806 (N.D. Ill. Oct. 14, 1993).

❒ ***In re Salton/Maxim Sec. Litig.***, No. 91 C 7693 (N.D. Ill.). Class action arising out of public offering of Salton/Maxim Housewares, Inc. stock. On September 23, 1994, Judge James S. Holderman approved a $2.4 million settlement, commenting that "it was a pleasure to preside over [the case] because of the skill and the quality of the lawyering on everyone's part in connection with the case."

❒ ***Horton v. Merrill Lynch, Pierce Fenner & Smith, Inc.***, No. 91-276-CIV-5-D (E.D.N.C.). A $3.5 million settlement was approved on May 6, 1994 in this securities fraud class action arising out of a broker's marketing of a

speculative Australian security. The Court stated that "the experience of class counsel warrants affording their judgment appropriate deference in determining whether to approve the proposed settlement." 855 F. Supp. 825, 831 (E.D.N.C. 1994).

❒ ***In re International Trading Group, Ltd. Customer Account Litig.***, No. 89-5545 RSWL (GHKx) (C.D. Cal.). Class action alleging violation of the anti-fraud provisions of the Commodity Exchange Act. The case settled with individual defendants and proceeded to a judgment against the corporate entity. In that phase, the Court awarded the Class a constructive trust and equitable lien over the corporation's assets and entered a $492 million judgment in favor of the Class. Approximately $7 million was recovered on the judgment.

❒ ***Hoxworth v. Blinder Robinson & Co.,*** No. 88-0285 (E.D. Pa.). Securities fraud and RICO class action resulting from alleged manipulative practices and boiler-room operations in the sale of "penny stocks." *See* 903 F.2d 186 (3rd Cir. 1990). Judgment in excess of $70 million was obtained in February, 1992. The judgment was affirmed by the Third Circuit Court of Appeals, 980 F.2d 912 (3rd Cir. 1992). *See also Hoxworth v. Blinder*, 74 F.3d 205 (10th Cir. 1996).

❒ ***Benfield v. Steindler***, No. C-1-92-729 (S.D. Ohio). Shareholder derivative suit on behalf of General Electric Corporation shareholders arising out of the sale of military aircraft engines to the government of Israel in violation of U.S. law. On December 10, 1993, the Court approved a settlement in the amount of $19.5 million. In a January 13, 1994 Report to the Court Concerning Attorney Fees, the Special Master characterized the firm as a "leading litigation" firm, and stated that the "representation given plaintiff was first rate".

❒ ***In re Structural Dynamics Research Corporation Derivative Litig.***, No. C-1-94-650 (S.D. Ohio). Shareholder derivative action arising out of Structural Dynamics's inaccurate reporting of its financial performance. In approving a $5 million settlement on July 19, 1996, Judge Herman J. Weber stated that "in my mind the highest professional service a lawyer can give to his or her client is to terminate the litigation as early as possible and at the most economical cost to your clients. The Court finds that the lawyers in this case have done just that..."

IV. Miscellaneous Class Actions

❒ ***In re Midway Moving & Storage, Inc.'s Charges to Residential Customers,*** No. 03 CH 16091 (Cir. Ct. Cook Cty., Il.). A class action on behalf of customers of Illinois' largest moving company whose final moving charges exceeded their pre-move written estimates. Plaintiffs alleged violation of the Illinois Consumer Fraud Act, breach of contract and breach of the covenant of good faith and fair dealing. A litigation class was certified and upheld on appeal. *See Ramirez v. Midway Moving and Storage, Inc.*, 880 N.E.2d 653 (Ill. App. 2007). On the eve of trial, the case settled on a class-wide basis. On October 12, 2012, the Court (Judge Richard J. Elrod) granted final approval and stated that CCMS is "highly experienced in complex and class action litigation, vigorously prosecuted the Class' claims, and achieved an excellent Settlement for the Class under which Class members will receive 100% of their alleged damages."

❒ ***Beattie v. CenturyTel, Inc.***, Civ. No. 02-10277 (E.D. Mich.). A class action on behalf of telephone customers in numerous states who were billed for an inside wire maintenance program improperly described in bills as "Non-Regulated Services." Plaintiffs alleged violation of the truth-in-billing requirements of the Federal Telecommunications Act. A litigation class was certified and upheld on appeal. *See Beattie v. CenturyTel, Inc.*, 511 F.3d 554 (6th Cir. 2007). On July 9, 2010, the court granted final approval to a $13 million cash settlement.

❒ ***Grider v. Keystone Health Plan Central Inc. et al.***, Civ. No. 01-5641 (E.D. Pa.). A class action filed on behalf of medical service providers who rendered services to patients insured by the defendants. Plaintiffs alleged that the defendants improperly denied, delayed or

reduced payments to medical providers for the services they rendered to class members. On June 13, 2008, Judge Gardner, of the Eastern District of Pennsylvania, granted final approval to two settlements that fully resolved the case. Under the terms of the settlement agreement, the defendants were required to pay class members almost $7.5 million and make substantial changes to the their business practices. The estimated value of the business practice changes was $48 million.

❒ ***Walter Cwietniewicz d/b/a Ellis Pharmacy, et al. v. Aetna U.S. Healthcare***, June Term, 1998, No. 423 (Pa. Common Pleas). On May 25, 2006, Judge Stephen E. Levin of the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Civil Trial Division, granted final approval to a settlement of a class action brought for the benefit of Pennsylvania pharmacies that participated in U.S. Healthcare's capitation program and had money withheld from capitation payments during the second half of 1996 and the first half of 1997. The lawsuit alleged that participating pharmacies should have received certain semi-annual payments for these two six-month periods in order to be properly compensated for dispensing prescriptions to plan members. At the final approval hearing, Judge Levin noted that "this particular case was as hard-fought as any that I have participated in" and with respect to the Class's reaction to the settlement achieved as a result of our firm's work: ". . . a good job, and the reason there should be no objection, they should be very very happy with what you have done."

❒ ***PrimeCo Personal Communications, L.P. v. Illinois Commerce Commission***, No. 98 CH 5500 (Circuit Court of Cook County, Ill.). This class action sought recovery of an unconstitutional infrastructure maintenance fee imposed by municipalities on telephone and other telecommunications customers in the State of Illinois. On August 1, 2002, the court granted final approval to a settlement of wireless telephone and pager customers' claims against the City of Chicago worth over $31 million.

❒ ***Gersenson v. Pennsylvania Life and Health Insurance Guaranty Assoc.***, No. 3468 (Pa. Common Pleas). Class action against state insurance guaranty association brought on behalf of Pennsylvania resident insureds of Executive Life Insurance Co. for violating due process, and failing to pay required benefits and other monies. Plaintiff's motion for summary judgment was granted and the court awarded plaintiff and the Class more than $18 million. The judgment was upheld on appeal.

❒ ***Supnick v. Amazon.Com, Inc., and Alexa Internet***, No. 00-CV-221 (W.D. Wash.). Class action against internet browsing service provider and its parent for violating user privacy by secretly collecting personally identifying information of users without informed consent. On July 27, 2001, the court granted final approval to a settlement that included programmatic and monetary relief. The FTC endorsed the settlement and elected to not prosecute defendants based, in part, on the relief achieved in the settlement with plaintiffs.

❒ ***Curley v. Cumberland Farms Dairy, Inc.***, No. 86-5057 (D.N.J.). Class action arising out of convenience store chain's treatment of employees to prevent losses. In September 1993, the court approved a settlement in the amount of $5.5 million. In a November 12, 1993 opinion awarding attorneys fees, Judge Stanley S. Brotman noted that "petitioners [including Mr. Faucher and Ms. Meriwether] demonstrated in this case great skill and determination in representing their clients through the many stages of this lengthy and complex litigation."

V. Individual Biographies

PARTNERS

❑ ***PATRICK E. CAFFERTY*** graduated from the University of Michigan, with distinction, in 1980 and obtained his J.D., *cum laude*, from Michigan State University College of Law in 1983. In law school, he received the American Jurisprudence Award for study of commercial transactions law. From 1983 to 1985, he served as a prehearing attorney at the Michigan Court

of Appeals and as a Clerk to Judge Glenn S. Allen, Jr. of that Court. Mr. Cafferty is admitted to the state bars of Michigan and Illinois, the Supreme Court of the United States, the United States Courts of Appeals for the Federal, Second, Third, Fourth, Sixth and Seventh Circuits, and the United States District Courts for the Eastern District of Michigan, Western District of Michigan, and Northern District of Illinois. In *In Telesphere Sec. Litig.*, Judge Milton I. Shadur characterized Mr. Cafferty's credentials as "impeccable." 753 F. Supp. 176, 719 (N.D. Ill. 1990). In 2002, Mr. Cafferty was a speaker at a forum in Washington D.C. sponsored by Families USA and Blue Cross/Blue Shield styled "Making the Drug Industry Play Fair." At the Health Action 2003 Conference in Washington D.C., Mr. Cafferty was a presenter at a workshop titled "Consumers' Access to Generic Drugs: How Brand Manufacturers Can Derail Generic Drugs and How to Make Them Stay on Track." In December 2010, Mr. Cafferty made a presentation on indirect purchaser class actions at the American Antitrust Institute's annual antitrust enforcement conference. *See Indirect Class Action Settlements* (Am. Antitrust Inst., Working Paper No. 10-03, 2010), *available at* http://www.antitrustinstitute.org/~antitrust/content/aai-working-paper-no-10-03-indirect-purchase-settlement-data-base-updated. Mr. Cafferty has attained the highest rating, AV®, from Martindale-Hubbell.

❏ ***ELLEN MERIWETHER*** received her law degree from George Washington University, *magna cum laude*, in 1985. She was a member of the *George Washington Law Review* and was elected to the Order of the Coif. Ms. Meriwether received a B.A. degree, *with highest honors*, from LaSalle University in 1981. She was an adjunct professor at LaSalle University teaching a course in the University's honors program from 1988-1993. Ms. Meriwether is a member of the Bar of the Commonwealth of Pennsylvania and is admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the Second, Third, Seventh, Tenth and Eleventh Circuits, and the United States District Court for the Eastern District of Pennsylvania. Ms. Meriwether is an active member of the Federal Courts Committee of the Philadelphia Bar Association, and has chaired several of its subcommittees. She is the course planner and moderator for the Committee's annual presentation of "My First Federal Trial," an award-winning program that gives young lawyers the opportunity to hear from a panel of federal judges from the Eastern District of Pennsylvania. She is a member of the Advisory Board of the American Antitrust Institute and is a frequent presenter on topics relating to complex, class action and antitrust litigation. She is a member of the Editorial Board for *Antitrust*, a publication by the section of Antitrust Law of the American Bar Association, and has published several articles in the magazine including "Putting the 'Squeeze' on Refusal to Deal Cases: Lessons from *Trinko* and *linkLine*," (Vol. 24, No. 2, Spring 2010) and "Rigorous Analysis in Certification of Antitrust Class Actions: A Plaintiff's Perspective." (Vol. 21, No. 3, Summer 2007). In 2010, she was included in the US News and World Report Publication of "Best Lawyers in America" in the field of Antitrust Law, and in 2007, Ms. Meriwether was recognized in Philadelphia Magazine's Annual Survey as one of the "Top 50 Women Super Lawyers" in Pennsylvania. Ms. Meriwether has been named a "Pennsylvania Super Lawyer" in each of the past five years, and has attained the highest rating, AV®, from Martindale-Hubbell.

❏ ***BRYAN L. CLOBES*** is a 1988 graduate of the Villanova University School of Law and received his undergraduate degree from the University of Maryland. While in law school, Mr. Clobes clerked for Judge Arlin M. Adams of the United States Court of Appeals for the Third Circuit and Judge Mitchell H. Cohen of the United States District Court for the District of New Jersey. In 1988, after graduating from law school, Mr. Clobes served as a law clerk to Judge Joseph Kaplan of the Maryland Circuit Court in Baltimore. From 1989 through June, 1992, Mr. Clobes served as Trial Counsel to the Commodity Futures Trading Commission in Washington, D.C. Mr. Clobes authored *In the Wake of Varity Corp. v. Howe: An Affirmative Duty to Disclose Under ERISA*, 9 DePaul Bus.

L.J. 221 (1997). Mr. Clobes was a member of the Amicus Committee of the National Association of Securities and Commercial Law Attorneys and he has authored briefs filed with the Supreme Court in a number of recent ERISA cases, including *Varity Corp. v. Howe* and *Schoonejongen v. Curtiss-Wright Corp.* Mr. Clobes has attained the highest rating, AV®, from Martindale-Hubbell and has been named a "Pennsylvania Super Lawyer" in each of the past three years. Mr. Clobes has been admitted to the bar in New Jersey and Pennsylvania, the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit and the United States District Court for the Eastern District of Pennsylvania.

❑ ***JENNIFER WINTER SPRENGEL*** is a 1990 graduate of DePaul University College of Law, where she was a member of the *DePaul University Law Review*. She received her undergraduate degree from Purdue University in 1987. Ms. Sprengel has handled a variety of commercial litigation matters in both state and federal court. Ms. Sprengel is admitted to practice law in Illinois, the United States District Court for the Northern District of Illinois and the United States Court of Appeals for the Third and Seventh Circuits. Ms. Sprengel currently serves as Co-Chair of the Class Action and Derivative Suits Committee of the American Bar Association's Litigation Section.

❑ ***ANTHONY FATA*** is a 1999 graduate of The Ohio State University College of Law, where he graduated with honors and was elected to the Order of the Coif, served as Managing Editor of The Ohio State Journal on Dispute Resolution, and earned the CALI award for Consumer Law and the CALI Excellence for the Future Award. Mr. Fata received his undergraduate degree from Miami University in 1995. Mr. Fata began his legal career in the trial and white collar practice groups at McDermott Will & Emery. **Mr. Fata** joined Cafferty Clobes Meriwether & Sprengel LLP in 2003. He has successfully prosecuted a wide range of commodities, securities, antitrust and consumer class actions. He has successfully represented the firm's business clients in a variety of commercial disputes and transactional matters and investor clients in securities arbitrations and regulatory proceedings. Among other publications, Mr. Fata authored *Doomsday Delayed: How the Court's Party-Neutral Clarification of Class Certification Standards in Wal-Mart v. Dukes Actually Helps Plaintiffs*," 62 DePaul Law Review 401 (Spring 2013), *Class Actions: Attaining Settlement Class Certification Under Amchem and Ortiz*, 19 *Product Liability Law & Strategy 1* (2001), and was a contributing author for *IICLE Securities Law*, Chapter 15 – Civil Remedies (2003). Among other speaking engagements, Mr. Fata was a panelist for the 22nd Annual DePaul Law Review Symposium, *Class Action Rollback? Wal-Mart v. Dukes and the Future of Class Action Litigation* (2012), and has been selected to serve as a panelist for the Practising Law Institute's *Internal Investigations: What to Do, and What Not to Do* (2013). Mr. Fata is admitted to the bar in Illinois, as well as the Sixth, Seventh and Ninth Circuit Courts of Appeals, the Northern District of Illinois (including the Trial Bar) and the District of Colorado.

❑ ***NYRAN ROSE RASCHE*** received her undergraduate degree *cum laude* from Illinois Wesleyan University in 1995, and earned her law degree from the University of Oregon School of Law in 1999. Following law school, Ms. Rasche served as a clerk to the Honorable George A. Van Hoomissen of the Oregon Supreme Court. She is the author of *Protecting Agricultural Lands: An Assessment of the Exclusive Farm Use Zone System*, 77 Oregon Law Review 993 (1998). Ms. Rasche is admitted to practice in the state courts of Oregon and Illinois, as well as the United States District Courts for the Northern District of Illinois and the Southern District of Illinois. She is also a member of the American and Chicago Bar Associations.

❑ ***CHRISTOPHER B. SANCHEZ*** is a 2000 graduate of the DePaul University College of Law, where he wrote for the *Journal of Art and Entertainment Law* and was the school's student representative for the Hispanic National Bar Association. He received his undergraduate degree, *cum laude*, from the University of New

Mexico in 1996. Mr. Sanchez is admitted to practice in Illinois, as well as the United States District Court for the Northern District of Illinois and United States Court of Appeals for the Seventh Circuit. He is also a member of the Illinois State Bar Association and of the Hispanic National Bar Association.

ASSOCIATES

❑ ***KELLY L. TUCKER*** received her law degree from Fordham University School of Law in 2010, where she was an Executive Notes and Articles Editor of the Fordham Journal of Corporate and Financial Law and a member of the Executive Board of Fordham Law Moot Court. While in law school, Ms. Tucker published a Note on the subject of antitrust litigation entitled, *In the Wake of Empagran—Lights out on Foreign Activity Falling under Sherman Act Jurisdiction?*, 15 Fordham J. Corp. & Fin. L 807 (2010) and served as a Judicial Intern to the Honorable Douglas Eaton, a Magistrate Judge in the District Court for the Southern District of New York. She earned her undergraduate degree from American University in 2003. Ms. Tucker joined the firm in 2011.

❑ ***DANIEL O. HERRERA*** received his law degree, *magna cum laude*, and his MBA, with a concentration in finance, from the University of Illinois at Urbana-Champaign in 2008. Mr. Herrera received his bachelor's degree in economics from Northwestern University in 2004. Mr. Herrara joined CCMS as an associate in 2011 and is resident in its Chicago, Illinois Office. Prior to joining CCMS, Mr. Herrera was an associate in the trial practice of a Chicago-based national law firm, where he defended corporations in securities and antitrust class actions, as well as SEC and DOJ investigations and enforcement actions. Mr. Herrera also routinely handled commercial matters on behalf of corporate clients. Mr. Herrera is licensed to practice in Illinois and before the U.S. District Court for the Northern District of Illinois.

OF COUNSEL

❑ ***DOM J. RIZZI*** received his B.S. degree from DePaul University in 1957 and his J.D. from DePaul University School of Law in 1961, where he was a member of the *DePaul University Law Review*. From 1961 through 1977, Judge Rizzi practiced law, tried at least 39 cases, and briefed and argued more than 100 appeals. On August 1, 1977, Judge Rizzi was appointed to the Circuit Court of Cook County by the Illinois Supreme Court. After serving as circuit court judge for approximately one year, Judge Rizzi was elevated to the Appellate Court of Illinois, First District, where he served from 1978 to 1996. Judge Rizzi also teaches at both the undergraduate and graduate level: since 1980, he has been a part-time faculty member of the Loyola University School of Law and, since 1992, he has been a part-time faculty member at the University of Illinois-Chicago. Judge Rizzi became counsel to the firm in October, 1996.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MYLAN PHARMACEUTICALS, INC., et al. **Plaintiff,** **v.** **WARNER CHILCOTT PUBLIC LIMITED COMPANY, et al.,** **Defendants.**	**Civ. No. 12-3824** **CONSOLIDATED**

DECLARATION OF PETER KOHN IN SUPPORT OF DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES

I, Peter Kohn, declare as follows:

1. I am a partner at the law firm of Faruqi & Faruqi, LLP. I submit this declaration in support of Direct Purchaser Class Plaintiffs' ("Class Plaintiffs") motion for an award of attorneys' fees, reimbursement of expenses and payment of incentive awards to the class representatives in connection with services rendered in prosecuting this action.

2. My firm has acted as Co-Lead counsel for the Class Plaintiffs in this litigation. During the course of this litigation, my firm has been involved in the following activities:

- Reviewed, organized, analyzed, summarized and prepared attorney work product memos about hundreds of thousands of pages of documents and data produced by Defendants Warner Chilcott Public Limited Company, Warner Chilcott (US) LLC, Warner Chilcott Company LLC, Warner Chilcott Holdings Company III, Ltd., and Warner Chilcott Laboratories Ireland Limited (collectively, "Warner Chilcott"), and Mayne Pharma Group Limited and Mayne Pharma International Pty, Ltd.

(collectively, "Mayne") (collectively "Defendants"), as well as documents produced by multiple third parties;

- Played a principal role in briefing Class Plaintiffs' Opposition to Defendants' Motions to Dismiss, Class Plaintiffs' Motion for Class Certification and Reply in support thereof and Class Plaintiffs' Opposition to Defendants' Motion to Exclude the Declaration and Testimony of Jeffrey Leitzinger Ph.D.;
- Negotiated with defense counsel concerning discovery of Defendants and Class Representative Rochester Drug Co-Operative, Inc. ("RDC"), defended two depositions of RDC's witnesses, participated in numerous meetings and conferences with Defendants concerning the scope of requested discovery;
- Led Class Plaintiffs' discovery of 32 third parties by negotiating with counsel for third parties over the scope of production and reviewing the document production or assigning review to other Co-Counsel;
- Deposed 4 Mayne witnesses including 3 in Australia, deposed 4 Defendants' experts including Defendants' pharmaceutical manufacturing and supply, dermatology, pharmaceutical economics, and drug delivery experts, participated in depositions of Retailer and third party witnesses, and defended the deposition of Plaintiffs' economic expert, Jeffrey Leitzinger Ph.D.;
- Took the leading role in working with Class Plaintiffs' dermatology, pharmaceutics and pharmaceutical manufacturing and supply experts in connection with class certification, merits expert reports and depositions;

- Played a leading role in settlement discussions, actively participating in the mediation process, communicating regularly with RDC regarding the settlement, and negotiating and drafting the terms of the Settlement Agreements;
- Drafted all the papers relating to Preliminary Approval of the Settlement and for Class Certification;
- Led the claims administration process by working with the claims administrator, the escrow agent and Class Plaintiffs' economic expert in administering the settlement.

3. Exhibit 1 attached hereto is a summary of the time spent by my firm's attorneys and professional support staff who were involved in this litigation, and the lodestar calculation based on my firm's usual and customary hourly billing rates. The total number of hours expended by my firm from inception through this date is 5,912 hours. The total lodestar for my firm is $3,939,982.50.

4. The hourly rates for the partners, attorneys and professional support staff included in Exhibit 1 are the usual and customary current hourly rates charged for their services in non-contingent matters, which have been accepted and approved in other complex class action litigations. The exhibit was prepared at my request from contemporaneous, daily time records regularly prepared and maintained by my firm.

5. Exhibit 2 attached hereto is a summary by category of the unreimbursed expenses incurred by my firm in connection with the prosecution of this litigation. The expenses incurred in this action are reflected on my firm's books and records, which are prepared from invoices, receipts, credit card bills, cancelled checks and wire transfer notices expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred. The total expenses incurred by my firm are $179,835.84.

6. Exhibit 3 sets forth the biographies of the principal attorneys from my firm who were involved in this case.

FARUQI & FARUQI, LLP

Dated: March 19, 2014

/*s/ Peter Kohn*
Peter Kohn

EXHIBIT 1

DORYX ANTITRUST LITIGATION
TIME REPORT

Firm Name: FARUQI & FARUQI, LLP
Reporting Period: Inception through 11/13/2013

PROFESSIONAL	STATUS	TOTAL HOURS	CURRENT HOURLY RATE	TOTAL LODESTAR
Peter Kohn	P	2040.8	$795	$1,622,436.00
Joseph Lukens	P	1381.2	$750	$1,035,900.00
Neill Clark	A	1309.3	$585	$765,940.50
Luke Smith	A	72.5	$495	$35,887.50
Sarah Westby	A	625.8	$475	$297,255.00
Elizabeth A. Silva	A	85.6	$375	$32,100.00
Aaron Peskin	A	158.8	$515	$81,782.00
Richard Schwartz	A	12.7	$555	$7,048.50
Jessica Jenks	PL	47.2	$275	$12,980.00
Joy Williams	PL	104.0	$275	$28,600.00
Derek Behnke	PL	57.3	$275	$15,757.50
Lilia Volynkova	PL	3.5	$275	$962.50
Miriam Sampson	PL	8.3	$260	$2,158.00
Diana Abellard	PL	5.0	$235	$1,175.00
TOTALS		5912		$3,939,982.50

P = Partner
C = Counsel
A = Associate
PL = Paralegal

EXHIBIT 2

DORYX ANTITRUST LITIGATION
EXPENSE REPORT

Firm Name: FARUQI & FARUQI, LLP
Reporting Period: Inception through 11/13/2013

EXPENSE	AMOUNT
Litigation Fund	$150,000.00
Travel/Hotel/Meals	$21,111.27
Copying Services	$2,152.23
Research Services	$2,347.35
Telephone/Teleconference/Fax	$311.80
FedEx/Messengers/Postage	$3,123.19
Court Fees	$790.00
Other (describe)	
TOTAL	$179,835.84

EXHIBIT 3

FARUQI & FARUQI LLP
ATTORNEYS AT LAW

Faruqi & Faruqi, LLP focuses on complex civil litigation, including securities, antitrust, wage and hour, and consumer class actions as well as shareholder derivative and merger and transactional litigation. The firm is headquartered in New York, and maintains offices in California, Delaware and Pennsylvania.

Since its founding in 1995, Faruqi & Faruqi, LLP has served as lead or co-lead counsel in numerous high-profile cases which ultimately provided significant recoveries to investors, consumers and employees.

PRACTICE AREAS

ANTITRUST LITIGATION

The attorneys at Faruqi & Faruqi, LLP represent direct purchasers, third-party payors, end payors, and competitors in a variety of individual and class action antitrust cases brought under Sections 1 and 2 of the Sherman Act. These actions, which typically seek treble damages under Section 4 of the Clayton Act, have been commenced by businesses and consumers who have been injured by anticompetitive agreements to fix prices or allocate markets, conduct that excludes or delays competition, and other monopolistic or conspiratorial conduct that harms competition. Current and past matters include the following:

- *In re Aftermarket Filters Antitrust Litigation*, No. 08-4883 (N.D. Ill) (representing a proposed class of direct purchasers of filters challenging conspiracy to fix prices, in violation of § 1 of the Sherman Act)
- *In re AndroGel Antitrust Litigation (II)*, No. 09-2084 (N.D. Ga.) (representing a proposed class of direct purchasers of drug AndroGel, alleging that the manufacturer of drug AndroGel entered into anticompetitive settlement agreements designed to delay generic competition in violation of §§ 1 and 2 of the Sherman Act)
- *Babyage.com, Inc., et al. v. Toys "R" Us, Inc.*, No. 05-6792 (E.D. Pa.) (representing two retailers challenging dominant retailer and co-conspirator suppliers' anticompetitive scheme to impose and enforce resale price maintenance in violation of §§ 1 and 2 of the Sherman Act and state law) (settled for undisclosed amount)
- *In re Blood Reagents Antitrust Litigation*, No. 09-2081 (E.D. Pa.) (representing a proposed class of direct purchasers of blood reagent products, challenging conspiracy to fix prices, in violation of § 1 of the Sherman Act)
- *Broadway v. JP Morgan Chase & Co. et al.,* No. 11-cv-00398 (E.D.N.Y.) (representing proposed class of silver traders against investment firms alleging conspiracy to depress and manipulate the price of COMEX silver futures and option contracts in violation of § 1 of the Sherman Act)
- *Brownson v. Furukawa Electric Co., Ltd. et al,* No. 11-14831(E.D. Mich.) (representing proposed class of users of wire harnesses in automobiles against parts manufactures who pleaded guilty to Department of Justice charges of an conspiracy to fix prices, violating § 1 of the Sherman Act)

- *Castro et al.* v. *Sanofi Pasteur, Inc.,* No. 11-cv-07178 (D.N.J.) (representing pediatricians and practice groups again children's vaccine maker for tying and bundling in an abuse of monopoly power in violation of § 2 of the Sherman Act)
- *In re Chocolate Confectionary Antitrust Litigation*, No. 08-MD-1935 (M.D. Pa.) (representing direct purchasers of chocolate products challenging conspiracy to fix prices, in violation of § 1 of the Sherman Act)
- *Connecticut Children's Medical Center v. Lundbeck, Inc.*, No. 09-1652 (D. Minn.) (representing a class of direct purchasers of drugs Indocin and NeoProfen alleging monopolization under §§ 1 and 2 of the Sherman Act and § 7 of the Clayton Act) (settled)
- *Cronk v. GMAC Mortgage, LLC,* No. 11-05161-SD (E.D. Pa.) (representing a class of condominium owners alleging that GMAC conducted a pattern and practice of forcing owners of condominium units to purchase excessive high-premium flood insurance in violation of federal and state laws)
- *In re Effexor Antitrust Litigation*, No 11-196 (D.N.J.) (representing a proposed class of direct purchasers of drug Effexor XR, alleging that the manufacturer, in concert with a generic manufacturer, engaged in an anticompetitive scheme to delay generic competition in violation of §§ 1 and 2 of the Sherman Act) (Faruqi & Faruqi is on the Executive Committee)
- *In re Endosurgical Products Direct Purchaser Antitrust Litigation*, No. 05-CV-8809 (C.D. Cal.) (represented a proposed class of direct purchasers of endosurgical products manufactured by Johnson and Johnson, challenging bundled pricing and exclusionary contracting scheme that violated §§ 1 and 2 of the Sherman Act) (settled)
- *F & V Oil Company, Inc., et al v. Reddy Ice Holdings, Inc., et* al, No. 08-11152 (E.D. Mich.) (representing class of direct purchasers against manufacturers of packaged ice alleging conspiracy to fix prices and allocate markets in violation of § 1 of the Sherman Act)(partially settled)
- *In re Hypodermic Products Antitrust Litigation*, No. 05-1602 (D.N.J.) (representing a proposed class of direct purchasers challenging monpolistic conduct by Becton Dickinson and Company in the sale of hypodermic syringes and related products) (settlement for $45 million)
- *In re Iowa Ready-Mixed Concrete Antitrust Litigation*, No. C 10-4038 (N.D. Ia.) (representing direct purchasers alleging producers and seller sellers of ready-mixed concrete conspired to fix prices in violation of § 1 of the Sherman Act) (settled for $18.5 million)
- *Isaac Industries, Inc. v. E.I. Dupont De Nemours and Company, et al.*, No. 10-00323-RDB (D. Md.) (representing proposed class of direct purchasers of titanium dioxide against manufacturers alleging a conspiracy to fix prices in violation of § 1 of the Sherman Act) (settlements in excess of $100 million)
- *Jimico Enterprises, Inc., et al. v. Lehigh Gas Corp.*, No. 07-578 (N.D.N.Y) (representing several terminated gas stations alleging violations of the Petroleum Marketing Practices Act) (judgment for plaintiffs)
- *King Drug Company of Florence, Inc., et al. v. Cephalon, Inc., et al.*, No. 06-1797 (E.D. Pa.) (representing direct purchasers of drug Provigil alleging Cephalon conspired with generic competitors as part of a larger scheme to monopolize in violation of §§ 1 and 2 of the Sherman Act)
- *In re Lipitor Antitrust Litigation*, No. 12-2389 (PGS/DEA) (D.N.J.) (representing a proposed class of direct purchasers of Lipitor alleging that Pfizer and a generic drug company, Ranbaxy, conspired to delay generic atorvastatin calcium competition)
- *In re LoEstrin Antitrust Litigation,* No. 13-md-2472 (D.R.I.) (representing a proposed class of direct purchasers of drug LoEstrin 24 Fe, alleging that the manufacturer and would-be generic manufacturers conspired to enter into a pay-for-delay agreement to delay generic competition in violation of § 1 of the Sherman Act) (Faruqi & Faruqi is co-lead counsel)

- *Marchbanks Truck Service, Inc., et al. v. Comdata Network, Inc., et al.,* No. 07-1078-JKG-HSP (E.D. Pa.) (representing proposed class of independent truck stops against fleet card issuer and chain truckstops for abuse of monopoly power and tying and bundling in violation of § 2 of the Sherman Act)
- *Marchese v. Cablevision Systems Corporation*, No. 2:10-cv-02190 (D.N.J.) (representing a proposed class of direct purchasers of two-way cable services from Cablevision, accusing Cablevision of illegally tying those services to rentals of a Cablevision-supplied set-top box)
- *Mark S. Wallach, et al. v. Eaton Corp., et al.*, No. 10-260 (D. Del.) (representing purchasers of truck transmissions alleging exclusive dealing agreements between Eaton Corp. and OEMs to keep the price for truck transmissions artificially high in violation of §§ 1 and 2 of the Sherman Act and § 3 of the Clayton Act) (Faruqi & Faruqi is on the executive committee)
- *In re Metoprolol Succinate Direct Purchaser Antitrust Litigation*, 06-52 (D. Del.) (representing pharmaceutical wholesaler and proposed class of direct purchasers challenging the conduct of AstraZeneca in delaying generic drug competition, in violation of § 2 of the Sherman Act) (settled for $20 million)
- *Mylan Pharms., Inc. v. Warner Chilcott Public Limited Company, et al.*, No. 12-3824 (E.D. Pa.) (representing a proposed class of direct purchasers of drug Doryx, alleging that the manufacturer engaged in an anticompetitive scheme to delay generic competition in violation of §§ 1 and 2 of the Sherman Act) (Faruqi & Faruqi is co-lead counsel)
- *In re Nexium (Esomeprazole) Antitrust Litigation*, No. 12-md-2409 (D. Mass.) (representing a pharmaceutical wholesaler and proposed class of direct purchasers challenging pay-for-delay agreements delayed generic competition to AstraZeneca's Nexium, in violation of §§ 1 and 2 of the Sherman Act)
- *In re: Niaspan Antitrust Litigation*, No. 13-md-2460 (E.D. Pa.) (representing a proposed class of direct purchasers of drug Niaspan, alleging that the manufacturer and would-be generic companies conspired to enter into a pay-for-delay agreement to delay generic competition in violation of § 1 of the Sherman Act)
- *In re Online DVD Rental Antitrust Litigation*, No. 09-2029 (N.D. Cal.) (representing a proposed class of subscribers to Netflix alleging a per se illegal market allocation agreement between it and Walmart) (partial settlement for approximately $27 million)
- *In re Pennsylvania Title Ins. Antitrust Litigation*, No. 08-1202 (E.D. Pa.) (Faruqi & Faruqi partner Peter Kohn was co-lead counsel in this action on behalf of direct purchasers of title insurance alleging illegal cartel pricing under § 1 of the Sherman Act)
- *In re Prandin Direct Purchaser Antitrust Litigation*, No. 10-12141AC-DAS (E.D. Mich.) (representing a pharmaceutical wholesaler and proposed class of direct purchasers challenging the conduct of Novo Nordisk A/S in manipulating regulatory framework and patent laws to delay generic drug competition in violation of § 2 of the Sherman Act) (Faruqi & Faruqi is on the executive committee)
- *In re Ready-Mixed Concrete Antitrust Litigation*, No. 05-979 (S.D. Ind.) (represented a proposed class of direct purchasers of ready-mixed concrete challenging conspiracy to fix prices, in violation of § 1 of the Sherman Act) (settled in excess of $40 million)
- *Rhodes v. National Collegiate Athletic Association, et al*, No. 09-5378 (N.D. Cal.) (representing a proposed class of Division 1 college athletes and former athletes against the NCAA and its licensing agent alleging conspiracy to preclude athletes from profiting from use of their images in violation of § 1 of the Sherman Act)
- *Rochester Drug Co-Operative, Inc., et al. v. Boehringer Ingelheim Pharms., Inc.*, No. 13-6990 (E.D. Pa.) (representing a pharmaceutical wholesaler and proposed class of direct purchasers of drug Aggrenox alleging that brand drug company paid would-be generic competitor not to compete with it, in violation of the Sherman Act)

- *Rochester Drug Co-Operative, Inc., et al. v. Braintree Labs, Inc.*, No. 07-142-SLR (D. Del.) (representing a pharmaceutical wholesaler and proposed class of direct purchasers of drug MiraLax alleging and anticompetitive scheme to delay generic competition in violation of § 2 of the Sherman Act) (settled for $17.25 million)
- *Rochester Drug Co-Operative, Inc., et al. v. Endo Pharms., Inc.*, No. 13-7217 (E.D. Pa.) (representing a pharmaceutical wholesaler and proposed class of direct purchasers of drug Lidoderm alleging that brand drug company paid would-be generic competitor not to compete, in violation of the Sherman Act)
- *Rochester Drug Co-Operative, Inc. v. Medicis Pharm. Corp., et al.*, No. 13-4270 (E.D. Pa.) (representing a proposed class of direct purchasers of drug Solodyn, alleging that the manufacturer engaged in an anticompetitive scheme to delay generic competition in violation of §§ 1 and 2 of the Sherman Act)
- *In re Skelaxin (Metaxalone) Antitrust Litigation*, No. 12-MD-2343 (E.D. Tenn.) (representing a proposed class of direct purchasers of Skelaxin alleging that King and a generic drug company, Mutual, conspired to delay generic metaxalone competition)
- *Sotomayor, v. Hachette Book Group Inc., et al.*, No. 11-05707 (S.D.N.Y.) (representing a proposed class of e-book purchasers alleging a horizontal conspiracy among book publishers and e-book sellers in the United States to raise, fix, stabilize and maintain retail prices of e-books)
- *In re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litigation*, MDL No. 2445 (representing a pharmaceutical wholesaler and proposed class of direct purchasers of Reckitt Benckiser's Suboxone, alleging that Reckitt engaged in a scheme to delay generic competition in violation of § 2 of the Sherman Act) (Faruqi & Faruqi is co-lead counsel)
- *In re Text Messaging Antitrust Litigation*, No. 08-C-782 (N.D. Ill.) (representing purchasers of text messaging services alleging price-fixing in violation of § 1 of the Sherman Act)
- *Throm v. GMAC Mortgage, LLC*, No. 11-06813-SD (E.D. Pa.) (representing a class of homeowners alleging that GMAC conducted a pattern and practice of forcing owners of properties to purchase excessive high-premium flood insurance in violation of federal and state laws)
- *In re Tricor Antitrust Litigation*, No. 05-360 (D. Del.) (represented PacifiCare, a large third-party payor challenging the conduct of Abbott Laboratories and Laboratories Fournier in suppressing generic drug competition, in violation of §§ 1 and 2 of the Sherman Act) (settled for undisclosed amount)
- *In re Wellbutrin XL Antitrust Litigation*, No. 08-2431 (E.D. Pa.) (representing a pharmaceutical wholesaler and proposed class of direct purchasers challenging the conduct of SmithKline Beecham Corp. and Biovail Laboratories in delaying generic drug competition, in violation of §§ 1 and 2 of the Sherman Act) (settlement for $37.5 million against one defendant)

CONSUMER FRAUD LITIGATION

Attorneys at Faruqi & Faruqi, LLP have represented consumers in a variety of state and federal complex class action cases. In *Thomas v. Global Vision Products*, Case No. RG-03091195, California Superior Ct., Alameda Cty.), Faruqi & Faruqi, LLP served as co-lead counsel in a consumer class action lawsuit against Global Vision Products, Inc., the manufacturer of the Avacor hair restoration product and its officers, directors and spokespersons, in connection with the false and misleading advertising claims regarding the Avacor product. Though the

company had declared bankruptcy in 2007, Faruqi & Faruqi, LLP, along with its co-counsel, successfully prosecuted two trials to obtain relief for the class of Avacor purchasers. In January 2008, a jury in the first trial returned a verdict of almost $37 million against two of the creators of the product. In November 2009, another jury awarded plaintiff and the class more than $50 million in a separate trial against two other company directors and officers. This jury award represented the largest consumer class action jury award in California in 2009 (according to VerdictSearch, a legal trade publication).

In *Kelly, v. Phiten*, 11-cv-00067 JEG (S.D. IA 2011), Faruqi & Faruqi, LLP served as co-lead counsel in action concerning Defendant Phiten USA's alleged false and misleading statements that its jewelry and other products are capable of balancing the user's energy flow. Faruqi & Faruqi, LLP negotiated a settlement entitling claimants to up to 300% of the cost of the product and substantial injunctive relief requiring Phiten to modify its advertising claims.

Faruqi & Faruqi, LLP was also successful in *In re: HP Power-Plug Litigation*, Case No. 06-1221 (N.D. Cal.), in obtaining full relief to class members with a settlement of a cash payment up to $650.00, or in the alternative, a repair free-of-charge and free of shipping and handling costs and new limited warranty, to compensate class members for defective laptops manufactured by defendant HP. Also, in *Delre v. Hewlett-Packard Co.*, C.A. No. 3232-02 (N.J. Super. Ct. 2002), Faruqi & Faruqi, LLP obtained full relief for a class of approximately 170,000 members who purchased HP dvd-100i dvd-writers ("HP 100i") after HP misrepresented the write-once ("DVD+R") capabilities of the HP 100i; including, the compatibility of DVD+RW disks written by HP 100i with DVD players and other optical storage devices. HP agreed to replace the defective HP 100i with its more current, second generation DVD writer, the HP 200i, for affected class members and refund the $99 it had charged some consumers to upgrade from the HP 100i to the HP 200i prior to the settlement. Also, in *Potter v. Sharper Image Corp.*, No. CGC-03426350 (Cal. Sup. Ct.) Faruqi & Faruqi, LLP was lead counsel on behalf of a class of purchasers of Sharper Image's Ionic Breeze air purifiers alleging unfair and deceptive trade practices.

Faruqi & Faruqi, LLP was appointed counsel in *In re: Toyota Motor Corp. Hybrid Brake Marketing, Sales Practices, And Product Liability Litigation*, MDL No. 2172-CJC-RNB (C.D. Cal. 2011) on behalf of a proposed nationwide class of purchasers of Prius Hybrid and Lexus HS250h automobiles. Recently, Faruqi & Faruqi and co-counsel defeated a complex motion to dismiss filed by defendants who challenged plaintiffs' allegations pursuant to California's consumer laws including the UCL, the CLRA, and FAL as well as plaintiffs' breach of implied warranty of merchantability and breach of contract claims.

Faruqi & Faruqi is currently co-lead counsel in the following cases:

- *Avram v. Samsung Electronics America, Inc., et al.,* Case No. 11-CIV-6973 SRC-MAS (D.N.J. 2011) (representing a proposed nationwide class of persons who purchased mislabeled refrigerators from Samsung Electronics America, Inc. for misrepresenting the energy efficiency of certain refrigerators.)
- *Bates v. General Nutrition Centers, Inc., et al.*, Case No. 12-cv-01336-ODW-AJW (C.D. Cal. 2012) (representing a prospective class of consumers who purchased C-4 Extreme, a product containing a dangerous and synthetic stimulant, which has been deceptively marketed as a pre-workout "dietary supplement".)
- *Bates v. Kashi Co., et al.*, Case No. 11-CV-1967-H BGS (S.D. Cal. 2011) (representing a proposed nationwide class of purchasers of Kashi products that were deceptively labeled as "all natural.")
- *Dei Rossi v. Whirlpool Corp., et al.*, Case No. 2:12-cv-00125-JAM-JFM (E.D. Cal. 2012) (representing a proposed class of people who purchased mislabeled KitchenAid brand refrigerators from Whirlpool Corp., Best Buy, and other retailers.)
- *Dzielak v. Whirlpool Corp., et al.*, Case No. 12-CIV-0089 SRC-MAS (D. N.J. 2011) (representing a proposed nationwide class of purchasers of mislabeled Maytag brand washing machines for misrepresenting the energy efficiency of such washing machines.)
- *In re: Haier Freezer Consumer Litig.*, Case No. 11-CV-02911 EJD (D.N.J. 2011) (representing a proposed class of people who purchased mislabeled freezers from Haier America Trading, LLC and General Electric Company.)
- *In re: Michaels Stores Pin Pad Litig.*, Case No. 1:11-CV-03350 CPK (N.D. Ill. 2011) (representing a nationwide class of persons against Michaels Stores, Inc. for failing to secure and safeguard customers personal financial data.)
- *Loreto v. Coast Cutlery Co.*, Case No. 11-3977 SDW-MCA (D.N.J. 2011) (representing a proposed nationwide class of people who purchased knives that were of a lesser quality than advertised.)
- *Rodriguez v. CitiMortgage, Inc.*, Case No. 1:11-cv-04718-PGG-DCF (S.D.N.Y. 2011) (representing a proposed nationwide class of military personnel against CitiMortgage for illegal foreclosures.)
- *Rossi v. The Procter & Gamble Co.*, Case No. 11-CIV-7238 JLL (D.N.J. 2011) (representing a proposed nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste.)
- *In re: Scotts EZ Seed Litigation*, Case No. 7:12-cv-04727-VB (S.D.N.Y. 2012) (representing a proposed class of mulch grass seed products advertised as a superior grass seed product capable of growing grass in the toughest conditions and with half the water.)

EMPLOYMENT PRACTICES GROUP

Faruqi & Faruqi, LLP is a recognized leader in protecting the rights of employees. The firm's Employment Practices Group is committed to protecting the rights of current and former employees nationwide. The firm is dedicated to representing employees who may not have been compensated properly by their employer or who have suffered investment losses in their employer-sponsored retirement plan. The firm also represents individuals (often current or former employees) who assert that a company has allegedly defrauded the federal or state government.

Faruqi & Faruqi represents current and former employees nationwide whose employers have failed to comply with state and/or federal laws governing minimum wage, hours worked, overtime, meal and rest breaks, and unreimbursed business expenses. In particular, the firm focuses on claims against companies for (i) failing to properly classify their employees for purposes of paying them proper overtime pay, or (ii) requiring employees to work "off-the-clock," and not paying them for all of their actual hours worked.

In prosecuting claims on behalf of aggrieved employees, Faruqi & Faruqi has successfully defeated summary judgment motions, won numerous collective certification motions, and obtained significant monetary recoveries for current and former employees. In the course of litigating these claims, the firm has been a pioneer in developing the growing area of wage and hour law. In *Creely, et al. v. HCR ManorCare, Inc.*, C.A. No. 3:09-cv-02879 (N.D. OH), Faruqi & Faruqi, along with its co-counsel, obtained one of the first decisions to reject the application of the Supreme Court's Fed. R. Civ. P. 23 certification analysis in *Wal-Mart Stores, Inc. v. Dukes et. al.,* 131 S. Ct. 2541 (2011) to the certification process of collective actions brought pursuant to the Fair Labor Standards Act of 1938 ("FLSA"). The firm, along with its co-counsel, also recently won a groundbreaking decision for employees seeking to prosecute wage and hour claims on a collective basis in *Symczyk v. Genesis Healthcare Corp. et al.*, No. 10-3178 (3d Cir. 2011). In *Symczyk,* the Third Circuit reversed the district court's ruling that an offer of

judgment mooted a named plaintiff's claim in an action asserting wage and hour violations of the FLSA. Notably, the Third Circuit also affirmed the two-step process used for granting certification in FLSA cases. The *Creely* decision, like the Third Circuit's *Genesis* decision, will invariably be relied upon by courts and plaintiffs in future wage and hour actions.

Some of the firm's notable recoveries include *Bazzini v. Club Fit Management, Inc.,* C.A. No. 08-cv-4530 (S.D.N.Y. 2008), wherein the firm settled a FLSA collective action lawsuit on behalf of tennis professionals, fitness instructors and other health club employees on very favorable terms. Similarly, in *Garcia, et al., v. Lowe's Home Center, Inc., et al.*, C.A. No. GIC 841120 (Cal. Sup. Ct. 2008), Faruqi & Faruqi served as co-lead counsel and recovered $1.6 million on behalf of delivery workers who were unlawfully treated as independent contractors and not paid appropriate overtime wages or benefits.

The firm's Employment Practices Group also represents participants and beneficiaries of employee benefit plans covered by the Employee Retirement Income Security Act of 1874 ("ERISA"). In particular the firm protects the interests of employees in retirement savings plans against the wrongful conduct of plan fiduciaries. Often, these retirement savings plans constitute a significant portion of an employee's retirement savings. ERISA, which codifies one of the highest duties known to law, requires an employer to act in the best interests of the plan's participants, including the selection and maintenance of retirement investment vehicles. For example, an employer who administers a retirement savings plan (often a 401(k) plan) has a fiduciary obligation to ensure that the retirement plan's assets (including employee and any company matching contributions to the plan) are directed into appropriate and prudent investment vehicles.

Faruqi & Faruqi has brought actions on behalf of aggrieved plan participants where a company and/or certain of its officers breached their fiduciary duty by allowing its retirement plans to invest in shares of its own stock despite having access to materially negative information concerning the company which materially impacted the value of the stock. The

resulting losses can be devastating to employees' retirement accounts. Under certain circumstances, current and former employees can seek to hold their employers accountable for plan losses caused by the employer's breach of their ERISA-mandated duties.

The firm's Employment Practices Group also represents whistleblowers in actions under both federal and state False Claims Acts. Often, current and former employees of business entities that contract with, or are otherwise bound by obligations to, the federal and state governments become aware of wrongdoing that causes the government to overpay for a good or service. When a corporation perpetrates such fraud, a whistleblower may sue the wrongdoer in the government's name to recover up to three times actual damages and additional civil penalties for each false statement made. Whistleblowers who initiate such suits are entitled to a portion of the recovery attained by the government, generally ranging from 15% to 30% of the total recovery.

False Claims Act cases often arise in context of Medicare and Medicaid fraud, pharmaceutical fraud, defense contractor fraud, federal government contractor fraud, and fraudulent loans and grants. For instance, in *United States of America, ex rel. Ronald J. Streck v. Allergan, Inc. et al.*, No. 2:08-cv-05135-ER (E.D. Pa.), Faruqi & Faruqi represents a whistleblower in an un-sealed case alleging fraud against thirteen pharmaceutical companies who underpaid rebates they were obliged to pay to state Medicaid programs on drugs sold through those programs.

Based on its experience and expertise, the firm has served as the principal attorneys representing current and former employees in numerous cases across the country alleging wage and hour violations, ERISA violations and violations of federal and state False Claims Acts.

SECURITIES FRAUD LITIGATION

Since its inception over seventeen years ago, Faruqi & Faruqi, LLP has devoted a substantial portion of its practice to class action securities fraud litigation. In *In re Purchase Pro*

Inc. Securities Litig., Master File No. CV-S-01-0483-JLQ (D. Nev. 2001), as co-lead counsel for the class, Faruqi & Faruqi, LLP secured a $24.2 million settlement in a securities fraud litigation. As noted by Senior Judge Justin L. Quackenbush in approving the settlement, "I feel that counsel for plaintiffs evidenced that they were and are skilled in the field of securities litigation."

Other past achievements include; *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.) (recovered $25 million dollars for class members), *In re Mitcham Indus, Inc. Secs. Litig.*, Master File No. H-98-1244 (S.D. Tex. 1998) (recovered $3 million dollars on behalf of class members despite the fact that corporate defendant was on the verge of declaring bankruptcy), and *Ruskin v. TIG Holdings, Inc.*, C.A. No. 98 Civ. 1068 (S.D.N.Y. 1998) (recovered $3 million dollars on behalf of class members).

Recently, in *Shapiro v. Matrixx Initiatives, Inc.*, Case No. CV-09-1479-PHX-ROS, Faruqi & Faruqi, LLP, as co-lead counsel for the class, defeated defendants' motion to dismiss and succeeded in having the action certified as a class action. Counsel is currently conducting discovery on behalf of class members.

Additionally, Faruqi & Faruqi, LLP is serving as court-appointed counsel for the class in the following cases:

- *Percoco v. Deckers Outdoor Corp.*, No. 1:12-cv-01001-SLR (D. Del.) (sole lead counsel)
- *McGee v. American Oriental Bioengineering, Inc.*, No. 2:12-cv-05476-SVW-SHx (C.D. Cal.) (sole lead counsel)
- *Lauria v. BioSante Pharm., Inc.*, No. 12 C 0771 (N.D. Ill.) (sole lead counsel)
- *Austin v. AEterna Zentaris Inc.*, No. 1:12-Civ-4711-(PKC) (S.D.N.Y.) (sole lead counsel)
- *McIntyre v. Chelsea Therapeutics Int'l, LTD*, Case No. 3:12-CV-213-MOC-DCK (sole lead counsel)
- *In re Carbo Ceramics, Inc. Stock & Options Sec. Litig.*, Case No. 1:12-cv-01034-LLS (S.D.N.Y.) (lead counsel for options investors)
- *In re China Organic Sec. Litig.*, Case No. 1:11-cv-08623-LBS (S.D.N.Y.) (sole lead counsel)
- *In re GLG Life Tech Corp. Sec. Litig.*, Case No. 1:11-cv-09150-BSJ-GWG (S.D.N.Y.) (sole lead counsel)
- *Anghel v. Ebix, Inc.*, Case No. 1:11-cv-02400-RWS (N.D. Ga., Atlanta Division) (sole lead counsel)

FARUQI & FARUQI LLP
ATTORNEYS AT LAW

SHAREHOLDER DERIVATIVE LITIGATION

Faruqi & Faruqi, LLP has extensive experience litigating shareholder derivative actions on behalf of corporate entities. This litigation is often necessary when the corporation has been injured by the wrongdoing of its officers and directors. This wrongdoing can be either active, such as the wrongdoing by certain corporate officers in connection with purposeful backdating of stock-options, or passive, such as the failure to put in place proper internal controls, which leads to the violation of laws and accounting procedures. A shareholder has the right to commence a derivative action when the company's directors are unwilling or unable, to pursue claims against the wrongdoers, which is often the case when the directors themselves are the wrongdoers.

The purpose of the derivative action is threefold: (1) to make the company whole by holding those responsible for the wrongdoing accountable; (2) the establishment of procedures at the company to ensure the damaging acts can never again occur at the company; and (3) make the company more responsive to its shareholders. Improved corporate governance and shareholder responsiveness are particularly valuable because they make the company a stronger one going forward, which benefits its shareholders. For example, studies have shown the companies with poor corporate governance scores have 5-year returns that are 3 .95% below the industry average, while companies with good corporate governance scores have 5-year returns that are 7.91 % above the industry-adjusted average. The difference in performance between these two groups is 11 .86%. *Corporate Governance Study: The Correlation between Corporate Governance and Company Performance*, Lawrence D. Brown, Ph.D., Distinguished Professor of Accountancy, Georgia State University and Marcus L. Caylor, Ph.D. Student, Georgia State University Faruqi & Faruqi, LLP has achieved all three of the above stated goals of a derivative action. The firm regularly obtains significant corporate governance changes in connection with the successful resolution of derivative actions, in addition to monetary recoveries that inure

directly to the benefit of the company. In each case, the company's shareholders indirectly benefit through an improved market price and market perception.

In *In re UnitedHealth Group Incorporated Derivative Litig.*, Case No. 27 CV 06-8065 (Minn. 4th Judicial Dist. 2009) Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, obtained a recovery of more than $930 million for the benefit of the Company and corporate governance reforms designed to make UnitedHealth a model of corporate responsibility and transparency. At the time, the settlement reached was believed to be the largest settlement ever in a derivative case. See "UnitedHealth's Former Chief to Repay $600 Million," Bloomberg.com, December 6, 2007 ("the settlement . . . would be the largest ever in a 'derivative' suit . . . according to data compiled by Bloomberg.").

As co-lead counsel in *Weissman v. John, et al.*, Cause No. 2007-31254 (Tex. Harris County 2008) Faruqi & Faruqi, LLP, diligently litigated a shareholder derivative action on behalf of Key Energy Services, Inc. for more than three years and caused the company to adopt a multitude of corporate governance reforms which far exceeded listing and regulatory requirements. Such reforms included, among other things, the appointment of a new senior management team, the realignment of personnel, the institution of training sessions on internal control processes and activities, and the addition of 14 new accountants at the company with experience in public accounting, financial reporting, tax accounting, and SOX compliance.

More recently, Faruqi & Faruqi, LLP concluded shareholder derivative litigation in *The Booth Family Trust, et al. v. Jeffries, et al.*, Lead Case No. 05-cv-00860 (S.D. Ohio 2005) on behalf of Abercrombie & Fitch Co. Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, litigated the case for six years through an appeal in the U.S. Court of Appeals for the Sixth Circuit where it successfully obtained reversal of the district court ruling dismissing the shareholder derivative action in April 2011. Once remanded to the district court, Faruqi & Faruqi, LLP caused the company to adopt important corporate governance reforms narrowly targeted to remedy the

alleged insider trading and discriminatory employment practices that gave rise to the shareholder derivative action.

The favorable outcome obtained by Faruqi & Faruqi, LLP in *In re Forest Laboratories, Inc. Derivative Litigation*, Lead Civil Action No. 05-cv-3489 (S.D.N.Y. 2005) is another notable achievement for the firm. After more than six years of litigation, Faruqi & Faruqi, LLP, as co-lead counsel, caused the company to adopt industry-leading corporate governance measures that included rigorous monitoring mechanisms and Board-level oversight procedures to ensure the timely and complete publication of clinical drug trial results to the investing public and to deter, among other things, the unlawful off-label promotion of drugs.

SHAREHOLDER MERGER AND TRANSACTIONAL LITIGATION

Faruqi & Faruqi, LLP places special emphasis on prosecuting shareholder class actions brought nationwide against officers, directors and other parties responsible for corporate wrongdoing. Most of these cases are based upon state statutory or common law principles involving fiduciary duties owed to investors by corporate insiders as well as Exchange Act violations.

Faruqi & Faruqi, LLP has obtained significant monetary and therapeutic recoveries, including millions of dollars in increased merger consideration for public shareholders; additional disclosure of significant material information so that shareholders can intelligently gauge the fairness of the terms of proposed transactions and other types of therapeutic relief designed to increase competitive bids and protect shareholder value. As noted by Judge Timothy S. Black of the United States District Court for the Southern District of Ohio in appointing lead counsel *Nichting v. DPL Inc.*, Case No. 3:11-cv-14 (S.D. Ohio), "[a]lthough all of the firms seeking appointment as Lead Counsel have impressive resumes, the Court is most impressed with Faruqi & Faruqi."

As sole class counsel for plaintiffs in *Kajaria v. Cohen*, No. 1:10-CV-03141 (N.D. Ga., Atlanta Div.), Faruqi & Faruqi, LLP, succeeded in having the district court order Bluelinx Holdings Inc., the target company in a tender offer, to issue additional material disclosures to its recommendation statement to shareholders before the expiration of the tender offer. In *In re Cogent, Inc. Shareholders Litigation*, Consol. C.A. No. 5780-VC (Del. Ch.) Faruqi & Faruqi, LLP, as co-lead counsel obtained a post-close cash settlement of $1.9 million after two years of hotly contested litigation; *In re Bausch & Lomb Inc. Buyout Litig.*, Index No. 07/6384 (N.Y. Supr. Ct., Monroe Cty. 2008) Faruqi & Faruqi, LLP, as co-lead counsel, caused Bausch & Lomb Inc. to disclose to shareholders critical material information concerning its merger with Warburg Pincus LLC and in *Rice v. Lafarge* North *America, Inc., et al.*, No. 268974-V (Montgomery Cty., Md. Circuit Ct.), Faruqi & Faruqi, LLP, as co-lead counsel represented the public shareholders of Lafarge North America ("LNA") in challenging the buyout of LNA by its French parent, Lafarge S.A., at $75.00 per share. After discovery and intensive injunction motions practice, the price per share was increased from $75.00 to $85.50 per share, or a total benefit to the public shareholders of $388 million. The Lafarge court gave Class counsel, including Faruqi & Faruqi, LLP, shared credit with a special committee appointed by the company's board of directors for a significant portion of the price increase.

Also, in *In re: Hearst-Argyle Shareholder Litig.,* Lead Case No. 09-Civ-600926 (N.Y. Sup. Ct.) as co-lead counsel for plaintiffs, Faruqi & Faruqi, LLP litigated, in coordination with Hearst-Argyle's special committee, an increase of over 12.5%, or $8,740,648, from the initial transaction value offered for Hearst-Argyle Television Inc.'s stock by its parent company, Hearst Corporation. Faruqi & Faruqi, LLP, in *In re Alfa Corp. Shareholder Litig.*, Case No. 03-CV-2007-900485.00 (Montgomery Cty, Ala. Cir. Ct.) was instrumental, along with the Company's special committee, in securing an increased share price for Alfa Corporation shareholders of $22.00 from the originally-proposed $17.60 per share offer, which represented over a $160 million benefit to class members, and obtained additional proxy disclosures to ensure that Alfa

shareholders were fully-informed before making their decision to vote in favor of the merger, or seek appraisal.

Moreover, in *In re Fox Entertainment Group, Inc. S'holders Litig.*, Consolidated C.A. No. 1033-N (Del. Ch. 2005), Faruqi & Faruqi, LLP, as co-lead counsel, and in coordination with Fox Entertainment Group's special committee, created an increased offer price from the original proposal to shareholders, which represented an increased benefit to Fox Entertainment Group, Inc. shareholders of $450 million. Also, in *In re Howmet Int'l S'holder Litig.*, Consolidated C.A. No. 17575 (Del. Ch. 1999) Faruqi & Faruqi, LLP, in coordination with Howmet's special committee, successfully obtained an increased benefit to class members of $61.5 million dollars).

Further, in *Brickell Partners v. Emerging Commns., Inc.*, Civil No. 16415 (Del. Ch. 1998) Faruqi & Faruqi, LLP, in its monitoring role as Class counsel achieved a post-trial settlement on behalf of the Class of $5,596,037.40. After being consolidated with an appraisal hearing, the action was litigated vigorously for over four years, including a six week trial, where Faruqi & Faruqi, LLP in a secondary, monitoring role, represented the Class' interests with primary trial counsel - counsel for the hedge fund Greenlight Capital L.P. After trial the Court returned a verdict in favor of plaintiff. The case established new law and new standards for determining the fiduciary duties of corporate directors, especially directors that have specialized backgrounds (such as, accountants, lawyers, financial experts, etc.). The decision is now reported as *In re Emerging Commns., Inc. S'holders Litig.*, No. 16415, 2004 Del. Ch. LEXIS 70 (Del. Ch., May 3, 2004).

Faruqi & Faruqi, LLP, is committed to bringing novel post-close cases seeking damages as a result of an unfair buyout. Faruqi & Faruqi, LLP has handled a number of high profile cases such as *In re Smurfit-Stone Container Corp. S'holder Litig.*, Consol. C.A. No. 6164-VCP (Del. Ch. March 24, 2011); *In re Cogent S'holder Litig.*, C.A. No. 5780-VCP (Del. Ch. 2010); *In re Massey Energy Co. Derivative and Class Action Litig.*, C.A. No, 5430-CS (Del. Ch. 2010); *In re Novell, Inc. S'holder Litig.*, Consol. C.A. No. 6032-VCN (Del. Ch. 2010); *In re Playboy Enterprises, Inc.*

S'holders Litig., Consol. C.A. No. 5632-VCN (Del. Ch. 2010); *In re MFW S'holder Litig.*, Consol. C.A. No. 6566-CS (Del. Ch. 2011); *In re BJ's Wholesale Club, Inc. S'holders Litig.*, Consol. C.A. No. 6623-VCN (Del. Ch. 2011); *In re Morton's Restaurant Group, Inc. S'holder Litig.*, Consol. C.A. No. 7122-CS (Del. Ch. 2011).

ATTORNEYS

NADEEM FARUQI

Mr. Faruqi is Co-Founder and Managing Partner of the firm. Mr. Faruqi oversees all aspects of the firm's practice areas. Mr. Faruqi has acted as sole lead or co-lead counsel in many notable class or derivative action cases, such as: *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.) (recovered $25 million dollars for class members); *In re PurchasePro, Inc., Secs. Litig.*, Master File No. CV-S-01-0483 (D. Nev. 2001) ($24.2 million dollars recovery on behalf of the class in securities fraud action); *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999) (established certain new standards for preferred shareholders rights); *Dennis v. Pronet, Inc.*, C.A. No. 96-06509 (Tex. Dist. Ct.) (recovered over $15 million dollars on behalf of shareholders); *In re Tellium, Inc. Secs. Litig.*, C.A. No. 02-CV-5878 (D.N.J.) (class action settlement of $5.5 million); *In re Tenet Healthcare Corp. Derivative Litig.*, Lead Case No. 01098905 (Cal. Sup. Ct. 2002) (achieved a $51.5 million benefit to the corporation in derivative litigation).

Upon graduation from law school, Mr. Faruqi was associated with a large corporate legal department in New York. In 1988, he became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, and in 1992, became a member of that firm. While at Kaufman Malchman Kirby & Squire, Mr. Faruqi served as one of the trial counsel for plaintiff in *Gerber v. Computer Assocs. Int'l, Inc.*, 91-CV-3610 (E.D.N.Y. 1991). Mr. Faruqi actively participated in cases such as: *Colaprico v. Sun Microsystems*, No. C-90-20710 (N.D. Cal. 1993)

(recovery in excess of $5 million on behalf of the shareholder class); *In re Jackpot Secs. Enters., Inc. Secs. Litig.*, CV-S-89-805 (D. Nev. 1993) (recovery in excess of $3 million on behalf of the shareholder class); *In re Int'l Tech. Corp. Secs. Litig.*, CV 88-440 (C.D. Cal. 1993) (recovery in excess of $13 million on behalf of the shareholder class); and *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of $70 million).

Mr. Faruqi earned his Bachelor of Science Degree from McGill University, Canada (B.Sc. 1981), his Master of Business Administration from the Schulich School of Business, York University, Canada (MBA 1984) and his law degree from New York Law School (J.D., *cum* laude, 1987). Mr. Faruqi was Executive Editor of New York Law School's Journal of International and Comparative Law. He is the author of "Letters of Credit: Doubts As To Their Continued Usefulness," Journal of International and Comparative Law, 1988. He was awarded the Professor Ernst C. Stiefel Award for Excellence in Comparative, Common and Civil Law by New York Law School in 1987.

LUBNA M. FARUQI

Ms. Faruqi is Co-Founder of Faruqi & Faruqi, LLP. Ms. Faruqi is involved in all aspects of the firm's practice. Ms. Faruqi has actively participated in numerous cases in federal and state courts which have resulted in significant recoveries for shareholders.

Ms. Faruqi was involved in litigating the successful recovery of $25 million to class members in *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.). She helped to establish certain new standards for preferred shareholders in Delaware in *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999). Ms. Faruqi was also lead attorney in *In re Mitcham Indus., Inc. Secs. Litig.*, Master File No. H-98-1244 (S.D. Tex. 1998), where she successfully recovered $3 million on behalf of class members despite the fact that the corporate defendant was on the verge of declaring bankruptcy.

Upon graduation from law school, Ms. Faruqi worked with the Department of Consumer and Corporate Affairs, Bureau of Anti-Trust, the Federal Government of Canada. In 1987, Ms. Faruqi became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, where she actively participated in cases such as: *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of $70 million); *Kantor v. Zondervan Corp.*, C.A. No. 88 C5425 (W.D. Mich. 1989) (recovery of $3.75 million on behalf of shareholders); and *In re A.L. Williams Corp. S'holders Litig.*, C.A. No. 10881 (Del. Ch. 1990) (recovery in excess of $11 million on behalf of shareholders).

Ms. Faruqi graduated from McGill University Law School at the age of twenty-one with two law degrees: Bachelor of Civil Law (B.C.L.) (1980) and a Bachelor of Common Law (L.L.B.) (1981).

MICHAEL J. HYNES

Mr. Hynes is Managing Partner in Faruqi & Faruqi, LLP's Pennsylvania office and Co-Chair of the firm's Shareholder Derivative Litigation Department.

Prior to joining Faruqi & Faruqi, Mr. Hynes practiced law at Barroway Topaz Kessler Meltzer & Check, LLP, where he concentrated on shareholder derivative litigation. Mr. Hynes has served as lead or co-lead counsel in numerous high profile derivative actions relating to the "backdating" of stock options, including *In re Monster Worldwide, Inc. Derivative Litig.*, Index No. 06-108700 (New York County, NY); *In re Barnes & Noble, Inc. Derivative Litig.*, Index No. 06-602389 (New York County, NY); *In re Affiliated Computer Services, Inc. Derivative Litig.*, Cause No. 06-3403 (Dallas County, TX); and *In re Progress Software Corp. Derivative Litig.*, Civil A. No. 07-1937-BLS2 (Suffolk County, MA). Settlements of these, and similar actions, resulted in significant monetary and corporate governance improvements for those companies and their public shareholders. He is currently litigating cases involving breaches of fiduciary duties arising out of the use of improper accounting methods, the payment of excessive compensation

to executive officers, violations of the Foreign Corrupt Practices Act, and violations of the False Claims Act.

Prior to joining Barroway Topaz, Mr. Hynes practiced law at Cozen O'Connor, where he concentrated on bankruptcy and commercial litigation. He was also an attorney with the Defenders' Association of Philadelphia from 1991 to 1996, where he defended thousands of misdemeanor and felony cases and obtained jury trial experience.

Mr. Hynes received his law degree from Temple University School of Law (J.D. 1991), and is a graduate of Franklin and Marshall College (1987). Mr. Hynes is licensed to practice law in Pennsylvania, New Jersey and Montana, and has been admitted to practice in the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Eastern and Middle Districts of Pennsylvania.

DAVID E. BOWER

David E. Bower is Managing Partner of Faruqi & Faruqi, LLP's California office. Mr. Bower has extensive experience in securities class actions, real estate and corporate litigation, and complex commercial litigation matters. Mr. Bower has been in the private practice of law since 1981. Prior to forming his own law firm, Law Offices of David E. Bower, in 1996, Mr. Bower practiced for two years with the law firm Hornberger & Criswell where he supervised and coordinated complex business litigation. From 1989 to 1994, he was a partner with the law firm Rivers & Bower where he handled business, construction, real estate, insurance, and personal injury litigation and business and real estate transactions. From 1984 to 1989, he practiced in the insurance bad faith defense and complex litigation department of the Los Angeles, California based law firm of Gilbert, Kelley, Crowley & Jennett. From 1981 to 1984, he practiced law in New York as a partner with the law firm Boysen, Scheffer & Bower.

Mr. Bower is a graduate of the Mediation Training Program at UCLA and has a certification in Advanced Mediation Techniques. He has presided in over 200 mediations since

becoming certified and is currently on the Los Angeles Superior Court Pay Panel of mediators and arbitrators. He is the past Chairman of the Board of Directors of Mental Health Advocacy Services, a non-profit legal services firm in Los Angeles. He is now the President of the Board of A New Way of Life Reentry Project, a non-profit serving ex-convicts seeking reentry into society as productive citizens.

He graduated from State University of New York (at Buffalo) (B.A. 1977) and received his law degree from the Southwestern University School of Law (J.D. 1981). Mr. Bower is admitted to the bar in California and New York.

JAMES R. BANKO

James R. Banko is a partner in Faruqi & Faruqi's Delaware office. Mr. Banko has substantial practice in complex litigation, including securities and corporate fraud.

Prior to joining the Firm, Mr. Banko practiced law at Grant & Eisenhofer, P.A. where he focused on securities and corporate fraud litigation. Mr. Banko represented sophisticated institutional investors in a high-profile securities fraud class action, *In re Tyco International, Ltd. Securities Litig.*, which resulted in $3 billion class action settlement and in which Mr. Banko took and defended numerous depositions and wrote class certification, discovery, and summary judgment briefs. Mr. Banko was also involved in the recovery of a successful settlement against a former chief financial officer on behalf of a European fund which included discovery under the Hague Convention. Mr. Banko also took a leading role in several other securities fraud class actions against pharmaceutical companies including briefing of *Daubert* motions. Representative clients included various state attorney generals, pension funds, and securities funds.

Mr. Banko was previously an associate in the litigation department of Curtis, Mallet-Prevost, Colt & Mosle LLP's New York office, where he practiced in all aspects of general civil litigation, including complex commercial, contract, corporate, product liability, and trade secret

cases, including jury trials. Responsibilities included hearings, pleadings, pretrial discovery, motions for summary judgment, motions in limine, argument of substantive and procedural motions in federal and state courts, engaging in settlement negotiations and drafting of agreements.

Mr. Banko received his J.D. from the University of Pennsylvania Law School where he was a Senior Board Member of the Journal of International Business Law. Mr. Banko is admitted, and in good standing, in NY, NJ, PA, DC, DE, FL, and CA as well as numerous United States district courts as well as the 1st, 2d, 3d and 9th Circuits and the U.S. Supreme Court.

JUAN E. MONTEVERDE

Mr. Monteverde is a partner in Faruqi & Faruqi, LLP's New York office and Chair of the firm's Shareholder Merger and Transactional Litigation Department. Mr. Monteverde has concentrated his legal career advocating shareholder rights and has appeared before the Delaware Chancery Court on numerous occasions on behalf of shareholders in mergers and acquisitions class actions.

Before joining Faruqi & Faruqi, LLP, Mr. Monteverde gained extensive experience litigating over 50 mergers and acquisitions class actions from inception to conclusion. In particular, Mr. Monteverde acted as lead counsel or co-lead counsel for shareholders in *In re Bear Stearns Litigation*, Index No. 600780/08 (N.Y. Sup. Ct. 2008) (challenging acquisition of Bear Stearns for $2.00 per share by JP Morgan, price increased to $10.00 per share); *Sullivan v. Gorog, et al.*, Case Number BC398258 (Cal. Super. Ct. 2008) (prosecution of preliminary injunction seeking to enjoin tender offer by Best Buy Co. Inc. of Napster, Inc., resulting in post-tender offer settlement for the enlargement of appraisal rights of Napster shareholders); *In re Metavante Shareholder Litigation*, Consolidated Case No. 09-cv-5325 (Wis. Cir. Ct. 2009) (obtained significant supplemental disclosures to shareholders to enable an informed vote regarding the acquisition of Metavante by Fidelity); *In re Candela Corporation Shareholders*

Litigation, Lead Civil Action No. 09-4092-BLS1 (Mass. Sup. Ct. 2009) (obtaining settlement of additional disclosures pertaining to the acquisition of Candela Corporation by Syneron Medical Ltd. and reformation of merger agreement to reduce termination fee by approximately 20%); and *Ubaney v. Rubinstein, et al.*, Civil Action No. 5459-VCL (Del. Ch. Ct. 2010) (obtaining supplemental disclosures in connection with the acquisition of Palm, Inc., including complete disclosure of Palm Inc.'s financial projections and free cash flows for 2010 through 2015).

At Faruqi & Faruqi, LLP, Mr. Monteverde continues to protect shareholder rights. He has acted as lead counsel or co-lead counsel in: *In re Cogent, Inc. Shareholders Litigation*, Consol. C.A. No. 5780-VC (Del. Ch.)(obtaining post-close cash settlement of $1.9 million after two years of hotly contested litigation); *In re Valeant Pharmaceuticals International Shareholders Litigation*, Consolidated Case No. 5644-VCS (Del. Ch. Ct. 2010) (negotiating significant supplemental disclosures regarding the acquisition of Valeant by Biovail); *In re Cogent Shareholder Litigation*, CA No. 5780-VCP(Del. Ch. Ct. 2010) (prosecuting preliminary injunction as well as continuing to litigate action zealously post-closing of merger) and *McGowan v. ICx Technologies, Inc., et al.*, C.A. No. 1:10CV1013 (E.D. Va. 2010) (achieving a class action settlement for additional disclosures pertaining to the tender offer of ICX Technologies, Inc. and extending the appraisal rights period for ICX Technologies shareholders by 20 days).

Mr. Monteverde has taught a New York CLE course regarding the financial and legal fundamentals underlying the valuation of mergers and acquisitions of publicly traded companies, Valuations Issues in Mergers and Acquisitions, October 20, 2010. Mr. Monteverde has also been a panel speaker in the session for "Don't Get Caught in the Past" at the 2011 Corporate Counsel CLE Seminar in Naples, Florida, where he discussed the current corporate governance developments in the mergers and acquisitions law practice and new trends in corporate governance law and practice at the start of the new decade.

Mr. Monteverde graduated from California State University of Northridge (B.S. Finance 2002) and St. Thomas University School of Law (J.D., *cum laude,* 2006). While at St. Thomas

University School of Law, Mr. Monteverde was a staff editor of law review and the president of the law school newspaper. Mr. Monteverde is admitted to practice in the courts of New York, the United States District Court for the Southern District of New York and Eastern District of New York, Eastern District of Wisconsin, District of Colorado and Seventh Circuit for the United States Court of Appeals.

ANTONIO VOZZOLO

Antonio Vozzolo is a partner in Faruqi & Faruqi, LLP's New York office and Chair of the firm's Consumer Fraud Litigation Department. Mr. Vozzolo's practice focuses on representing individuals and institutional investors seeking redress for financial and consumer fraud

Mr. Vozzolo was one of the primary counsel responsible for prosecuting *In re PurchasePro, Inc., Secs. Litig.*, Master File No. CV-S-01-0483 (D. Nev. 2001), a case against the officers and directors of PurchasePro.com as well as AOL Time Warner, Inc., America On-Line, Inc., and Time Warner, Inc., for federal securities laws violations, culminating in a $24.2 million settlement.

Mr. Vozzolo's other notable cases are *Thomas v. Global Vision Products*, Case No. RG-03091195 (Cal. Super. Ct., Alameda Cty.) (representing certified class of California consumers for false and misleading advertising claims regarding Avacor hair restoration product; $37 million jury verdict for the first trial, $50 million jury verdict for separate trial against two of the remaining directors and officers); *In re: HP Power-Plug Litigation*, Case No. 06-1221 (N.D. Cal.) (representing a proposed nationwide class of persons who purchased defective laptops; cash payment up to $650.00, or in the alternative, a repair free-of-charge); *Delre v. Hewlett-Packard Co.*, C.A. No. 3232-02 (N.J. Super. Ct. 2002) (representing a proposed nationwide class of persons for false and misleading advertising claims regarding capabilities of model 100i DVD writers; recovery included replacement of the 100i writer with upgraded, second generation 200i DVD

writer and a refund of the $99 defendant had previously charged consumers to upgrade from the 100i to the 200i).

Mr. Vozzolo graduated, *cum laude*, from Fairleigh Dickinson University in 1992 with a Bachelor of Science (B.Sc.), where he was on the Dean's List, and with a Masters in Business Administration (M.B.A.) in 1995. He is a graduate of Brooklyn Law School (J.D. 1998). Mr. Vozzolo served as an intern to the Honorable Ira Gammerman of the New York Supreme Court and the New York Stock Exchange while attending law school.

PETER KOHN

Mr. Kohn is a partner in Faruqi & Faruqi, LLP's Pennsylvania office and Chair of the firm's Antitrust Litigation Department. Prior to joining the firm in 2010, Mr. Kohn was a shareholder at Berger & Montague, P.C. Over the past decade, Mr. Kohn has prepared for trial several noteworthy lawsuits under the Sherman Act, including *In re Buspirone Patent & Antitrust Litigation*, MDL No. 1410 (S.D.N.Y.) ($220M settlement), *In re Cardizem CD Antitrust Litigation*, No. 99-MD-1278 (E.D. Mich.) ($110M settlement), *In re Hypodermic Products Antitrust Litigation*, No. 05-1602 (D.N.J.) ($45M settlement preliminarily approved), *Meijer, Inc. v. Warner-Chilcott*, No. 05-2195 (D.D.C.) ($22M settlement), *In re Metoprolol Succinate Antitrust Litigation*, No. 06-52 (D. Del.) ($20M settlement); *In re Relafen Antitrust Litigation*, No. 01-12239 (D. Mass.) ($175M settlement), *In re Remeron Direct Purchaser Antitrust Litigation*, No. 03-cv-0085 (D.N.J.) ($75M settlement), *Rochester Drug Co-Operative, Inc. v. Braintree Labs.*, No. 07-142 (D. Del.) ($17.25M settlement); *In re Terazosin Hydrochloride Antitrust Litigation*, No. 99-MDL-1317 (S.D. Fla.) ($72.5M settlement), *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340 (D. Del.) ($250M settlement), and *In re Wellbutrin XL Antitrust Litigation*, No. 08-cv-2431 (E.D. Pa.) ($37.5M partial settlement). The court appointed him as co-lead counsel for the plaintiffs in *In re Pennsylvania Title Ins. Antitrust Litig.*, No. 08cv1202 (E.D. Pa.) (action on behalf of direct purchasers of title insurance alleging illegal cartel pricing under § 1 of the Sherman Act). In

addition to monopolization and market allocation cases, Mr. Kohn has prosecuted cases involving resale price maintenance, tying and exclusive dealing. Currently, he is actively preparing several generic pharmaceutical competition cases for trial, including ones concerning the branded drugs Aggrenox, Androgel, Doryx, Effexor, Lidoderm, Lipitor, LoEstrin, Nexium, Niaspan, Prandin, Provigil, Skelaxin, Solodyn, Suboxone, and Wellbutrin XL, in addition to actions involving tying in the cable television industry and exclusive dealing in the sale of truck transmissions.

A sampling of Mr. Kohn's reported cases in the antitrust arena includes *In re Hypodermic Products Antitrust Litigation*, 484 Fed. Appx. 669 (3d Cir. 2012) (issue of direct purchaser standing under *Illinois Brick*); *Delaware Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116 (9th Cir. 2008) (issue of direct purchaser standing under *Illinois Brick*); *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 558 F. Supp.2d 575 (E.D. Pa. 2008) (denying defendants' motion to dismiss following the Supreme Court's decisions in *Twombly* and *Leegin*, and for the first time in the Third Circuit adopting the Merger Guidelines method of relevant market definition); *J.B.D.L. Corp. v. Wyeth-Ayerst Laboratories, Inc.*, 485 F.3d 880 (6th Cir. 2007) (affirming summary judgment in exclusionary contracting case); and *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 458 F. Supp.2d 263 (E.D. Pa. 2006) (discoverability of surreptitiously recorded statements prior to deposition of declarant).

Mr. Kohn is a 1989 graduate of the University of Pennsylvania (B.A., English) and a 1992 *cum laude* graduate of Temple University Law School, where he was senior staff for the *Temple Law Review* and received awards for trial advocacy. Mr. Kohn was recognized as a "recommended" antitrust attorney in the Northeast in 2009 by the Legal 500 guide (www.legal500.com) and was chosen by his peers as a "SuperLawyer" in Pennsylvania in 2009, 2010, 2011, 2012, and 2013. In 2011, Mr. Kohn was selected as a Fellow in the Litigation Counsel of America, a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. He is a member of the bars of the Supreme Court of Pennsylvania (1992-

present), the United States District Court for the Eastern District of Pennsylvania (1995-present), the United States District Court for the Eastern District of Michigan (2010-present), the United States Court of Appeals for the Third Circuit (2000-present), the United States Court of Appeals for the Sixth Circuit (2005-present), and the United States Court of Appeals for the Federal Circuit (2011-present).

RICHARD W. GONNELLO

Richard W. Gonnello is a partner in the Firm's New York office and Chair of the firm's Securities Fraud Litigation Department. Mr. Gonnello focuses his practice on shareholder litigation and class actions.

Prior to joining the firm, Mr. Gonnello was a partner at Entwistle & Cappucci LLP and an associate at Latham & Watkins LLP. Mr. Gonnello has represented institutional and individual investors in obtaining substantial recoveries in numerous class actions, including *In re Royal Ahold Sec. Litig.*, No. 03-md-01539 (D. Md. 2003) ($1.1 billion) and *In re Tremont Securities Law, State Law and Insurance Litigation*, No. 08-cv-11117 (S.D.N.Y. 2011) ($100 million+). Mr. Gonnello has also obtained favorable recoveries for institutional investors pursuing direct securities fraud claims, including cases against *Qwest Communications International, Inc.* ($175 million+) and *Tyco Int'l Ltd* ($21 million).

Mr. Gonnello has co-authored the following articles: "*'Staehr' Hikes Burden of Proof to Place Investor on Inquiry Notice*, "New York Law Journal, December 15, 2008; and "*Potential Securities Fraud: 'Storm Warnings' Clarified*," New York Law Journal, October 23, 2008.

Mr. Gonnello graduated *summa cum laude* from Rutgers University in 1995, where he was named Phi Beta Kappa. He received his law degree from UCLA School of Law (J.D. 1998), and was a member of the UCLA Journal of Environmental Law & Policy.

BETH A. KELLER

Ms. Keller is a partner in Faruqi & Faruqi, LLP's New York office and Co-Chair of the firm's Shareholder Derivative Litigation Department. Her practice focuses on shareholder derivative litigation and securities class actions in federal and state court.

Since joining Faruqi & Faruqi, Ms. Keller has been actively involved in numerous complex cases in which the firm, as sole or co-lead counsel, achieved substantial corporate governance enhancements and/or financial recoveries for the corporation and its shareholders, including *In re Tenet Healthcare Corp. Derivative Litig.*, Lead Case No. 01098905 (Cal. Sup. Ct. 2002); *In re Advanced Mktg. Srvs., Inc. Derivative Litig.*, No. CIC824845 (Cal. Super. Ct.); *In re Ligand Pharm. Inc. Deriative. Litig.*, Lead Case No. GIC834255 (Cal. Super. Ct.); and *In re Novastar Fin., Inc. Derivative Litig.*, Lead Case No. 04-CV-212685 (Cir. Ct. Mo. 2004).

Ms. Keller graduated from Hobart & William Smith Colleges in 1999 with a Bachelors of Arts in Political Science and English and from the State University of New York at Buffalo Law School in 2002. Ms. Keller participated in the Desmond Moot Court Competition while at law school. She is a member of both the New York and New Jersey Bars and is admitted to practice in the United States District Courts for the Southern, Eastern and Western Districts of New York.

ADAM R. GONNELLI

Mr. Gonnelli is a partner in Faruqi & Faruqi, LLP's New York office and Chair of the firm's Employment Practices Group.

Since joining Faruqi & Faruqi, Mr. Gonnelli has concentrated his practice on wage and hour litigation, transaction litigation and consumer class actions. Representative cases include *Garcia v. Lowe's, Cos., Inc.*, No. 841120 (Cal. Super. Ct.) (case to recover overtime pay for delivery drivers); *In re NutraQuest, Inc.*, No. 06-202 (D.N.J.) (consumer fraud case against national diet supplement company); *Wanzo v. Nextel Commc'ns, Inc.*, No. GIC 791626 (Cal. Sup. Ct.) (consumer case challenging change in "nights and weekends" plan); *Rice v. Lafarge North*

America, No. 268974 (Md. Cir. Ct.) (merger case resulted in a benefit of $388 million); and *In re Fox Entm't Group, Inc. S'holders Litig.*, No. 1033-N (Del. Ch. 2005) (benefit to shareholders of $450 million).

Mr. Gonnelli received a B.A. from Rutgers University (Newark) in 1989 and a J.D. from Cornell Law School in 1997. At Rutgers University, Mr. Gonnelli lettered in football and fencing and served as Student Government President. Prior to attending law school, Mr. Gonnelli was a Financial Writer at the Federal Reserve Bank of New York, where he wrote educational materials on international trade and monetary policy. While attending Cornell Law School, Mr. Gonnelli served as Editor-in-Chief of the Cornell Journal of Law and Public Policy and was a member of the Atlantic Regional Championship moot court team in the Jessup International Law Moot Court Competition (1997).

JOSEPH T. LUKENS

Mr. Lukens is a partner in Faruqi & Faruqi, LLP's Pennsylvania office.

Mr. Lukens was a shareholder at the Philadelphia firm of Hangley Aronchick Segal Pudlin & Schiller, where he represented large retail pharmacy chains as opt-out plaintiffs in numerous lawsuits under the Sherman Act. Among those lawsuits were *In re Brand Name Prescription Drugs Antitrust Litigation* (MDL 897, N.D. Ill.), *In re Terazosin Hydrochloride Antitrust Litigation* (MDL 1317, S.D. Fla.), *In re TriCor Direct Purchaser Antitrust Litigation* (05-605, D. Del.), *In re Nifedipine Antitrust Litigation* (MDL1515, D.D.C.), *In re OxyContin Antitrust Litigation* (04-3719, S.D.N.Y), and *In re Chocolate Confectionary Antitrust Litigation* (MDL 1935, M.D. Pa.). While the results in the opt-out cases are confidential, the parallel class actions in those matters which are concluded have resulted in settlements exceeding $1.1 billion.

Earlier in his career, Mr. Lukens concentrated in commercial and civil rights litigation at the Philadelphia firm of Schnader, Harrison, Segal & Lewis. The types of matters that Mr. Lukens handled included antitrust, First Amendment, contracts, and licensing. Mr. Lukens also

worked extensively on several notable *pro bono* cases including *Commonwealth v. Morales*, which resulted in a rare reversal on a second post-conviction petition in a capital case in the Pennsylvania Supreme Court.

Mr. Lukens graduated from LaSalle University (B.A. Political Science, *cum laude*, 1987) and received his law degree from Temple University School of Law (J.D., *magna cum laude*, 1992) where he was an editor on the *Temple Law Review* and received several academic awards. After law school, Mr. Lukens clerked for the Honorable Joseph J. Longobardi, Chief Judge for the United States District Court for the District of Delaware (1992-93). Mr. Lukens is a member of the bars of the Supreme Court of Pennsylvania (1992-present), the United States Supreme Court (1996-present); the United States District Court for the Eastern District of Pennsylvania (1993-present), the United States Court of Appeals for the Third Circuit (1993-present), and the United States Court of Appeals for the District of New Jersey (1994-present).

Mr. Lukens has several publications, including: *Bringing Market Discipline to Pharmaceutical Product Reformulations*, 42 Int'l Rev. Intel. Prop. & Comp. Law 698 (September 2011) (co-author with Steve Shadowen and Keith Leffler); *Anticompetitive Product Changes in the Pharmaceutical Industry*, 41 Rutgers L.J. 1 (2009) (co-author with Steve Shadowen and Keith Leffler); *The Prison Litigation Reform Act: Three Strikes and You're Out of Court — It May Be Effective, But Is It Constitutional?,* 70 Temp. L. Rev. 471 (1997); *Pennsylvania Strips The Inventory Search Exception From Its Rationale – Commonwealth v. Nace*, 64 Temp. L. Rev. 267 (1991).

NEILL CLARK

Mr. Clark is an associate in Faruqi and Faruqi, LLP's Pennsylvania office and practices in the antitrust litigation department. Before joining the firm, Mr. Clark was an associate at Berger & Montague, P.C. where he was significantly involved in prosecuting antitrust class actions on

behalf of direct purchasers of brand name drugs and charging pharmaceutical manufacturers with illegally blocking the market entry of less expensive competitors.

Eight of those cases have resulted in substantial settlements totaling over $950 million: *In re Cardizem CD Antitrust Litig*: settled in November 2002 for $110 million; *In re Buspirone Antitrust Litig*: settled in April 2003 for $220 million; *In re Relafen Antitrust Litig*: settled in February 2004 for $175 million; *In re Platinol Antitrust Litig*: settled in November 2004 for $50 million; *In re Terazosin Antitrust Litig*: settled in April 2005 for $75 million; *In re Remeron Antitrust Litig*: settled in November 2005 for $75 million; *In re Ovcon Antitrust Litig*: settled in 2009 for $22 million; and *In re Tricor Direct Purchaser Antitrust Litig*: settled in April 2009 for $250 million.

Mr. Clark was also principally involved in a case alleging a conspiracy among hospitals and the Arizona Hospital and Healthcare Association to depress the compensation of per diem and traveling nurses, *Johnson et al. v. Arizona Hospital and Healthcare Association et al.*, No. CV07-1292 (D. Ariz.).

Mr. Clark was selected as a “Rising Star” by Pennsylvania Super Lawyers and listed as one of the Top Young Lawyers in Pennsylvania in the December 2005 edition of Philadelphia Magazine. Two cases in which he has been significantly involved have been featured as "Noteworthy Cases" in the NATIONAL LAW JOURNAL articles, “The Plaintiffs’ Hot List" (*In re Tricor Antitrust Litig*: October 5, 2009 and *Johnson v. Arizona Hosp. and Healthcare Ass'n.*, October 3, 2011).

Mr. Clark graduated cum laude from Appalachian State University in 1994 and from Temple University Beasley School of Law in 1998, where he earned seven "distinguished class performance" awards, an oral advocacy award and a "best paper" award.

FARUQI & FARUQI LLP
ATTORNEYS AT LAW

RICHARD SCHWARTZ

Richard Schwartz is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. Mr. Schwartz has been involved extensively in the firm's antitrust, merger, and derivative practice areas. Presently, Mr. Schwartz is a member of the teams prosecuting *In re Blood Reagents Antitrust Litig.* and *In re Hypodermic Products Antitrust Litigation*.

Mr. Schwartz graduated from the University of Washington (B.A.) and the University of Chicago (J.D.). While in law school, Mr. Schwartz served as a law clerk at the MacArthur Justice Center in Chicago and as a summer associate with the Chicago law firm Robinson Curley & Clayton P.C. Since law school, Mr. Schwartz has been a commercial litigator in New York and Pennsylvania.

Mr. Schwartz is a member of the bars of the State of New York (2005-present), Commonwealth of Pennsylvania (2010-present), the United States District Court for the Southern District of New York (2006-present), the United States District Court for the Eastern District of New York (2007-present), the United States District Court for the Northern District of New York (2008-present), the United States Court of Appeals for the Second Circuit (2010-present), the United States District Court for the Eastern District of Pennsylvania (2011-present) and the United States Court of Appeals for the Third Circuit (2011-present).

DAVID P. DEAN

David P. Dean is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. Mr. Dean concentrates his practice in complex commercial litigation, including shareholder derivative actions, merger and acquisition litigation, qui tam cases, and consumer class actions. Prior to joining Faruqi & Faruqi, LLP, Mr. Dean was a commercial litigator with Deeb Blum Murphy Frishberg & Markovich, PC. Mr. Dean began his career at the Miami-Dade County Public Defender's Office, where he conducted more than thirty jury and bench trials in felony and misdemeanor cases.

Mr. Dean earned his law degree from New York University School of Law (J.D., *magna cum laude*, 2006), and is a graduate of Wesleyan University (B.A., Government, High Honors, 1999). While in law school he served as a notes editor for the NYU Law Review, and gained clinical and internship experience with the Federal Defenders of New York, the New York Office of the Appellate Defender, the Louisiana Capital Assistance Center, and the Kentucky Department of Public Advocacy's Capital Post-Conviction Unit.

Mr. Dean is licensed to practice law in Pennsylvania and Florida, and has been admitted to practice in the United States District Court for the Eastern District of Pennsylvania.

FRANCIS P. McCONVILLE

Mr. McConville is an associate in Faruqi & Faruqi, LLP's New York office. Mr. McConville concentrates his practice on complex civil litigation with a focus on securities and shareholder class action litigation. Prior to joining the firm, Mr. McConville was an associate at Entwistle & Cappucci LLP.

Mr. McConville has represented institutional and individual investors in obtaining substantial recoveries in numerous class actions involving federal and state securities laws and fiduciary duties of corporate officials. Mr. McConville also counseled corporate clients in federal and state court in a wide range of commercial disputes.

Mr. McConville graduated from the University of Notre Dame (B.A., History and Political Science, 2005) and New York Law School (J.D., *magna cum laude*, 2008). While at New York Law School, Mr. McConville served as the Associate Managing Editor of the *New York Law School Law Review*. Mr. McConville is licensed to practice law in the State of New York and admitted to the United States District Courts for the Eastern and Southern Districts of New York.

LIGAYA HERNANDEZ

Ligaya Hernandez is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. Ms. Hernandez specializes in shareholder derivative litigation. Prior to joining Faruqi & Faruqi, LLP, Ms. Hernandez was an associate with Kessler Topaz Meltzer & Check, LLP where she concentrated her practice on shareholder derivative litigation.

Ms. Hernandez received her J.D. and a Health Law Certificate from Loyola University Chicago in 2009. While in law school she served as Senior Editor for the Annals of Health Law Journal and received the CALI Award for highest grade in Appellate Advocacy. Ms. Hernandez received a Master in Health Services Administration in Health Policy from The George Washington University and a Bachelor of Science degree in Biology from the University of Pittsburgh. She is licensed to practice law in Pennsylvania and New Jersey and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey.

BARBARA A. ROHR

Barbara A. Rohr is an associate in Faruqi & Faruqi, LLP's California office.

Prior to joining Faruqi & Faruqi, Ms. Rohr practiced civil and employment litigation at Walsh & Associates, APC, and for the City of Los Angeles. Ms. Rohr also gained valuable work experience as a human resources professional in the entertainment industry for six years before attending law school.

Ms. Rohr graduated from Southwestern Law School (J.D., 2010) and Arizona State University (B.A., Psychology and Broadcast Journalism, 1996). In 2010, Ms. Rohr was recognized for earning the highest grade in Sales at Southwestern Law School and received the Los Angeles County Bar Association's Jeffrey S. Turner Outstanding Commercial Law Student award.

Ms. Rohr is licensed to practice law in California and is admitted to practice before the United States District Courts for the Central, Northern, Southern, and Eastern Districts of California.

A. LUKE SMITH

A. Luke Smith is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. He focuses his practice on antitrust actions, primarily on behalf of drug purchasers complaining of suppressed generic competition.

Mr. Smith earned his J.D. in May of 2010 from Pennsylvania State University Dickinson School of Law. As a law student, Mr. Smith was certified as a Miller Center Public Interest Advocate in recognition of his service to the indigent community and also competed in the American Constitution Society Constance Baker Motley National Moot Court Competition. He earned a degree in Business Management from Cheyney University of Pennsylvania in May 2007 (*summa cum laude*).

During law school, Mr. Smith was a student attorney at the Penn State Dickinson School of Law Family Law Clinic, and a judicial intern for the Honorable Joseph A. Greenaway, then of the United States District Court for the District of New Jersey. He also interned at the New Jersey Office of the Public Defender, and at the Pennsylvania Attorney General, Bureau of Consumer Protection.

Mr. Smith is licensed to practice in Pennsylvania and New Jersey and admitted to the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

STEVEN BENTSIANOV

Steven Bentsianov is an associate in the New York office of Faruqi & Faruqi LLP and concentrates his practice in the area of securities class action litigation.

Mr. Bentsianov graduated from the State University of New York at Binghamton (B.A. in English, 2005) and from Brooklyn Law School (J.D., *magna cum laude*, 2011). While at Brooklyn Law School, Mr. Bentsianov was the Managing Editor of the Brooklyn Journal of Corporate, Financial and Commercial Law and was a Dean Merit Scholar. He also received the CALI Excellence Award in Legal Writing I and II, Banking Law and Corporate Finance.

Mr. Bentsianov gained further experience in law school through internships for U.S District Judge Brian Cogan in the U.S. District Court for the Eastern District of New York, the Federal Trade Commission, the Financial Industry Regulatory Authority, and as a summer associate for a securities class action firm.

Mr. Bentsianov is licensed to practice law in New York and New Jersey.

ANDREA CLISURA

Andrea Clisura is an associate in the New York office of Faruqi & Faruqi, LLP and focuses her practice on consumer class action litigation.

Ms. Clisura graduated from New York University (B.A., *magna cum laude*, 2005) and Brooklyn Law School (J.D., *magna cum laude*, 2011). While at Brooklyn Law School, Ms. Clisura was an Associate Managing Editor of the Brooklyn Law School Journal of Law and Policy, and was a member of the Moot Court Honor Society. Her note, "None of Their Business: The Need for Another Alternative to New York's Bail Bond Business," was published in Volume 19, Issue 1 of the Journal of Law and Policy. She also co-authored the hypothetical problem and bench brief for the 2011 Jerome Prince Memorial Evidence Moot Court Competition.

Ms. Clisura also gained experience in law school as an intern: to the Honorable David G. Trager of the Eastern District of New York, for the U.S. Department of Justice (Antitrust Division), and for a New York City-based legal services organization dealing with anti-predatory lending and foreclosure prevention.

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SARAH A. WESTBY

Sarah A. Westby is an associate in the New York office of Faruqi & Faruqi, LLP and concentrates her practice in the area of antitrust class action litigation. Ms. Westby graduated Phi Beta Kappa from the University of Delaware (B.A. in Psychology, *magna cum laude*, 2008)) and Brooklyn Law School (J.D., *cum laude*, 2011).

While at Brooklyn Law School, Ms. Westby was an Executive Editor of the Brooklyn Journal of International Law. Her note on comparative consumer class action law was selected as the winning submission in the 2010 Trandafir International Business Writing Competition and was published in the University of Iowa Journal of Transnational Law & Contemporary Problems. She also received awards in Trial Advocacy and International Economic Law. Ms. Westby gained experience during law school through internships for U.S. Magistrate Judge Ramon E. Reyes, Jr. in the U.S. District Court for the Eastern District of New York, the U.S. Department of Justice, Civil Rights Division, the New York City Law Department and as a law clerk for an antitrust and consumer class action firm.

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Megan Sullivan is an associate in the New York office of Faruqi & Faruqi, LLP and concentrates her practice in the area of securities class action litigation.

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Mr. Hidalgo's admission to practice in New York is pending.

TODD HENDERSON

Todd H. Henderson is an associate in the New York office of Faruqi & Faruqi, LLP and concentrates his practice in the area of shareholder derivative litigation.

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Prior to joining the firm, Mr. Henderson gained experience as a paralegal for the Internal Revenue Service, Office of Chief Counsel, and through internships for a securities and consumer class action firm, the New York State Division of Human Rights, United States Postal Service Law Department, the Brooklyn Consumer Counseling and Bankruptcy Clinic, and the New York City Human Resources Administration, Office of Legal Affairs.

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Prior to joining the firm, Mr. Schreiner gained experience in complex litigation as an associate at a New York City firm that represents plaintiffs in civil RICO actions. While in law school, Mr. Schreiner developed practical skills through internships with the Kings County Supreme Court Law Department, the Office of General Counsel at a major New York hospital, and a boutique law firm that specializes in international fraud cases.

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