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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RONALD MONK, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. JOHNSON & JOHNSON, WILLIAM C. WELDON, DOMINIC J. CARUSO, COLLEEN A. GOGGINS and PETER LUTHER, Defendants.	Civil Action No. 10-4841 (FLW) (DEA) **DECLARATION OF MATTHEW L. MUSTOKOFF IN SUPPORT OF FINAL APPROVAL OF SETTLEMENT, PLAN OF ALLOCATION AND APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

MATTHEW L. MUSTOKOFF, ESQ., of full age, hereby declares under penalty of perjury as follows:

1. I, Matthew L. Mustokoff, am a partner with the law firm of Kessler Topaz Meltzer & Check, LLP ("KTMC"), Lead Counsel for the Court-appointed Lead Plaintiff Sjunde AP-Fonden ("Lead Plaintiff" or "AP7") and the Class (as defined below) in the above-captioned action (the "Action"). I have been personally involved in all aspects of this Action, including the negotiations resulting in the settlement of the Action. I have also been kept informed of developments in the Action by attorneys working with me and under my direction. I am fully familiar with the facts contained herein based upon my personal knowledge.

2. I respectfully submit this Declaration (the "Declaration" or "Mustokoff Declaration"), pursuant to Fed. R. Civ. P. 23(e), in support of: (i) final approval of the proposed settlement of the Action (the "Settlement") on the terms and conditions reflected in the Stipulation and Agreement of Settlement dated July 15, 2013 (the "Stipulation"),[1] which this Court preliminarily approved by its Order Preliminarily Approving Settlement dated August 6, 2013 (the "Preliminary Approval Order"); (ii) final approval of the plan for allocating the settlement proceeds to the Class (the "Plan of Allocation"); and (iii) Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses.

3. Because this Declaration is submitted in support of a settlement, it is therefore privileged and inadmissible in any proceeding, other than in connection with the Settlement. In the event that the Settlement is not approved by the Court, this Declaration and the statements contained herein and in any supporting motions and memoranda are made without prejudice to Lead Plaintiff's position on the merits.

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[1] Unless otherwise noted, capitalized terms used herein shall have those meanings contained in the Stipulation. Dkt. Entry 111-2.

I. TERMS OF THE SETTLEMENT AND NOTICE

4. The Settlement provides for the payment of $22,900,000 in cash (the "Settlement Amount") by defendants Johnson & Johnson ("J&J" or the "Company"), Dominic J. Caruso and Colleen A. Goggins (collectively, the "Defendants"). Pursuant to the Stipulation, the Settlement Amount has been deposited into an escrow account for the benefit of the Class.[2]

5. The Settlement brings to a close over two years of contentious litigation between Lead Plaintiff and Defendants and was ultimately achieved through a protracted mediation process facilitated by a highly experienced and respected mediator. *See* Declaration of the Hon. Daniel Weinstein (Ret.) (the "Weinstein Dec.") filed herewith. I believe the Settlement provides an excellent recovery for the Class especially when viewed in light of the very substantial risk of a much smaller recovery – or even no recovery – after continued litigation of the Action. As detailed below, even if Lead Plaintiff prevailed on Defendants' motion to dismiss in part Lead Plaintiff's Second Amended Complaint which was *sub judice* at the time the Settlement was reached, Lead Plaintiff faced significant challenges to ultimately establishing the various elements of its claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), including scienter, materiality and loss causation, had the Action continued.

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[2] Pursuant to the Court's Preliminary Approval Order, the Class was certified pursuant to Fed. R. Civ. P. 23, solely for purposes of effectuating the Settlement, and consists of all persons and entities who purchased J&J common stock from October 14, 2008, to July 21, 2010, inclusive, and who were damaged thereby. Excluded from the Class are: (i) the Defendants; (ii) the Dismissed Defendants; (iii) the officers and directors of the Company or its subsidiaries or affiliates; (iv) members of the immediate families of the Individual Defendants and Dismissed Defendants and each of their legal representatives, heirs, successors, or assigns; and (v) any entity in which any Defendant or Dismissed Defendant has or had a controlling interest. Also excluded from the Class are all persons and entities who exclude themselves from the Class by timely requesting exclusion in accordance with the requirements set forth in the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Expenses, and Final Approval Hearing (the "Notice"). By the same Order, the Court appointed, for settlement purposes, Lead Plaintiff Sjunde AP-Fonden – a Swedish state pension fund, as class representative. Dkt. Entry 112.

Lead Plaintiff – a sophisticated institutional investor who supervised Lead Counsel throughout the Action, participated in all aspects of the litigation, remained informed throughout the settlement negotiations, and ultimately approved the Settlement – also believes that the Settlement represents a just result.[3]

6. The terms of the Settlement are set forth in the Stipulation and in the Notice. As of October 9, 2013, a total of 2,082,307 copies of the Notice and Proof of Claim and Release form (the "Proof of Claim" and, together with the Notice, the "Notice Packet") have been mailed to potential Class Members and nominees pursuant to the Court's Preliminary Approval Order. *See* ¶9 of the Declaration of Paul Mulholland, CPA, CVA (the "Mulholland Dec.") submitted on behalf of Strategic Claims Services ("SCS"), the Court-authorized claims administrator for the Settlement.[4] In addition, the Summary Notice was published in the national edition of *Investor's Business Daily* and transmitted over *PR Newswire* on September 3, 2013. Mulholland Dec., ¶7. SCS also posted important information and deadlines regarding the Settlement, as well as downloadable copies of the Notice, Summary Notice, Proof of Claim and Stipulation, on its website www.strategicclaims.net, and maintains a toll-free number to accommodate potential claimant inquiries. *Id.*, ¶5.

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[3] *See generally* the Declaration of Richard Gröttheim, Chief Executive Officer of Sjunde AP-Fonden, in Support of (I) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Gröttheim Dec."), filed herewith.

[4] As set forth in the Mulholland Declaration filed herewith, of the 2,082,307 Notice Packets mailed, 195,670 Notice Packets were mailed to the names and addresses of record holders provided by Defendants' Counsel pursuant to the Stipulation. Mulholland Dec., ¶¶4, 9. Further, since in most securities class actions, as the large majority of shareholders are beneficial owners whose securities are held in "street name" (*i.e.*, the securities are purchased by brokerage firms, banks, institutions and other third-party nominees ("Nominees") on behalf of the beneficial owners), SCS mailed 1,886,637 Notice Packets in response to requests by Nominees and other individuals. *Id.*, ¶9.

7. Along with providing information about the Settlement, the Notice advises recipients that Class Members who do not wish to participate in the Settlement may exclude themselves from the Class. The Notice also advises recipients that Class Members have the right to object to any aspect of the Settlement, the Plan of Allocation, or Lead Counsel's request for attorneys' fees and expenses. As of the filing of this Declaration, there have been no objections to any aspect of the Settlement, and 102 requests for exclusion from the Class (out of 2,082,307 Notices mailed) have been received. Mulholland Dec., ¶11.[5]

8. If the Court approves the Settlement and it becomes Final as that term is defined in the Stipulation, the claims asserted in the Action against the Defendants shall be dismissed with prejudice, subject to the terms of the Stipulation and the Order and Final Judgment entered by the Court. For the reasons set forth below and in the accompanying memoranda,[6] Lead Counsel respectfully submits that: (i) the terms of the Settlement and Plan of Allocation are fair, reasonable and adequate in all respects and, pursuant to Rule 23(e) should be approved by this Court; and (ii) Lead Counsel's request for an award of attorneys' fees and reimbursement of litigation expenses is supported by the facts and the law and should be awarded in full.

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[5] The deadline for submitting objections or requests for exclusion from the Class is October 24, 2013. *See* Exhibit B to Mulholland Declaration. If any objections or requests for exclusion are received after the date of this submission, Lead Counsel will address them in its reply brief to be filed with the Court on or before November 7, 2013.

[6] In conjunction with this Declaration, Lead Counsel is also submitting: (i) the Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation (the "Settlement Memorandum") and (ii) the Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee Memorandum").

II. HISTORY OF THE ACTION

A. Background of the Claims Asserted

9. The Action centers around allegations that certain former and current officers of J&J, and J&J's wholly owned subsidiary McNeil-PPC, Inc. ("McNeil"), failed to disclose and/or misrepresented (i) certain quality control issues within McNeil, and (ii) the true financial impact of those alleged quality control issues and resulting product recalls on McNeil.[7]

10. As alleged, when the true adverse financial impact of J&J's undisclosed quality control issues was revealed to the market in July 2010, the price of J&J's common stock declined a total of $2.45 per share – from a closing price of $59.57 on July 19, 2010 to a closing price of $57.12 on July 21, 2010.[8] Complaint, ¶¶14, 233.

B. The Pleadings Phase of the Litigation

11. The Action was filed as a putative class action on September 21, 2010 against J&J and certain of the Company's officers during the relevant time period – (i) William C. Weldon ("Weldon"), J&J's Chairman of the Board and Chief Executive Officer; (ii) Dominic J. Caruso ("Caruso"), J&J's Chief Financial Officer, Principal Financial Officer and Vice President of Finance; and (iii) Peter Luther ("Luther"), President of J&J's McNeil subsidiary. Dkt. Entry 1. By Order dated December 6, 2010, the Court appointed AP7 as Lead Plaintiff pursuant to the

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[7] *See* Second Amended Complaint dated September 7, 2012 (the "Complaint") (Dkt. Entry 83 (Filed Under Seal)), ¶¶2-16.

[8] On July 20, 2010, J&J announced that recalls and the closure of its Fort Washington, Pennsylvania plant would adversely impact sales in 2010 by approximately $600 million, and on July 21, 2010, the Company announced that its Lancaster, Pennsylvania plant had been cited by the Food and Drug Administration ("FDA") for quality control issues. Complaint, ¶¶13, 93, 234. In addition, previously on May 27, 2010, the U.S. House of Representatives Committee on Oversight and Government Reform held a hearing during which the Committee discussed a retrieval of certain Motrin products. On that news, the price of J&J common stock declined $0.63 per share to close on May 27, 2010 at $59.03. *Id.*, ¶¶4, 8, 221, 255.

Private Securities Litigation Reform Act of 1995 ("PSLRA") and approved Lead Plaintiff's selection of Barroway Topaz Kessler Meltzer & Check, LLP (n/k/a Kessler Topaz Meltzer & Check, LLP) as lead counsel ("Lead Counsel") and Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. as liaison counsel ("Liaison Counsel"). Dkt. Entry 7.

12. Following an extensive investigation which included locating and interviewing numerous confidential witnesses, Lead Plaintiff filed its Amended Complaint on March 11, 2011 (*see* Dkt. Entry 16) asserting claims under Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder by the U.S. Securities and Exchange Commission ("SEC"), against the defendants named in the initial complaint (*i.e.*, J&J, Weldon, Caruso and Luther) as well as Colleen A. Goggins ("Goggins"), the Worldwide Chairman of J&J's Consumer Group and a member of J&J's Executive Committee throughout the relevant time period. The Amended Complaint alleged, *inter alia*, that Defendants failed to disclose and/or misrepresented: (i) certain quality control issues within the Company; (ii) the true financial impact of these quality control issues and resulting product recalls on the Company; and (iii) the true facts and circumstances surrounding J&J's product recalls. The Amended Complaint further alleged that, as a result of Defendants' alleged misstatements and omissions, the price of J&J common stock was artificially inflated during the Class Period, causing damage to Lead Plaintiff and other members of the Class who purchased J&J common stock during this time.

13. Defendants jointly moved to dismiss the Amended Complaint on May 27, 2011, asserting, among other things, that (i) Lead Plaintiff failed to establish a strong inference of scienter; (ii) defendants' alleged misstatements were not actionable under the Exchange Act and were puffery or otherwise immaterial; and (iii) Lead Plaintiff failed to plead facts to establish liability under Section 20(a). Dkt. Entry 24. Lead Plaintiff opposed defendants' motion on July

22, 2011, and defendants filed a reply in support of their motion on August 26, 2011. Dkt. Entries 30-32. By Opinion and Order dated December 19, 2011, the Court denied in part and granted in part defendants' motion to dismiss with respect to defendants J&J, Caruso and Goggins and granted in full the motion with respect to defendants Weldon and Luther without prejudice. Dkt. Entries 33-34. The Court's December 19, 2011 Opinion and Order limited the claims asserted against Caruso and Goggins to three alleged misrepresentations.

14. On January 3, 2012, Lead Plaintiff filed a motion for reconsideration of the portion of the Court's December 19, 2011 Opinion and Order dismissing Lead Plaintiff's claims under Section 20(a) of the Exchange Act against defendant Weldon. Dkt. Entry 35. Defendants opposed Lead Plaintiff's motion for reconsideration on January 23, 2012. Dkt. Entry 39. By Order and Memorandum Opinion dated May 22, 2012, the Court denied Lead Plaintiff's motion for reconsideration. Dkt. Entries 70-71.

15. While Lead Plaintiff's motion for reconsideration was pending before the Court, Defendants filed their answer to the Amended Complaint on February 20, 2012 (*see* Dkt. Entry 48), and shortly thereafter, the Parties served their initial document requests and embarked on the discovery described below at ¶¶18-24.

16. While discovery was ongoing, Lead Plaintiff moved for leave to file a second amended complaint on August 23, 2012. Dkt. Entry 76. The Court granted Lead Plaintiff's motion on August 31, 2012. Dkt. Entry 80. Thereafter, on September 7, 2012, Lead Plaintiff filed the operative complaint, the Second Amended Complaint, against the remaining defendants, J&J, Caruso and Goggins. Dkt. Entry 83 (Filed Under Seal). Lead Plaintiff's Second Amended Complaint supplemented the pleadings with new allegations against defendant Caruso based on emails and other internal documents produced by defendants in the early rounds of discovery.

Specifically, Lead Plaintiff alleged that Caruso made two additional false and misleading statements regarding the quality control issues at J&J's McNeil subsidiary beyond those alleged in the Amended Complaint and sustained by the Court in its December 19, 2011 Opinion and Order. Complaint, ¶9. These additional alleged false and misleading statements included Caruso's statements during an April 20, 2010 earnings conference call regarding OTC shipping levels and Caruso's statements during a May 11, 2010 analyst conference call regarding the financial impact of McNeil's Fort Washington, Pennsylvania plant shutdown. *Id.*, ¶¶9, 184, 202.

17. Defendants moved to dismiss in part the Second Amended Complaint on September 27, 2012. Dkt. Entry 90. Defendants asserted, among other things, that, with respect to certain of Caruso's alleged misstatements: (i) Caruso's statements were not actionable, as they were either accurate when made or forward-looking and protected by the PSLRA's safe-harbor provision; (ii) Lead Plaintiff had not adequately alleged scienter; and (iii) Lead Plaintiff had not adequately alleged loss causation. Lead Plaintiff filed its opposition to Defendants' motion to dismiss on October 25, 2012, and Defendants filed their reply on November 12, 2012. Dkt. Entries 97 and 104. The Court scheduled oral argument on Defendants' motion for February 20, 2013.[9] Defendants' motion to dismiss was pending when the Parties reached their agreement-in-principle to settle the Action in April 2013.

C. Lead Plaintiff's Investigation and Discovery

18. On March 5, 2012, the Parties submitted a Joint Discovery Plan to the Court. In accordance with the Joint Discovery Plan, the Parties served each other with their initial document requests on March 5, 2012. On March 13, 2012, the Court entered the Pretrial Scheduling Order (*see* Dkt. Entry 61), pursuant to which the Parties served their Initial

[9] The February 20, 2013 argument was subsequently taken off calendar due to the Parties' settlement efforts.

Disclosures on March 26, 2012.[10] Thereafter, on April 4, 2012, the Parties served each other with responses and objections to their initial document requests.

19. After participating in several meet-and-confer sessions on April 9, 2012, April 27, 2012 and May 2, 2012, the Parties reached an impasse regarding Defendants' objections and responses to Lead Plaintiff's initial document requests. Specifically, Defendants refused to search for and produce the documents of six individuals whom Lead Plaintiff had identified as possessing information relevant to Lead Plaintiff's claims. Accordingly, on May 9, 2012, Lead Plaintiff filed an informal motion to compel Defendants' production of documents from these six individuals. On May 15, 2012, the Court heard oral argument and granted Lead Plaintiff's motion in part and denied it in part, directing Defendants to produce a subset of the requested documents. Dkt. Entry 69.

20. During the next several months, Lead Plaintiff proactively sought discovery from Defendants. In addition to serving initial document requests, Lead Plaintiff served First and Second Sets of Interrogatories on Defendants on June 4 and July 17, 2012, respectively, to which Defendants provided responses on July 17 and August 16, 2012, respectively. Lead Plaintiff also served Second and Third Sets of Requests for the Production of Documents on June 18 and July 18, 2012, respectively, to which Defendants provided responses and objections on July 18 and August 17, 2012, respectively.

21. Lead Plaintiff also sought discovery from third parties, including Inmar and WIS International, two outside contractors which, as alleged, assisted J&J in retrieving defective OTC products from store shelves without alerting the public. *See* Complaint, ¶¶61-66. Lead Plaintiff

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[10] Pursuant to the Court's Pretrial Scheduling Order, all fact discovery, including depositions, was to be completed by March 1, 2013 and all expert discovery, including depositions, was to be completed by June 14, 2013.

served subpoenas on these two entities on March 22, 2012. After considerable negotiations and multiple meet and confer sessions with counsel, Inmar and WIS International produced documents to Lead Plaintiff.

22. On August 21, 2012, Lead Plaintiff noticed the depositions of five fact witnesses. Lead Plaintiff prepared for these depositions, as well as several other individuals who were identified as having relevant information based on Lead Plaintiff's analysis of the documents produced by Defendants and third parties.

23. In July 2012, Lead Plaintiff requested that Defendants produce the files of an additional ten custodians whom Lead Plaintiff had identified as possessing relevant documents based upon Lead Plaintiff's review of Defendants' production of documents to date. However, Defendants refused to do so, and Lead Plaintiff again sought relief from the Court in a letter dated August 7, 2012. On October 5, 2012, Defendants requested the Court to stay discovery pending resolution of their motion to dismiss in part the Second Amended Complaint. Lead Plaintiff opposed Defendants' request to stay discovery in a letter to the Court dated October 12, 2012. As set forth below, Lead Plaintiff's second motion to compel and Defendants' motion to stay discovery were held in abeyance in light of the Parties' settlement discussions. Dkt. Entry 100.

24. In response to Lead Plaintiff's discovery efforts, Defendants produced thousands of pages of documents. The documents produced by Defendants required extensive review and analysis, and to that end, Lead Counsel retained an outside electronic discovery consultant to develop and maintain an electronic database to house these documents as well as to assist in their efficient review.

25. In addition to the discovery detailed above, Lead Plaintiff, through its counsel, conducted a comprehensive investigation into the Class's claims. This investigation, which began well before the filing of Lead Plaintiff's Amended Complaint and continued after the Court sustained in part the allegations therein, included, *inter alia*: (i) extensive and wide ranging investigative interviews with several former employees of J&J and McNeil, including personnel who worked at McNeil's Fort Washington, Pennsylvania plant; (ii) review and analysis of public documents pertaining to J&J, including the Company's filings with the SEC; (iii) review and analysis of press releases, conference calls and other public statements issued by Defendants; (iv) review of market analyst reports regarding J&J and its OTC business; (v) review of testimony given by defendant Goggins, former J&J chief executive officer William C. Weldon, and members of the FDA before the U.S. House of Representatives Committee on Oversight and Government Reform on May 27 and September 30, 2010; (vi) review of documents obtained through various government and regulatory investigations, including those by the U.S. House of Representatives, the U.S. Department of Justice, the FDA and the Oregon Attorney General; (vii) consultation with a leading economist and damages expert regarding issues of loss causation and damages; and (viii) research of the applicable law with respect to the claims asserted in the Action and the potential defenses thereto.

26. In sum, Lead Counsel has devoted substantial time to its investigation of the Class's claims as well as formal discovery – including reviewing thousands of pages of documents produced by Defendants, preparing for depositions of fact witnesses and litigating two motions to compel the production of additional documents. As a result, at the time the Parties were negotiating the terms of the Settlement, Lead Counsel had an in-depth knowledge of the strengths and weaknesses of the Class's claims as well as the risks to continued litigation.

This knowledge permitted Lead Plaintiff and Lead Counsel to fully consider and evaluate the fairness of the Settlement to the Class.

III. RISKS OF CONTINUED LITIGATION

27. While Lead Plaintiff and Lead Counsel believe that the claims asserted against the Defendants have merit, they also recognize that there were considerable risks involved to continued litigation. If the Action were to proceed, Lead Plaintiff would have to overcome Defendants' extensive challenges to the claims asserted. In their motion to dismiss in part the Second Amended Complaint (which was pending when the Settlement was reached), and in connection with the Parties' settlement negotiations, Defendants asserted various defenses to Lead Plaintiff's claims. Having considered the risks described below, among others, and evaluating Defendants' defenses, it is the informed judgment of Lead Plaintiff and its counsel, based upon all proceedings to date as well as Lead Counsel's extensive experience in litigating class actions under the federal securities laws, that the proposed Settlement of the Action is fair, reasonable and adequate, and in the best interests of the Class.[11]

A. Risks to Establishing Liability

28. Even if Lead Plaintiff survived the pending motion to dismiss, Lead Plaintiff faced a substantial risk to establishing Defendants' liability going forward. Had the Settlement

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[11] The following are factors courts in the Third Circuit consider when assessing whether a proposed settlement is fair, reasonable and adequate: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975) (citation omitted). *Accord In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 350 (3d Cir. 2010). Lead Plaintiff's Settlement Memorandum submitted herewith provides a detailed analysis of each of these factors. *See* Settlement Memorandum, §III(B).

not been reached, Lead Plaintiff would expect Defendants to build foundations for each of the defenses they asserted in their motion to dismiss and during the Parties' settlement negotiations, and to assert each of these defenses, and others, at summary judgment, trial and on appeal.

29. First, Defendants contended that Lead Plaintiff would be unable to prove materiality of the alleged misstatements and omissions, as the risks of future quality control problems had been publicly disclosed by J&J and were well known to the market prior to the alleged revelations of fraud at the end of the Class Period. In support of this "truth on the market" argument, Defendants pointed to J&J's disclosure of the FDA's January 8, 2010 Form 483 inspection report to McNeil detailing its adverse inspection of the McNeil plant in Las Piedras, Puerto Rico, followed by disclosure of the FDA's January 15, 2010 "warning letter" to Weldon and Luther criticizing, among other things, McNeil and J&J's quality control procedures. Additionally, as asserted in their motion to dismiss in part the Second Amended Complaint, Defendants argued that, with respect to certain of Caruso's alleged misstatements, the statements were not actionable, as they were either accurate when made or forward-looking and protected by the PSLRA's safe-harbor provision.

30. Second, in order to establish that Defendants violated Section 10(b) of the Exchange Act, Lead Plaintiff would be required to demonstrate that Defendants' conduct was either intentional or reckless. Defendants vigorously asserted that Lead Plaintiff would be unable to establish the requisite scienter for Section 10(b) liability because there was no evidence that defendants Caruso and Goggins were aware of some or all of the quality control issues at

McNeil, including the Motrin recall, and that, contrary to Lead Plaintiff's assertions of misleading conduct, these executives acted in good faith.[12]

31. Additionally, as set forth above, Defendants have vigorously challenged Lead Plaintiff's discovery efforts, and but for the Settlement, Lead Plaintiff would most likely continue to face hurdles gathering evidence and building their case against Defendants. While Lead Plaintiff is confident that there are substantially more relevant documents that would be produced after the Court ruled on Lead Plaintiff's pending motion to compel, the outcome of this motion, as well as future discovery efforts, are uncertain.

B. Risks Regarding Loss Causation and Establishing Damages

32. If successful in overcoming each and every defense the Defendants could raise with respect to the falsity or materiality of the challenged public statements or the scienter of Defendants, Lead Plaintiff would still have to prove that Class Members suffered damages. Lead Plaintiff would be required to prove that J&J's alleged false and misleading statements artificially inflated the price of its common stock or maintained artificial inflation, as well as the specific amount of the artificial inflation.

33. Defendants contended that Lead Plaintiff would be unable to establish loss causation, *i.e.*, that the correction of the alleged misstatements and omissions caused the decline in J&J's stock price. Defendants asserted that due to various non-fraud-related disclosures by J&J and other information that affected the Company's stock price (*e.g.*, announcements of the FDA's investigation of McNeil's manufacturing practices on May 27, 2010 and the criminal investigation of McNeil by the U.S. Attorney's Office for the Eastern District of Pennsylvania on

[12] Additionally, Defendants asserted that the quality control issues at best affected only a miniscule fraction of the Company's products, and that its senior executives could not possibly have known about them during the time of the alleged statements.

July 20, 2010), Lead Plaintiff would not be able to disaggregate the impact of these disclosures on the stock price from the alleged, fraud-related corrective disclosures.

34. Indeed, presentation of evidence and the Parties' differing arguments on loss causation and damages would hinge upon extensive expert discovery and testimony. Although Lead Plaintiff believes it would be able to present expert testimony to meet its burden on loss causation, and to rebut any arguments that Defendants would make, Defendants would be expected to assert that there were no damages or substantially smaller damages. As a result, the crucial element of damages would likely be reduced at trial to a "battle of the experts." Lead Counsel has sufficient experience to recognize that in such a battle there exists the substantial possibility that a trier of fact could be swayed by Defendants' experts, who would seek to minimize or eliminate the amount of Lead Plaintiff's losses by showing that any losses were attributable to factors other than the alleged misstatements and omissions.

35. In addition to the above, by its December 19, 2011 Opinion granting in part and denying in part Defendants' motion to dismiss the Amended Complaint, the Court effectively found that purchasers of J&J common stock on or between October 14, 2008 and April 19, 2010 did not have claims under Section 10(b) of the Exchange Act, as the first alleged false and misleading statement deemed actionable by the Court was made on April 20, 2010. Thus, going forward, there was the great likelihood that the class asserted in the Second Amended Complaint – and, accordingly, damages – would have been substantially curtailed.[13]

[13] Lead Plaintiff has accounted for the Court's December 19, 2011 Opinion in its proposed Plan of Allocation set forth in the Notice, discounting the "Recognized Claims" for J&J common stock purchased on or between October 14, 2008 and April 19, 2010 by 90 percent.

C. Risks Attendant to Trial and Appeal

36. The outcome of a jury trial, especially in a complex case such as this one, can never be predicted with reasonable certainty. Even if Lead Plaintiff prevailed at trial, there is no assurance that it would have recovered an amount equal to, much less greater than, the proposed Settlement Amount. Moreover, even a positive outcome at trial is not a guarantee of an ultimate positive result for the Class. There are several recent instances where plaintiffs' verdicts in securities fraud cases have been reversed by the trial court or on appeal.[14] Moreover, it is a foregone certainty that any jury verdict would have been just the beginning of a long appellate process, presenting extreme risk to the Class of actual recovery.

IV. THE PARTIES' SETTLEMENT NEGOTIATIONS

37. The Parties agreed to discuss a possible resolution of the Action while Defendants' motion to dismiss in part the Second Amended Complaint was pending. To facilitate these discussions, the Parties retained a highly respected and experienced mediator, the Honorable Daniel H. Weinstein (Ret.) of JAMS.[15] By Letter Order dated November 5, 2012, the Court stayed its decisions with respect to the pending motion to dismiss and motion to compel discovery until after the Parties' first scheduled mediation on December 4, 2012. *See* Dkt. Entry 100.

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[14] For example, in *In re BankAtlantic Bancorp, Inc. Sec. Litig.* 07-CV-61542-CIV-UNGARO (S.D. Fla.), Lead Counsel, after four years of litigation, obtained a jury verdict for plaintiffs only to have this verdict later vacated by the district court.

[15] Judge Weinstein has been involved in the alternative dispute resolution of securities class actions for approximately 20 years. Prior to joining JAMS, Judge Weinstein served as a Superior Court Judge in San Francisco, California and was an Associate Justice Pro-Tem on the California Supreme Court and First District Court of Appeals. *See* Weinstein Dec., ¶1.

38. The Parties participated in settlement negotiations over the course of several months, including two full-day, in-person mediation sessions and several telephonic sessions facilitated by Judge Weinstein.

39. The Parties conducted their first formal mediation on December 4, 2012 in New York City. In advance of the mediation, the Parties prepared and submitted extensive mediation statements for Judge Weinstein's review, which set forth their respective views of the relevant law and facts. At the mediation, both sides made detailed and thoughtful presentations as to the merits of the case. Although the Parties remained too far apart in their respective positions to reach a resolution of the Action at the mediation, they agreed to continue their negotiations. Over the next two months, each side participated in telephonic sessions with Judge Weinstein in an attempt to bridge the gap between them.

40. The Parties conducted their second formal mediation on February 14, 2013 in New York City. Here, the Parties did make some progress towards resolving their differences. At the conclusion of the mediation, the Parties remained at an impasse; however, they agreed to consider a mediator's proposal to resolve the Action to which they would be bound.

41. Following the February mediation session, the Parties submitted supplemental mediation statements on the issue of damages for Judge Weinstein's review. In preparing their submission, Lead Counsel consulted with a leading economist and damages expert, Dr. David Tabak, Senior Vice President of NERA Economic Consulting.

42. On April 24, 2013, Judge Weinstein issued a mediator's proposal to settle the action for $22,900,000 in cash. Following their agreement-in-principle, the Parties spent several weeks negotiating the specific terms of the Settlement and drafting the necessary supporting documents. The Parties entered into the Stipulation on July 15, 2013 (*see* Dkt. Entry 111-2), and

the Court preliminarily approved the Stipulation and the Settlement embodied therein by Order dated August 6, 2013. Dkt. Entry 112.

43. The Settlement achieved in this case provides the Class an immediate and substantial benefit and eliminates the significant risks of continued litigation under circumstances where a favorable outcome could not be assured. Lead Counsel believes that the Settlement is an excellent result for the Class considering the risk of recovering nothing or less than the Settlement Amount after substantial delay.

V. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

44. The proposed plan for allocating the settlement proceeds to the Class (the "Plan of Allocation" or "Plan") is set forth in the Notice. If approved, the Plan of Allocation will provide the manner in which the Settlement Amount, plus interest, less payment of Court-approved attorneys' fees and expenses, taxes, and the costs of claims administration, including the costs of printing and mailing the Notice and Proof of Claim and the cost of publishing the Summary Notice (the "Net Settlement Fund"), shall be distributed to Authorized Claimants.[16] Distributions from the Net Settlement Fund will be made to Authorized Claimants after all Proofs of Claim have been processed and after the Court has approved the final calculations and distributions to the Class.

45. The Plan is designed to achieve an equitable and rational distribution of the Net Settlement Fund, but it is not a formal damages analysis that would be submitted at trial. Here, the Plan was drafted by Dr. David Tabak, an experienced damages expert who assisted Lead Plaintiff in developing its damages model used in connection with mediation, with the careful

[16] "Authorized Claimant" is defined in the Stipulation as a Class Member who submits a valid Proof of Claim to the Claims Administrator (in accordance with the requirements established by the Court) that is approved for payment from the Net Settlement Fund.

consideration, detailed analysis, and ultimate approval of Lead Counsel. The Plan was fully disclosed in the Notice that was mailed to more than 2 million potential Class Members and nominees. *See* Notice attached as Exhibit B to the Mulholland Declaration. As of the filing of this Declaration, not a single Class Member has filed an objection to the Plan.

46. The Plan reflects that the price of J&J common stock was artificially inflated during the Class Period (*i.e.*, October 14, 2008, to July 21, 2010, inclusive) due to alleged misrepresentations and/or omissions by Defendants. The Plan takes into account the impact of disclosures made on the following three dates: May 27, 2010, July 20, 2010, and July 21, 2010 (each a "Disclosure Date").[17] Any share of J&J common stock purchased during the Class Period will accrue a "Recognized Claim" for each Disclosure Date through which it is held, with shares held through the end of the Class Period accruing a Recognized Claim for each Disclosure Date after such share was purchased. For shares held as of the close of trading on July 21, 2010, Recognized Claims are limited by the "bounceback" provision of the PSLRA.[18] In addition, in

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[17] As set forth in the Complaint: (i) on May 27, 2010, the U.S. House of Representatives Committee on Oversight and Government Reform held a hearing during which the Committee disclosed the retrieval of certain defective Motrin products from store shelves; (ii) on July 20, 2010, the Company announced that recalls and the closure of the Fort Washington plant would adversely impact sales in 2010 by approximately $600 million; and (iii) on July 21, 2010, the Company announced that its Lancaster, Pennsylvania plant had been cited by the FDA for quality control issues. *See* Complaint, ¶¶12, 13, 68, 93, 234.

[18] Pursuant to Section 21(D)(e)(1) of the PSLRA, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the PSLRA, Recognized Claims are reduced to an appropriate extent by taking into account the closing prices of J&J common stock during the 90-day "bounceback" period. The mean (average) closing price for J&J common stock during the 90-day period (beginning on July 22, 2010, and ending on November 26, 2010) was $61.27.

light of the Court's December 19, 2011 Opinion granting in part and denying in part Defendants' motion to dismiss Lead Plaintiff's Amended Complaint, Recognized Claims for J&J common stock purchased on or between October 14, 2008, and April 19, 2010 has been reduced by 90%.[19]

47. Under the Plan, the Court-authorized claims administrator, SCS, will calculate each Authorized Claimant's "Recognized Claim" based on the information supplied with the Class Member's Proof of Claim. Each claimant's *pro rata* share of the Net Settlement Fund shall be based upon the claimant's Recognized Claim from transactions in J&J common stock during the Class Period. Overall, if the total Recognized Claims for all Authorized Claimants exceeds the Net Settlement Fund, each Authorized Claimant's share of the Net Settlement Fund will be determined based upon the percentage that his, her or its Recognized Claim bears to the total Recognized Claims for all Authorized Claimants. The Plan is similar in structure to numerous plans of allocation which have been utilized, and approved by courts, in other securities class action cases. Accordingly, Lead Counsel believes that this method of allocation has a reasonable and rational basis and is fair and equitable and therefore, warrants the Court's approval.

VI. LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

48. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel respectfully requests an award of attorneys' fees in the amount of 20% of the Settlement Amount (*i.e.*, $4,580,000) and reimbursement of the expenses incurred by Plaintiffs' Counsel in connection with the investigation, prosecution and resolution of the Action in the

[19] The Court's December 19, 2011 Opinion found that purchases of J&J common stock on or between October 14, 2008 and April 19, 2010 were not actionable under the federal securities laws, as the first actionable alleged misleading statement occurred on April 20, 2010.

amount of $361,447.44, plus interest earned on both amounts at the same rate as earned on the Settlement Fund (the "Fee and Expenses Application").

49. Lead Counsel is submitting its Fee and Expense Application with the prior approval of Lead Plaintiff and this application is, in all respects, in accordance with the retainer agreement entered into by Lead Plaintiff and Lead Counsel at the outset of the Action. Gröttheim Dec., ¶7. Under the retainer agreement, Lead Counsel agreed to undertake the litigation on an entirely contingent basis, meaning that Lead Counsel would not be compensated at all, or reimbursed for any expenses incurred on behalf of the Class, unless it obtained a recovery for the Class. The retainer agreement also provided that, if Lead Counsel was successful at obtaining a recovery for the Class, it could seek up to 25% of the recovery as attorneys' fees. *Id.*

50. As set forth in the Gröttheim Declaration, Lead Plaintiff actively monitored the Action and consulted with counsel during the course of the Parties' settlement negotiations. *Id.*, ¶¶3-5. As an institutional investor, Lead Plaintiff's oversight in the conduct of litigation, and settlement negotiations is the precise result Congress intended in enacting the PSLRA. Congress enacted the PSLRA in large part to encourage institutional investors, like AP7, to assume control of securities class actions and "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." H.R. Conf. Rep. No. 104-369, at 32 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 731. Congress believed that institutions and other investors with a significant financial stake in the outcome of a securities class action would be in the best position to monitor the ongoing prosecution of the litigation, select counsel, and to assess the reasonableness of counsel's fee request. Here, Lead

Plaintiff's approval of the Fee and Expense Application (and the existence of its *ex ante* fee agreement with Lead Counsel) lends additional support to Lead Counsel's request and is a fact that should be given considerable weight in the Court's determination of a reasonable fee in this case.

51. Below is a summary of the additional factual bases for Lead Counsel's Fee and Expense Application. The legal authority supporting this application is set forth in Lead Counsel's Fee Memorandum submitted herewith.

A. Lead Counsel's Request for Attorneys' Fees is Fair and Reasonable

52. Lead Counsel submits that its request for an award of attorneys' fees in the amount of 20% of the Settlement Fund is justified and should be approved. As set forth more fully in Lead Counsel's Fee Memorandum submitted herewith, the percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery under the circumstances. The percentage method is also supported by public policy, has been recognized as appropriate by the United States Supreme Court for cases of this nature, is the authorized method under the PSLRA, and represents the overwhelmingly currently trend in the Third Circuit and most other Circuits. A cross-check of the lodestar in this case also supports the attorneys' fees requested. As set forth below, Plaintiffs' Counsel[20] have incurred a total of

[20] The term "Plaintiffs' Counsel" refers to Lead Counsel, Kessler Topaz Meltzer & Check, LLP, together with Liaison Counsel, Carella, Byrne, Cecchi, Olstein, Brody & Agnello P.C. The lodestar and expense submissions of David Kessler and James E. Cecchi, on behalf of Lead Counsel and Liaison Counsel, respectively, are filed with this application. These declarations set forth the names of the attorneys and paraprofessionals who worked on the Action, the hourly rates currently chargeable by each such attorney and paraprofessional, the lodestar value of the time expended by such attorneys and paraprofessionals, the unreimbursed expenses of the firms, and the background and experience of the firms.

$3,959,113.25 in time in this Action. Thus, the requested fee award represents an extremely modest multiplier of 1.16 to the lodestar.

53. Courts in the Third Circuit also review the following factors, among others, when considering a request for attorneys' fees in a common fund case: (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.[21] Lead Counsel respectfully submits that an analysis of the foregoing criteria demonstrates that the requested fee is fair and reasonable.

1. The Size of the Fund, the Number of Persons Benefited and the Reaction of the Class to Date

54. Lead Counsel has obtained a $22.9 million all cash recovery in exchange for the release of all claims against Defendants. This recovery represents a favorable result for the Class. In the view of Lead Plaintiff's damages expert, this recovery represents approximately 12% of the damages number that would be defensible at trial.[22] In addition, the Settlement

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[21] *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). The Third Circuit has also suggested three other factors that may be relevant to the Court's inquiry: (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 [non-class] contingent fee agreement at the time counsel was retained;" and (3) any "innovative terms of settlement." *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 165 (3d Cir. 2006) (citation and internal quotations omitted). The Fee Memorandum submitted herewith provides a detailed analysis of each of these factors. *See* Fee Memorandum, §III(C).

[22] This damages estimate, however, assumes that a jury would accept every element of the Class's damages theory as being correct and recoverable and does not take into account the many risks Lead Plaintiff faced if the Action proceeded to trial.

provides the only monetary recovery for J&J shareholders to date.[23] The Settlement also represents a substantial recovery for the Class when viewed in light of the many risks posed by continued litigation. As detailed above at ¶¶27-36, if the Action were to proceed, Lead Plaintiff would have to overcome Defendants' extensive challenges to the claims asserted.

55. In accordance with the Preliminary Approval Order, more than 2 million copies of the Notice have been disseminated to potential Class Members and nominees advising them that Lead Counsel would be requesting an award of attorneys' fees from the Settlement Fund in an amount not to exceed 20% of the Settlement Fund, and reimbursement of Litigation Expenses paid or incurred by Plaintiffs' Counsel in connection with the prosecution and resolution of the Action, in an amount not to exceed $450,000, plus interest earned on this amount at the same rate as the Settlement Fund. *See* Mulholland Dec., ¶9 and Ex. B attached thereto. In addition, the Summary Notice was published in the national edition of *Investor's Business Daily* and transmitted over the *PR* Newswire. *Id.*, ¶7. The Notice, Proof of Claim, Summary Notice and Stipulation have also been posted on SCS's website. As noted above, the deadline set by the Court for Class Members to object to the request for attorneys' fees and expenses has not yet passed. To date, there have been no objections to the maximum amount of fees and expenses set forth in the Notice.[24]

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[23] While there were governmental investigations into the quality control issues at McNeil, as well as a permanent injunction filed by the U.S. Department of Justice, none of these investigations or proceedings concerned misrepresentations in J&J's filings with the SEC or other public statements regarding the quality control issues at McNeil. For example, there was no investigation brought by the SEC.

[24] Should any objections be received after the date of this submission, they will be addressed by Lead Counsel in a reply brief to be filed with the Court on or before November 7, 2013.

2. The Skill and Efficiency of the Attorneys Involved

56. Lead Counsel is experienced in prosecuting securities class actions, and worked diligently and efficiently in prosecuting the Action as well as in bringing the Action to a successful conclusion for the Class. Lead Counsel, as demonstrated by the firm resume attached to its respective lodestar and expense submission (*see* Exhibit 3 to the Kessler Declaration), has litigated these types of actions in courts throughout the country, and has a successful track record in such cases. Liaison Counsel, Carella, Byrne, Cecchi, Olstein, Brody & Agnello P.C., is also highly experienced in complex litigation. *See* Exhibit 3 to the Cecchi Declaration.

57. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of opposing counsel. Defendants in this case were represented by the nationally prominent law firm of Covington & Burling LLP, who spared no effort in the defense of its clients. The ability of Lead Counsel to obtain this favorable Settlement for the Class in the face of such formidable legal opposition further reflects the superior quality of its work.

3. The Complexity and Duration of the Litigation

58. As discussed above, the claims advanced by the Class in the Action involve complex legal issues and many questions remained regarding the extent of Defendants' liability and the true measure of the Class's damages. These issues would have undoubtedly required extensive discovery, including additional document review and numerous depositions. In the absence of the Settlement, the Action could have continued for additional years.

4. The Risk of Nonpayment

59. The Action was undertaken by Plaintiffs' Counsel on a wholly contingent basis. From the outset, Plaintiffs' Counsel understood that they were embarking on a complex and

expensive litigation with no guarantee of compensation for the investment of time, money and effort that the case would require. In undertaking that responsibility, Plaintiffs' Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable costs that a case such as this entails. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel have received no compensation for their efforts during the course of this Action.

60. Plaintiffs' Counsel also bore the risk that no recovery would be achieved (or that a judgment could not be collected, in whole or in part). Even with the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured. In fact, there have been many hard-fought lawsuits where, because of: (i) the discovery of facts unknown when the case was commenced; (ii) changes in the law while the case was pending; or (iii) decisions on summary judgment or following a trial on the merits, that excellent professional efforts produced no fee for counsel. *See* Fee Memorandum, §III(C)(5). As discussed herein, this case presented a number of risks and uncertainties which could have prevented any recovery whatsoever. Thus, there existed a real risk that Plaintiffs' Counsel would invest substantial resources and efforts and receive nothing.

61. Plaintiffs' Counsel firmly believe that the commencement of a securities class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations.

5. The Amount of Time Devoted to the Case by Plaintiffs' Counsel

62. During the pendency of the Action, as detailed in ¶¶11-26 above, Plaintiffs' Counsel marshaled considerable resources and time in the research, investigation, prosecution and ultimate resolution of this case. These efforts included, *inter alia*, conducting a comprehensive investigation into the Class's claims; preparing two amended complaints; opposing two rounds of motions to dismiss by defendants; filing a motion for reconsideration; conducting discovery, including the review and analysis of thousands of pages of documents produced by Defendants and third parties and preparation for depositions; consulting with experts in preparation for mediation; and engaging in arm's-length settlement negotiations with Defendants over the course of several months, including two in-person, formal mediations, and additional months of negotiating the terms of the Stipulation and drafting the related settlement documents.[25]

63. As set forth in their lodestar and expense submissions, Plaintiffs' Counsel have devoted over 8,900 hours to the prosecution of the Class's claims against Defendants in this Action, resulting in a total lodestar of $3,959,113.25. *See* Kessler and Cecchi Declarations submitted herewith.[26] Thus, the requested fee award results in the application of a 1.16

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[25] Moreover, Lead Counsel will continue to perform legal work on behalf of the Class should the Court approve the Settlement. Additional resources will be expended assisting Class Members with their Proofs of Claim and related inquiries and working with the claims administrator, SCS, to ensure the smooth progression of claims processing.

[26] In addition, Exhibit 1 hereto provides a breakdown of Plaintiffs' Counsel's time for each of the following stages of the litigation: (1) Investigation of claims, witness interviews and preparation of initial Complaint and First Amended Complaint; (2) Preparation of Lead Plaintiff's Opposition to Defendants' Motion to Dismiss the Complaint and Motion for Partial Reconsideration of the Court's Order on the Motion to Dismiss; (3) Preparation (including research and drafting) of Second Amended Complaint, witness interviews and Motion to Amend Complaint; (4) Preparation (including research and drafting) of Lead Plaintiff's Opposition to Motion to Dismiss the Second Amended Complaint and Preparation for Oral Argument; (5) Negotiation and preparation of joint discovery plan; meet and confer sessions with defendants regarding discovery disputes and related correspondence; preparation of motions to compel discovery; preparation for/attendance at discovery hearings and conferences before Magistrate

multiplier to the lodestar.[27] Lead Counsel respectfully submits that such a multiplier from the attendant lodestar cross-check, fully supports the requested attorneys' fees as fair and reasonable.

6. Awards in Similar Cases

64. While the percentage of fees awarded in securities actions have varied substantially, courts in the Third Circuit and around the country consistently award percentage fees to plaintiffs' counsel that are equal to or greater than the fee requested by Lead Counsel herein. Accordingly, the present request for attorneys' fees in the amount of 20% of the Settlement Fund is reasonable and on the lower end of attorneys' fees typically awarded in complex class actions.

B. Lead Counsel's Request for Reimbursement of Litigation Expenses is Fair and Reasonable

65. Lead Counsel, on behalf of Plaintiffs' Counsel, also seeks reimbursement of litigation expenses in the amount of $361,447.44 that were reasonably incurred by Plaintiffs' Counsel in connection with the investigation, prosecution and resolution of the Action on behalf

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Judge; (6) Preparation of document requests, interrogatories and initial disclosures; review and analysis of documents produced by defendants and third parties; responding to defendants' document requests; post-complaint witness interviews; (7) Preparation for depositions (including document analysis and preparation of deposition outlines); (8) Preparation of court submissions for settlement approval; (9) Preparation of mediation submissions and participation in mediation sessions and calls with mediator; (10) Analysis of loss causation/damages issues and consultation with damages expert; (11) Preparation of subpoenas on third parties; negotiations with third parties regarding subpoenas; (12) Client communications, meetings, client document-related discovery and client related issues; and (13) Miscellaneous time incurred in prosecuting the Action.

[27] Plaintiffs' Counsel are cognizant of Judge Derman's report and recommendation regarding the fee request in *Johnson & Johnson Deriv. Litig.*, Civil Action No. 10-2033(FLW)(DEA). Notwithstanding the obvious differences between that litigation (which yielded no calculable monetary recovery) and the instant case (which yielded a $22.9 million common fund), even applying the hourly rates recommended by Judge Derman in that very different case would generate a lodestar multiplier no higher than 1.45 ($4,580,000 / $3,168,164) – a figure well within the bounds of reasonableness.

of the Class. It is well-settled that attorneys who have created a common fund for the benefit of a class are entitled to be reimbursed for their out-of-pocket expenses incurred in creating the fund so long as the submitted expenses are reasonable, necessary and directly related to the prosecution of the action.

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

67. The expenses incurred by Plaintiffs' Counsel are set forth in their firm's respective declarations and include the following categories of expenses, among others: on-line legal and factual research,[28] experts' fees, mediation, travel, postage, messenger services, filing fees and other incidental expenses directly related to the prosecution of this Action. *See* Kessler and Cecchi Declarations. A large portion of Plaintiff's Counsel's expenses was used to fund Lead Plaintiff's investigation, to pay for experts, and to pay for the costs of formal mediation with Judge Weinstein. These expenses were critical to the prosecution and resolution of this Action and are of the type routinely charged to clients billed by the hour.

68. To date, no objections have been received regarding the expense figure set forth in the Notice.

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[28] This reflects charges for computerized factual and legal research services such as *LexisNexis* and *Westlaw*. It is standard practice for attorneys to use *LexisNexis* and *Westlaw* to assist them in researching legal and factual issues, and, indeed, courts recognize that these tools create efficiencies in litigation and, ultimately, save clients and the class money.

VII. CONCLUSION

69. For all the reasons set forth above, Lead Counsel respectfully submits that the Settlement and the Plan of Allocation should be approved as fair, reasonable and adequate. Lead Counsel further submits that the requested fee in the amount of 20% of the Settlement Fund should be approved as fair and reasonable, and the request for reimbursement of Plaintiffs' Counsel's expenses in the amount of $361,447.44 should also be approved.

I hereby declare that the foregoing is true and correct.

Dated: October 10, 2013

MATTHEW L. MUSTOKOFF

Exhibit 1

In Re: Johnson & Johnson Securities Litigaiton

FIRM NAME: KESSLER TOPAZ MELTZER & CHECK, LLP

CATEGORIES

[1] Investigation of claims, witness interviews and preparation of initial Complaint and First Amended Complaint

[2] Preparation of Lead Plaintiff's Opposition to Defendants' Motion to Dismiss the Complaint and Motion for Partial Reconsideration of the Court's Order on the Motion to Dismiss

[3] Preparation (including research and drafting) of Second Amended Complaint, witness interviews and Motion to Amend Complaint

[4] Preparation (including research and drafting) of Lead Plaintiff's Opposition to Motion to Dismiss the Second Amended Complaint and Preparation for Oral Argument

[5] Negotiation and preparation of joint discovery plan; meet and confer sessions with defendants regarding discovery disputes and related correspondence; preparation of motions to compel discovery; preparation for/attendance at discovery hearings and conferences before Magistrate Judge

[6] Preparation of document requests, interrogatories and initial disclosures; review and analysis of documents produced by defendants and third parties; responding to defendants' document requests; post-complaint witness interviews

[7] Preparation for depositions (including document analysis and preparation of deposition outlines)

[8] Preparation of court submissions for settlement approval

[9] Preparation of mediation submissions and participation in mediation sessions and calls with mediator

[10] Analysis of loss causation/damages issues and consultation with damages expert

[11] Preparation of subpoenas on third parties; negotiations with third parties regarding subpoenas

[12] Client communications, meetings, client document-related discovery and client related issues

[13] Miscellaneous time incurred in prosecuting the action

	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]	[11]	[12]	[13]	HOURS	HOURLY RATE	LODESTAR
PARTNERS																
R. Abadou	42.30													42.30	$ 675.00	$ 28,552.50
N. Amjed	30.60													30.60	$ 600.00	$ 18,360.00
S. Berman	2.00											39.90		41.90	$ 700.00	$ 29,330.00
G. Castaldo		62.80	4.80						30.40	0.50				98.50	$ 700.00	$ 68,950.00
K. Justice		10.10	18.10	12.40	51.80	117.70	2.20		15.00	8.00	52.90		21.00	309.20	$ 625.00	$ 193,250.00
M. Mustokoff	157.30	26.50	58.20	132.00	180.50	107.80	12.00	21.50	227.90	53.00	16.70	0.20	15.60	1009.20	$ 625.00	$ 630,750.00
M. Topaz													0.70	0.70	$ 735.00	$ 514.50
ASSOCIATES																
J. D'Ancona			17.30	182.00	53.10	32.10			23.90	24.20	34.00			366.60	$ 425.00	$ 155,805.00
M. Danek					3.00	36.70				5.30			3.50	48.50	$ 500.00	$ 24,250.00
J. Enck								91.30						91.30	$ 475.00	$ 43,367.50
S. Kaskela	20.70					2.10								22.80	$ 400.00	$ 9,120.00
M. Lambert	197.00	244.90	44.50	107.20	34.20	151.70	0.50	1.80	15.90	15.00	24.20	0.60	9.90	847.40	$ 360.00	$ 305,064.00
L. Pederson (Of Counsel)	230.80					7.30								238.10	$ 550.00	$ 130,955.00
STAFF ATTORNEYS																
A. Audi						144.90								144.90	$ 395.00	$ 57,235.50
P. Mattucci						363.40	766.80							1130.20	$ 375.00	$ 423,825.00
W. O'Shea				13.30		502.10	754.20							1269.60	$ 395.00	$ 501,492.00
A. Rosseel						173.80								173.80	$ 395.00	$ 68,651.00
Z. Washington						105.90								105.90	$ 375.00	$ 39,712.50
K. Weiler						410.90	765.40							1176.30	$ 395.00	$ 464,638.50
INVESTIGATORS																
J. Bochet	102.50													102.50	$ 325.00	$ 33,312.50
J. Evans	9.50													9.50	$ 325.00	$ 3,087.50
J. Maginnis	36.30					26.50								62.80	$ 325.00	$ 20,410.00
K. Marshall	31.70					7.60								39.30	$ 225.00	$ 8,842.50
H. Molina	329.30					97.25								426.55	$ 325.00	$ 138,628.75
D. Rabbiner	91.05					24.00								115.05	$ 450.00	$ 51,772.50
PARALEGAL																
C. Chiappinelli								18.00						18.00	$ 225.00	$ 4,050.00
S. Hebard	17.00													17.00	$ 250.00	$ 4,250.00
D. Maytorena	74.90	35.90	4.60	51.70	3.80	200.70	1.50		17.50		8.10		7.10	405.80	$ 200.00	$ 81,160.00
K. Nyugen	18.50													18.50	$ 250.00	$ 4,625.00
Totals	**1391.45**	**380.20**	**147.50**	**498.60**	**326.40**	**2512.45**	**2302.60**	**132.60**	**330.60**	**106.00**	**135.90**	**40.70**	**57.80**	**8362.80**		**$ 3,543,961.75**

In Re: Johnson & Johnson Securities Litigation

FIRM NAME: **Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.**

Categories

[1] Investigation of claims, witness interviews and preparation of initial Complaint and First Amended Complaint
[2] Preparation of Lead Plaintiff's Opposition to Defendants' Motion to Dismiss the Complaint and Motion for Partial Reconsideration of the Court's Order on the Motion to Dismiss
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[11] Preparation of subpoenas on third parties; negotiations with third parties regarding subpoenas
[12] Client communications, meetings, client document-related discovery and client related issues
[13] Miscellaneous time incurred in prosecuting the action

	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]	[11]	[12]	[13]	Hours	Hourly Rate	Lodestar
PARTNERS																
J. Cecchi	12.10	75.50	18.00	35.20	27.00	43.00	0.00	83.20	67.00	1.00	0.00	8.80	4.30	375.10	$750.00	$281,325.00
L. Taylor	6.80	12.30	15.70	48.00	51.00	48.00	0.00	23.00	0.00	0.00	0.00	0.00	5.50	210.30	$600.00	$126,180.00
TOTAL PARTNERS	**18.90**	**87.80**	**33.70**	**83.20**	**78.00**	**91.00**	**0.00**	**106.20**	**67.00**	**1.00**	**0.00**	**8.80**	**9.80**	**585.40**		**$407,505.00**
ASSOCIATES																
D. Ecklund	0.00	0.30	0.00	0.00	0.00	0.00	0.00	3.50	0.00	0.00	0.00	0.00	0.20	4.00	$495.00	$1,980.00
Z. Bower	0.00	0.00	0.00	1.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.20	$495.00	$594.00
A. Petrolle	0.00	4.70	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5.90	10.60	$475.00	$5,035.00
TOTAL	**0.00**	**5.00**	**0.00**	**1.20**	**0.00**	**0.00**	**0.00**	**3.50**	**0.00**	**0.00**	**0.00**	**0.00**	**6.10**	**15.80**		**$7,609.00**
PARALEGALS																
C. Buggy	0.00	0.00	0.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	$125.00	$37.50
TOTAL	**0.00**	**0.00**	**0.30**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.30**		**$37.50**
GRAND TOTAL	**18.90**	**92.80**	**34.00**	**84.40**	**78.00**	**91.00**	**0.00**	**109.70**	**67.00**	**1.00**	**0.00**	**8.80**	**15.90**	**601.50**		**$415,151.50**