UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re: SPECTRUM PHARMACEUTICALS, INC., SECURITIES LITIGATION	:	Case No. 2:13-cv-00433-LDG (CWH) Base File CLASS ACTION

DECLARATION OF JONATHAN GARDNER IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES

I, JONATHAN GARDNER, declare as follows pursuant to 28 U.S.C. §1746:

1. I am a member of Labaton Sucharow LLP ("Labaton Sucharow" or "Lead Counsel"), counsel for Lead Plaintiff Arkansas Teacher Retirement System ("Lead Plaintiff" or "ATRS") and the Settlement Class.[1] I have been actively involved in prosecuting and resolving this action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my supervision and participation in all material aspects of the action.

2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, I submit this declaration in support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds as well as Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses. Both motions have the full support of Lead Plaintiff. *See* Declaration of George Hopkins, Executive Director of Arkansas Teacher Retirement System, in Support of Final Approval of Settlement and an Award to Counsel of Attorneys' Fees and Payment of Litigation Expenses, attached hereto as Exhibit 1.[2]

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[1] References to "Settlement Class" are to the class preliminarily certified by the Court for settlement purposes only, defined as: "all persons and entities that purchased or acquired publicly traded Spectrum common stock (including through the exercise of warrants or options) and/or call options, and/or sold publicly traded Spectrum put options, during the period from August 8, 2012 through March 12, 2013, inclusive, and were allegedly damaged thereby. Excluded from the Settlement Class are: (i) the Defendants; (ii) the officers and directors of Spectrum during the Class Period; (iii) members of the immediate families of the Individual Defendants and the officers and directors of Spectrum during the Class Period; (iv) any entity in which any Defendant has or had a controlling interest; (v) the legal representatives, heirs, successors, assigns, and affiliates of any such excluded party. Also excluded from the Settlement Class will be any person who timely and validly seeks exclusion from the Settlement Class." *See* Order Granting Preliminary Approval of Class Action Settlement and Directing Notice to the Settlement Class (ECF No. 141 ¶ 2).

All capitalized terms not otherwise defined herein have the same meaning as that set forth in the Stipulation and Agreement of Settlement, dated as of November 19, 2015 (the "Stipulation", ECF No. 140-1).

[2] Citations to "Exhibit" or "Ex.___" herein refer to exhibits to this Declaration. For clarity, exhibits that themselves have attached exhibits will be referenced as "Ex. __-__." The first

I. PRELIMINARY STATEMENT: THE SIGNIFICANT RECOVERY ACHIEVED

3. This case has been vigorously litigated from its commencement in May 2014 through the execution of the Stipulation. The Settlement of $7,000,000 was achieved only after Lead Counsel, *inter alia*: (a) reviewed and analyzed publicly available information concerning Defendants, including press releases, news articles, and other public statements issued by or concerning Defendants; (b) conducted an exhaustive pre-filing investigation that included interviews of 26 former Spectrum employees and other persons with relevant knowledge (13 of whom provided information as confidential witnesses) after identifying almost 60 potential witnesses; (c) prepared and filed a detailed Consolidated Amended Class Action Complaint ("Complaint"); (d) successfully opposed Defendants' comprehensive motion to dismiss; (e) successfully opposed Defendants' motion for reconsideration of the Court's order denying Defendants' motion to dismiss; (f) participated in an expedited discovery process in connection with mediation, reviewing almost 31,000 pages of core documents produced by Defendants, including emails of the Individual Defendants; (g) engaged in thorough mediation efforts which included pre-mediation presentations by Defendants on the critical issues in the case as well as preparation of mediation briefs and a full day of mediation; and (h) conferred with an experts on damages. Having done so, Lead Counsel was in a position to fully evaluate the strengths and weaknesses of the claims of Lead Plaintiff and the Settlement Class.

4. The Complaint was brought against Spectrum and certain of its officers, Rajesh C. Shrotriya (Chief Executive Officer), Brett L. Scott (Chief Financial Officer), and Joseph Kenneth (Chief Operating Officer) (collectively, "Defendants"), for violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§78j(b), 78t(a), and Rule 10b-5

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numerical reference refers to the designation of the entire exhibit attached hereto and the second numerical reference refers to the exhibit designation within the exhibit itself.

promulgated thereunder, 17 C.F.R. §240.10b-5. Lead Plaintiff alleged that during the Class Period, Defendants made materially false and misleading statements about the prospects for sales of FUSILEV ("Fusilev"), an injectable drug that is used as part of chemotherapy treatment. In particular, the Complaint alleged that Defendants made material misstatements to the effect that: (a) despite the increasing availability of a generic version of Fusilev (leucovorin) starting in the summer of 2012, Fusilev sales and end-user demand had remained stable and supported that doctors continued to order Fusilev even knowing that generic leucovorin was available; (b) the number of accounts ordering Fusilev continued to increase during 2012 and re-order rates were also up; and (c) contrary to speculation that Spectrum was discounting Fusilev to keep physicians interested, Fusilev's sales price was actually increasing. The Complaint further alleged that as a result of Defendants' conduct, Spectrum's securities traded at artificially inflated prices during the Class Period, and that when Defendants revealed a change in ordering patterns of Fusilev, Spectrum's stock price suffered, causing damage to investors.

5. The Settlement is an excellent result for the Settlement Class and the product of hard-fought litigation and tenacious arm's-length negotiations between the Parties, facilitated by a respected and experienced mediator, Mr. Jed D. Melnick, Esq. of JAMS. The negotiations were conducted by experienced counsel with a full understanding of both the strengths and weaknesses of their respective cases.

6. The $7 million Settlement Amount is in-line with the median reported settlement amounts since the passage of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which have ranged from $5.6 million in 1996 (adjusted for inflation) to $7.3 million in 2015. *See* Svetlana Starykh and Stefan Boettrich, *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review* (NERA Jan. 2016) (attached as Exhibit 2 hereto) at 28.

7. Further, as discussed below, Lead Plaintiff also retained an expert to analyze loss causation issues and estimate potential damages. Lead Plaintiff's expert's analysis was based on a corrective disclosure made after the market closed on March 12, 2013 (*i.e.* that Fusilev sales for 2013 would be drastically lower than previously stated), which allegedly caused a statistically significant stock drop on March 13, 2013. Lead Plaintiff's damages expert has estimated aggregate damages for the Class Period in the range of approximately $80 million to $110 million, depending on assumptions regarding the number of active traders. This range also assumes 100% of the stock drop on the alleged corrective disclosure date is entirely attributable to the correction of the alleged fraud, despite Defendants' arguments that at least some, if not all, of the stock drop is attributed to non-fraudulent reasons. As such, the $7 million Settlement represents a gross recovery of approximately 6% to 9% of Lead Plaintiff's consulting expert's best case estimated damages —a very favorable recovery in light of the countervailing legal and factual arguments and litigation risks.[3] *See, e.g., In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) ($13.75 million settlement yielding 6% of potential damages was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *see also* Memorandum of Points and Authorities in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation ("Approval Brief"), §I.B.4.

8. In choosing to settle, Lead Plaintiff and Lead Counsel took into consideration the significant risks associated with advancing the claims alleged in the Complaint, as well as the duration and complexity of the legal proceedings that remained ahead. As discussed in more detail in Section VI., *infra*, there were risks that the Court would find as a matter of law that Lead

[3] As explained below, *see* Section VI.C., Defendants would argue that Lead Plaintiff's damages at most were in the range of $35 to $45 million because the Class Period should be restricted to start on December 12, 2012 or January 9, 2013. Under this assumption, the Settlement represents approximately 16% to 20% of recoverable damages.

Plaintiff's evidence in support of falsity, loss causation and/or scienter did not create a genuine issue of material fact. Further, Lead Plaintiff faced additional trial-related risks. For example, there was a substantial risk that, despite the use of testimony from respected experts, a jury might not understand the complex issues to be presented concerning the drug industry or might not accept Lead Plaintiff's arguments regarding liability of the causal relationship between Defendants' alleged corrective disclosure and the drop in price of Spectrum securities at the end of the Class Period. Issues relating to loss causation and damages would likely have come down to an inherently unpredictable and hotly disputed "battle of the experts," with Defendants' experts focusing heavily on the length of the Class Period and other confounding information. Furthermore, there was a significant risk that a jury could find that during the Class Period Defendants did not act with the required state of mind, *i.e.*, with scienter. Accordingly, in the absence of a settlement, there was a very real risk that the Settlement Class could have recovered nothing or an amount significantly less than the negotiated Settlement.

9. Lead Plaintiff and Lead Counsel carefully considered all of these issues in deciding to settle the Action for $7,000,000. On balance, considering all the circumstances and risks both sides faced if the Parties had continued to trial, both Lead Plaintiff, for itself and the Settlement Class, and Defendants concluded that settlement on the terms agreed upon was in their respective best interests.

10. Lead Counsel, and Local Counsel, The O'Mara Law Firm, P.C. (collectively, "Plaintiff's Counsel"), prosecuted this Action on a wholly contingent basis and advanced and incurred significant litigation expenses. By doing so, Lead Counsel shouldered the risk of an unfavorable result. Plaintiff's Counsel have not received any compensation for their efforts, nor have they been paid for their substantial expenses incurred to date. The complex nature and scope of the facts and law underlying the alleged securities violations resulted in the investment of more than

3,500 hours of attorney and other professional and paraprofessional time, as well as expenses of $73,439.66.

11. Lead Counsel's fee application for 25% of the Settlement Fund is fair both to the Settlement Class and to Lead Counsel, and warrants the Court's approval. This fee request is within the range of fee percentages frequently awarded in this type of action and, under the particular facts of this case, is fully justified in light of the substantial benefits that Lead Counsel conferred on the Settlement Class, the risks it undertook, the quality of its representation, the nature and extent of the legal services, and the fact that counsel pursued the case at financial risk.

II. FACTUAL BACKGROUND

A. Summary of Lead Plaintiff's Claims

12. Spectrum is a biotechnology company that focuses on oncology and hematology drugs, including Fusilev. Fusilev is essentially the purified form of a cancer drug, generic leucovorin ("leucovorin"), that has been available as a low-cost generic drug for over 50 years. Fusilev sales were catalyzed by the shortage of leucovorin, that occurred with varying intensity from late 2008 to late 2012. Complaint ¶ 6. By the end of 2012, Fusilev sales comprised over 75% of the Company's total revenue and became Spectrum's main growth driver. *Id.* ¶ 62. As the leucovorin shortage began to ease, however, beginning in the summer of 2012, Defendants allegedly embarked on a scheme to fraudulently inflate Spectrum's stock price. *See, e.g., id.* ¶¶ 90-107.

13. Lead Plaintiff alleged that Defendants falsely reassured the market – at numerous investor conferences throughout the fall of 2102, in addition to the Company's quarterly calls – that Fusilev would continue to succeed and grow. In particular, Lead Plaintiff alleged that Defendants made false and misleading statements that: (a) despite the increasing availability of leucovorin starting in the summer of 2012, Fusilev sales and end-user demand had remained stable and doctors continued to order Fusilev even knowing that generic leucovorin was available; (b) the number of

accounts ordering Fusilev continued to increase during 2012 and re-order rates were also up; and (c) contrary to speculation that Spectrum was discounting Fusilev to keep physicians interested, Fusilev sales price was actually increasing. *See, e.g., id* ¶ 8.

14. Lead Plaintiff further alleged that at the same time Defendants were falsely assuring investors that Fusilev sales would not plummet with the re-emergence of leucovorin, internal pharmaceutical sales data available to Defendants showed that Fusilev sales were beginning to slide as early as 2Q-3Q 2012. Additionally, as end-user demand dried up, and because Defendants had overloaded distributor and clinic inventories with their bulk discounts, inventories backed up. Defendants' alleged fraudulent behavior was finally revealed when Spectrum issued a press release after the market closed on March 12, 2013, in which Defendants acknowledged that Spectrum anticipated a change in ordering patterns of Fusilev. The press release gave drastically reduced revenue estimates and, in response, Spectrum's' stock price plummeted over 37% in a single day on unusually heavy trading volume. *Id*. ¶¶ 15, 19-20.

III. PROCEDURAL HISTORY

15. In March 2013, five securities class action complaints were filed against Defendants, alleging violations of the federal securities laws. The first complaint was filed on March 14, 2013. ECF No. 1.

A. Appointment of Lead Plaintiff and Lead Counsel

16. Pursuant to Section 21D(a)(3) of the Exchange Act, 15 U.S.C. §78u-4(a)(3), as amended by PSLRA, on May 13, 2013, ATRS moved for appointment as lead plaintiff and further moved the Court to appoint Labaton Sucharow as lead counsel. ECF No. 41. Eight other movants also filed on May 13, 2013 for appointment as lead plaintiff along with their respective chosen counsel. *See* ECF Nos. 21, 23, 26, 27, 33, 36, 37 and 38. Five of those movants subsequently withdrew or expressed that they did not have the largest financial interest. On March 20, 2014, the

Court appointed ATRS as Lead Plaintiff and approved its selection of Labaton Sucharow as Lead Counsel. ECF No. 96.[4]

B. The Consolidated Amended Class Action Complaint

17. On May 20, 2014, after Lead Counsel conducted a well-developed and extensive pre-filing factual investigation, Lead Plaintiff filed the Complaint. *See* ECF No. 103. The Complaint was the result of a significant effort by Lead Counsel that included, among other things: (a) review and analysis of documents filed by Spectrum with the U.S. Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases, news articles, and other public statements issued by or concerning Spectrum; and (c) review and analysis of research reports issued by financial analysts concerning Spectrum's securities and business. The investigation also included Lead Counsel's in-house investigators interviews of 26 former Spectrum employees and other persons with relevant knowledge, after locating almost 60 potential witnesses, the accounts of 13 of whom were included in the Complaint as confidential witness accounts. Additionally, in its effort to prepare the Complaint, Lead Counsel consulted with an expert on damages.

18. As noted above, the Complaint asserted claims under §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder, and named Spectrum, Rajesh C. Shrotriya, Brett L. Scott, and Joseph Kenneth as Defendants. The Complaint alleged that Defendants knowingly or recklessly made false and misleading statements and concealed material facts regarding the prospects for Fusilev sales. The Complaint alleged that as a result of Defendants' conduct, Spectrum's securities traded at artificially inflated prices during the Class Period, and that when Defendants revealed that Spectrum anticipated a change in ordering patterns of Fusilev, Spectrum's stock price suffered, causing damage to investors.

[4] The Court previously entered orders consolidating the actions. *See* ECF Nos. 16 and 50.

C. Defendants' Motion to Dismiss the Complaint

19. On July 20, 2014, Defendants moved to dismiss the Complaint. ECF No. 108. Defendants' memoranda of law accompanying their motion spanned over 50 pages, citing dozens of cases and raising numerous legal issues and sub-issues aimed at undermining Lead Plaintiff's claims and allegations. Defendants argued that: (a) Lead Plaintiff failed to allege any false or misleading statements because, *inter alia*, (i) Lead Plaintiff failed to specify which statements were allegedly false or misleading; (ii) Defendants' statements are protected by the PSLRA safe harbor provision; and (iii) Defendants' statements are inactionable puffery; (b) Lead Plaintiff failed to adequately allege scienter because (i) Lead Plaintiff failed to allege direct knowledge of falsity including failing to allege that the Individual Defendants had knowledge of a decline in end-user demand; (ii) Lead Plaintiff failed to allege recklessness; and (iii) Lead Plaintiff's allegations of Defendant Shrotriya's stock sales are not sufficient to raise a strong inference of scienter; and (c) Lead Plaintiff failed to allege loss causation. They also argued that Lead Plaintiff failed to establish scheme liability under §§10b-5(a) and 10b-5(c) as well as control-person liability under §20(a).

20. On September 19, 2014, Lead Plaintiff filed an opposition to Defendants' motion. ECF No. 114. Lead Plaintiff's comprehensive brief argued that the Complaint adequately stated a claim for relief under the applicable statutes. Lead Plaintiff argued, *inter alia*, that: (a) the Complaint identifies the material misstatements and omissions with the requisite particularity; and (b) the Complaint sufficiently pleads falsity in that, *inter alia*, Defendants' statements were not protected by the statutory safe harbor and were not puffery. Lead Plaintiff also alleged that the Complaint raised a strong inference of scienter given that: (a) Fusilev comprised over 75% of Spectrum's total revenue and was Spectrum's main product and only growth driver; and (b) Shrotriya's sales were highly unusual during the Class Period selling 735,993 shares of his Spectrum stock during the Class Period for net proceeds of almost $7 million, compared with no sales or

proceeds in the time periods before or after the Class Period. Additionally, Lead Plaintiff alleged that the Complaint sufficiently alleged loss causation given the stock drop immediately following the March 12, 2013 announcement that Fusilev sales would be drastically lower than previously stated due to the re-emergence of leucovorin.

21. On October 17, 2014, Defendants filed a reply brief in further support of their motion to dismiss. ECF No. 115.

D. The Court Denies Defendants' Motion to Dismiss the Complaint

22. On March 26, 2015, the Court issued an Order denying Defendants' motion in its entirety. ECF No. 117. The Court concluded that: (a) Lead Plaintiff adequately identified specific statements alleged to be false and misleading; (b) Defendants had not established that their forward-looking statements were accompanied by meaningful cautionary language; (c) Lead Plaintiff had adequately alleged that Defendants made statements that required further disclosure so that such statements would not be misleading; and (d) Lead Plaintiff stated facts giving rise to a strong inference of scienter, considering the "importance of Fusilev's sales to Spectrum's business; that the defendants had access to sources of information allowing them to ascertain that the Fusilev end-user demand was declining as generic leucovorin became more readily available; and that the actual, and negative impact, was noticed by Spectrum employees." Order at 7. The Court also noted that Lead Plaintiff alleged facts showing that Defendant Shrotriya, "in defending his assertion that end-user demand was stable, prefaced such assertion by stating '[w]hat we watch and monitor very closely is underlying end-user demand.'" *Id.* The Court stated that "having sufficiently alleged that monitoring end-user demand would have revealed the decline of end-user demand, the allegation permits an inference of scienter." *Id.* Additionally, the Court found that "Shrotriay's sale of stocks during the Class Period (in contrast to his lack of transactions in comparable periods before and after) also raise an inference of scienter." *Id.*

23. The Court also found that Lead Plaintiff adequately alleged loss causation, noting the significant drop in stock price immediately following Defendants' March 12, 2013 announcement that Fusilev sales would significantly drop in response to the increased availability of leucovorin in the market. *Id*.

E. Defendants' Motion for Reconsideration of the Court's March 26, 2015 Order Denying Defendants' Motion to Dismiss

24. On April 10, 2015, Defendants requested that the Court reconsider its March 26, 2015 Order denying their motion to dismiss. ECF No. 118. Defendants argued that reconsideration is warranted because the Court: (a) wrongly applied Rule 8 instead of Rule 9 in evaluating the Complaint's allegations; (b) treated conclusory assertions of a decline in end-user demand as equivalent to an allegation of facts constituting a material decline in end-user demand; (c) relied on a "core operations" inference to conclude that the Complaint adequately alleges that Defendants knew about a material decline in end-user demand and misapplied settled law regarding the inferences available from Defendant Shrotriya's alleged stock sales; (d) failed to apply Ninth Circuit standards for evaluating the Complaint's loss causation allegations; (e) misapplied the safe harbor provision of the PSLRA; and (f) failed to address Defendants' arguments that many of the alleged misstatements were broad statements of corporate optimism protected under the puffery doctrine.

25. On April 24, 2015, Lead Plaintiff filed its opposition to Defendants' motion for reconsideration (ECF No. 121), arguing, among other things, that Defendants failed to meet the standard of "clear error" required on a motion for reconsideration, instead making an impermissible re-argument of their motion to dismiss.

26. On May 1, 2015, Defendants submitted their reply to Lead Plaintiff's opposition. ECF No. 122.

27. On May 11, 2015, the Court denied Defendants' motion for reconsideration. ECF No. 124.

28. On May 26, 2015, Defendants filed their Answer to the Complaint, denying the Complaint's substantive allegations and raising twenty-seven affirmative defenses. ECF No. 125.

IV. SETTLEMENT NEGOTIATIONS

A. The Action is Stayed Pending Mediation

29. On June 4, 2015, the Parties filed a joint stipulation and proposed order to stay all proceedings pending the outcome of mediated settlement discussions. ECF No. 128. On June 15, 2015, the Court issued an Order granting the joint stipulation and staying all proceedings. ECF No. 130.

B. Document Production in Connection with the Mediation

30. In accordance with the June 15, 2015 Order, the Parties agreed to participate in a mediation scheduled for August 10, 2015 to be preceded by a targeted document production concerning the core issues in dispute in the matter.

31. Defendants produced 12,750 documents (almost 31,000 pages) to Lead Plaintiff. This production included the following types of documents, among others: (a) inventory and sales reports for Fusilev; (b) internal emails between Spectrum executives regarding Fusilev sales updates, sales data, and forecasts, among other topics; (c) presentations showing doctors' insights regarding the use of leucovorin; (d) distribution agreements showing the supply and rebates that the Company offered to health care providers; and (e) invoices of drugs shipped to health care providers and/or that were held in distribution centers.

32. To perform an initial review of Defendants' document production, a focused team of attorneys was assembled by Lead Counsel. The attorneys working on the review possessed considerable experience reviewing documents in complex securities cases, and focused on reviewing

Defendants' document production for the purpose of preparing for the mediation and gathering evidence to prove Lead Plaintiff's allegations. The documents were then reviewed by more senior level attorneys. The attorneys performing this document review were instrumental in uncovering documents that could be used to advance Lead Plaintiff's case during mediation and thereby helped to achieve the successful result: securing a settlement of $7,000,000 on behalf of the Settlement Class.

C. Mediation

33. Defendants and Lead Plaintiff engaged Mr. Jed D. Melnick, Esq. of JAMS, a well-respected and highly experienced mediator, to assist them in a potential negotiated resolution of the claims in the Action. On August 10, 2015, Lead Plaintiff and Lead Counsel, Defendants and Defendants' Counsel, and certain of Defendants' insurers met with Mr. Melnick in an attempt to reach a settlement. In connection with the mediation session, the Parties exchanged detailed mediation materials setting forth their respective positions on the strengths and weaknesses of the claims and defenses. Lead Plaintiff's mediation statement included 38 exhibits, many of which were documents produced by Defendants in connection with the mediation.

34. The Parties were not able to reach a resolution at the August 10, 2015 mediation session. However, after the mediation, with the assistance of Mr. Melnick, the Parties continued to engage in productive settlement discussions and ultimately accepted a mediator's proposal concerning a settlement on September 27, 2015.

35. Following the Parties' agreement to settle, they engaged in further extensive negotiations concerning the terms of the Stipulation, which was executed by the Parties on November 19, 2015 and filed with the Court on November 20, 2015. ECF No. 140-1.

36. On November 20, 2015, Lead Plaintiff also moved for preliminary approval of the Settlement which the Court granted by Order entered January 27, 2016. ECF No. 141.

V. LEAD PLAINTIFF'S COMPLIANCE WITH PRELIMINARY APPROVAL ORDER AND REACTION OF THE SETTLEMENT CLASS TO DATE

37. Pursuant to the Preliminary Approval Order, the Court appointed Analytics Consulting LLC ("Analytics") as Claims Administrator in the Action and instructed Analytics to disseminate copies of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses and Proof of Claim (collectively "Notice Packet") by mail and to publish the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses.

38. The Notice, attached as Exhibit A to the Declaration of Christopher Amon Re: Notice Dissemination and Publication ("Mailing Decl." or "Mailing Declaration") (attached as Exhibit 3 hereto), provides potential Settlement Class Members with information on the terms of the Settlement and, among other things: their right to exclude themselves from the Settlement Class; their right to object to any aspect of the Settlement, the Plan of Allocation, or the fee and expense application; and the manner for submitting a Claim Form in order to be eligible for a payment from the net proceeds of the Settlement. The Notice also informs Settlement Class Members of Lead Counsel's intention to apply for an award of attorneys' fees of no more than 25% of the Settlement Fund and for payment of litigation expenses in an amount not to exceed $125,000.

39. As detailed in the Mailing Declaration, on February 10, 2016, Analytics began mailing Notice Packets to potential Settlement Class Members as well as banks, brokerage firms, and other third party nominees whose clients may be Settlement Class Members. Mailing Decl. ¶¶ 3-7. In total, to date, Analytics has mailed 15,360 Notice Packets to potential nominees and Settlement Class Members by first-class mail, postage prepaid. *Id.* ¶ 8. To disseminate the Notice, Analytics obtained the names and addresses of potential Settlement Class Members from listings provided by Spectrum and its transfer agent and from banks, brokers and other nominees. *Id.* ¶¶ 3-7.

40. On February 19, 2016, Analytics caused the Summary Notice to be published in *Investor's Business Daily* and to be transmitted over *PR Newswire*. *Id.* ¶ 9, and Exhibits B and C thereto.

41. Analytics also maintains and posts information regarding the Settlement on a dedicated website established for the Action, www.spectrumsecuritiessettlement.com, to provide Settlement Class Members with information concerning the Settlement, as well as downloadable copies of the Notice Packet and the Stipulation. *Id*. ¶ 11. In addition, Lead Counsel has made relevant documents concerning the Settlement available on its firm website.

42. Pursuant to the terms of the Preliminary Approval Order, the deadline for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, or the fee and expense application, or to request exclusion from the Settlement Class is May 23, 2016. To date, Lead Counsel has not received any objections and the Claims Administrator has not received any requests for exclusion from the Settlement Class. *Id*. ¶¶ 12-13. Should any objections or requests for exclusion be received, Lead Plaintiff will address them in their reply papers, which are due June 6, 2016.

VI. RISKS FACED BY LEAD PLAINTIFF IN THE ACTION

43. Based on publicly available documents, information and internal documents obtained through their own investigation and from Defendants, and their discussions with consultants and experts, Lead Counsel believes that the Settlement is fair, reasonable, and adequate. Lead Counsel also realizes, however, that Lead Plaintiff faced considerable risks and obstacles to achieving a greater recovery, were the case to continue. Lead Plaintiff and Lead Counsel carefully considered these challenges during the months leading up to the Settlement and during the settlement discussions with Defendants.

A. Risks of Proving that Defendants Made False Statements

44. In order for Lead Plaintiff to prevail on its Exchange Act claims, it would first have to establish that Defendants made actionable false or misleading statements or material omissions. Throughout the course of the litigation Defendants argued, and would likely raise at summary judgment and trial, that Lead Plaintiff cannot prove actionable misstatements or omissions. Principally, Defendants would likely assert that they did not make misleading statements regarding the state of the Fusilev business on the ground that Fusilev end-user demand remained strong during the Class Period. Defendants would point to data that purportedly indicated continued strength in Fusilev end-user demand through at least January 2013, even in the face of the growing supply of leucovorin. For example, Defendants would likely rely on data from IMS Health, a provider of data to subscribers regarding pharmaceutical sales, purportedly showing that there was no slide in end-user demand of Fusilev during 2Q-3Q 2012. In particular, Defendants may introduce evidence on end-user sales for Fusilev, leucovorin, and the folate analog market as a whole from Q4 2011 into Q1 2013 showing that Fusilev end-user purchases continued to rise in each successive period before leveling off after reaching an all-time high at the end of Q3 2012.

45. Lead Plaintiff would point to contrary evidence showing that, from at least October 2012, the total number of end-user accounts ordering Fusilev was declining month over month. In particular, they would rely on internal reports that purportedly showed declining unit sales to end-user accounts from 2Q12 to 3Q12, and continuing through 4Q12 until the end of the Class Period. Lead Plaintiff would also rely on documents allegedly supporting their contention that Spectrum regularly discounted Fusilev purchases by its distributors, executing distributor agreements concerning bulk purchases at quarter-end, regardless of underlying end-user demand, to counter the alleged decrease in demand. Lead Plaintiff would argue that as a result of these distributor

agreements, distributors made most of their purchases at quarter-end, resulting in a spike of sales in the last month of each quarter.

46. Defendants would also likely assert that even if data on Fusilev end-user sales could be read as showing a drop in end-user demand, this data was available to the market and discussed by market participants, thereby rendering any statements on the issue immaterial. Defendants would argue that short sellers were betting heavily against the Company and that this short selling activity mirrored the negative sentiment of certain stock analysts who, after reviewing the same end-user data, believed that Fusilev sales would not continue to grow and that Spectrum's stock price would fall. Defendants would assert that analysts and investors had access to the same industry data and reports as Spectrum.

47. While Lead Plaintiff believes it could amass sufficient evidence to prove that Defendants made materially false and misleading statements and omissions regarding these issues, if the Court or a jury were to accept Defendants' arguments, the Settlement Class would recover nothing.

B. Risks of Proving Defendants' Scienter

48. There was also a risk that at trial Lead Plaintiff would not be able to prove scienter, *i.e.*, that Defendants acted with knowledge of or with recklessness as to the alleged falsity of their statements and omissions. A defendant's state of mind in a securities case is often the most difficult element of proof and one which is rarely supported by direct evidence or an admission.

49. Defendants would have argued that Lead Plaintiff could not prove scienter because Defendants would show that they sincerely and reasonably believed that Fusilev demand was not being displaced by leucovorin. Defendants would likely argue that their optimism in the prospects for Fusilev were well-grounded and based on a number facts. First, they may have argued, using expert witnesses, that there are clinical advantages to using Fusilev given that Fusilev was purer in

form than leucovorin – it contains only the pharmacologically active isomer while leucovorin contains two isomers, the pharmacologically active levo-isomer and the inactive dextro-isomer. Defendants may also have developed evidence supporting the argument that doctors were not likely to switch patients from Fusilev to leucovorin if patients were responsive to Fusilev, given the poor health of such patients and the difficulties and risks of switching them to a new drug that might not be tolerated. Lastly, Defendants may also have argued that in addition to medical benefits to patients, Fusilev brought financial benefits to doctors who sold the drug to patients, given that a vial of Fusilev sold for about $150 while leucovorin sold for about $40. Physicians made more money by prescribing and providing Fusilev. Defendants, therefore, would argue that they reasonably believed that these financial incentives would contribute to doctors prescribing Fusilev over leucovorin, even if leucovorin reappeared.

50. Given these arguments, Defendants may have made a persuasive factual showing that they had a good faith belief that Fusilev would continue to grow. The state of the law on such issues is also very complex and evolving. Accordingly, there were very difficult factual and legal challenges for Lead Plaintiff to overcome in connection with proving scienter. How a jury would interpret and apply these facts to the law was uncertain.

C. Risks in Proving Loss Causation and Damages

51. Defendants would have vigorously challenged Lead Plaintiff's ability to establish loss causation and damages, key elements of Lead Plaintiff's claims.

52. In moving to dismiss the Complaint, Defendants argued that Lead Plaintiff failed to allege facts indicating that the market understood the March 12, 2013 press release to be a revelation of any purported fraud. To the contrary, Defendants argued that the press release merely disclosed a change in Spectrum's 2013 forward guidance from prior guidance based on communications with distributors concerning ordering patterns, and therefore the reason for the stop drop is the market's

reaction to the change in guidance and the Company's lowered expectations, not any revelation of fraud. Although the Court disagreed with Defendants argument and found Lead Plaintiff alleged loss causation, there is no doubt that Defendants would continue to maintain at summary judgment and at trial that the disclosure said nothing about end-user demand and therefore did not reveal any fraud.

53. Regarding damages, Defendants would likely have asserted, that, *inter alia*, because Lead Plaintiff's fraud theory is based on an undisclosed material decline in end-user demand at the time of the alleged misstatements, Lead Plaintiff's damages calculation must be based on a class period that begins *during* a material decline in end-user demand. Defendants would argue that the first seven weeks of the Class Period saw end-user demand climb to an all-time high, therefore, the Class Period begins too early. According to Defendants, the Class Period should begin on the first-alleged misstatement occurring after the first date on which a material declining trend in end-user demand can be identified. Therefore, Defendants would likely assert that the Class Period should begin either on December 12, 2012 or January 9, 2013 (the first alleged misstatements after the dips in demand on November 23, 2012 or December 28, 2012, respectively).

54. Under Defendants' argument, if the Class Period were adjusted to begin on December 12, 2012 or January 9, 2013, then total estimated damages, assuming liability could be established, would be in the range of just approximately $35 to $45 million.

55. Lead Plaintiff retained a reliable and experienced damages expert with whom Lead Counsel consulted extensively. As noted above, Lead Plaintiff's expert estimated that the Settlement Class sustained maximum aggregate damages between $80 million and $110 million assuming the entire class period is implicated and 100% of the stock drop on the alleged corrective disclosure date is entirely attributable to the correction of the alleged fraud. However, if the Court (at summary

judgment) or the jury (at trial) were to agree with Defendants, a shortening of the Class Period would materially reduce Lead Plaintiff's alleged damages.

56. Proof of loss causation and the technical aspects of damages would have required significant expert testimony and analysis, as well as fact-intensive evidence. Because establishing these elements would involve a "battle of experts," as well has highly complex medical and financial issues for the jury to sift through and weigh, the outcome of summary judgment and trial was and remains impossible to predict.

D. Risks in Proceeding to Summary Judgment and Trial

57. In order for the Settlement Class to ultimately prevail on its claims, it would first have to survive Defendants' motion – or motions – for summary judgment. Summary judgment would pose a number of risks for the Settlement Class. Lead Plaintiff would have to demonstrate to the Court based on the evidentiary record and testimony adduced that a genuine issue of material fact existed with regard to each element of its securities claims. Defendants would undoubtedly bolster their motion for summary judgment with any exculpatory evidence that arose during merits discovery. Here, there were real risks at the summary judgment stage that the Court could have determined as a matter of law that: the alleged misstatements were not false; that the Class Period should be compressed; and/or that loss causation could not be established.

58. In terms of proceeding to trial, Lead Plaintiff faced weighty evidentiary risks. For example, there were the typical risks that documents produced by Defendants and the testimony of current and former Spectrum employees, including Defendants, could significantly undermine the Complaint's allegations, particularly with respect to falsity and scienter, or would not ultimately be viewed by the Court or jury as sufficient to satisfy every element of Lead Plaintiff's claims. In addition, given the complexity and variety of the facts that the jury would be presented with, and the

likely presentation by numerous credible medical experts, there were significant risks of jury confusion that would render them incapable of reaching a verdict for plaintiffs.

E. Risks Concerning Appeals

59. Even if Lead Plaintiff prevailed on liability on any or all of its claims and was awarded some or all of its damages, there was a high likelihood that Defendants would appeal the verdict and award. The appeals process would likely span several years, during which time the Settlement Class would receive no distribution on any damage award. In addition, an appeal would carry with it the risk of reversal, in which case the Settlement Class would receive no recovery despite having prevailed on the claims at trial.

60. In summary, there are multiple procedural hurdles, as well as significant merit-based risks involved in proceeding with the Action, each of which was carefully considered by Lead Counsel and Lead Plaintiff in making the determination to settle with Defendants on the agreed terms.

F. Risks Concerning Maintaining Class Certification Through Trial

61. At the time of settlement, Lead Plaintiff had not yet moved for class certification. While Lead Plaintiff believes it would prevail in a contested class certification proceeding, given *Halliburton Co. v. Erica P. John Fund Inc.*, 134 S. Ct. 2398 (2014), Defendants would likely have tenaciously argued and presented expert testimony seeking to demonstrate a lack of price impact on Spectrum's securities' prices on relevant days during the Class Period. This would have resulted in a protracted battle of experts, which may have identified issues that would have to be deferred to the merits stage. Accordingly, even if Lead Plaintiff prevailed at the class certification stage, Defendants would likely have continued to challenge the efficiency of the market for Spectrum's securities, as well as the presumption of reliance through all subsequent stages and before the jury. Decertification after trial also remained a significant risk.

VII. THE PLAN OF ALLOCATION

62. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Settlement Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a valid Claim Form, including all required information, postmarked no later than June 9, 2016. As provided in the Notice, after deduction of Court-awarded attorneys' fees and expenses, Notice and Administration Expenses, and all applicable Taxes, the balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the plan of allocation approved by the Court (the "Plan of Allocation").

63. The proposed Plan of Allocation, which is set forth in full in the Notice (Ex. 3–A at 11-15), was 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. Lead Counsel developed the Plan of Allocation in close consultation with Lead Plaintiff's consulting damages expert and believes that the plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

64. The Plan of Allocation provides for distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on "Recognized Loss" formulas tied to liability and damages. These formulas consider the amount of alleged artificial inflation in the prices of Spectrum publicly traded common stock and/or call options (or deflation in the prices of put options), as quantified by Lead Plaintiff's expert. Lead Plaintiff's consulting damages expert analyzed the movement in the prices of Spectrum securities and took into account the portion of the price drops allegedly attributable to the alleged fraud.

65. Analytics, under Lead Counsel's direction, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Loss compared to the aggregate Recognized Losses of all Authorized Claimants.

Calculation of Recognized Loss will depend upon several factors, including the type of Spectrum security purchased, when the claimants purchased the securities, whether the securities were sold during the Class Period, and if so, when.[5]

66. In sum, the proposed Plan of Allocation, developed in consultation with Lead Plaintiff's consulting damages expert, was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants. Accordingly, Lead Counsel respectfully submits that the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved.

VIII. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES IS REASONABLE

A. Consideration of Relevant Factors Justify an Award of a 25% Fee in This Case

67. For its diligent efforts on behalf of the Settlement Class, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis. As explained in the Memorandum of Points and Authorities in Support of Lead Counsels' Motion for an Award of Attorneys' Fees and Payment of Expenses ("Fee Brief"), courts within the Ninth Circuit recognize that the percentage method is the appropriate method of fee recovery and the prevailing method of determining attorneys' fees in the Ninth Circuit.

68. Consistent with the Notice to the Settlement Class, Lead Counsel seeks a fee award of 25% of the Settlement Fund. Lead Counsel also requests payment of expenses incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of $73,439.66 plus accrued interest at the same rate as is earned by the Settlement Fund. Lead Counsel submits

[5] After the claims administration process is complete and rejected claimants have been given an opportunity to contest the determination of their claims, Lead Plaintiff will file a motion seeking the Court's approval of the Claims Administrator's findings and authority to distribute the Net Settlement Fund. *See* Stipulation ¶ 23. Pursuant to the Stipulation, the Claims Administrator will continue to distribute the Net Settlement Fund to Authorized Claimants until it is no longer economically feasible to do so. *Id.* ¶ 27. At that point, Lead Plaintiff will seek the Court's approval to donate the remainder to an appropriate non-profit organization. *Id.*

that, for the reasons discussed below and in the accompanying Fee Brief, such awards would be reasonable and appropriate under the circumstances before the Court.

1. Lead Plaintiff Supports the Fee and Expense Application

69. Lead Plaintiff ATRS is an institutional investor that provides government-sponsored, retirement, disability, and survivor benefits to the thousands of current and former employees of the Arkansas education community, and manages more than $14 billion in assets held in trust. Ex. 1 ¶ 1.

70. Lead Plaintiff has evaluated and fully supports the Fee and Expense Application. *Id.* ¶¶ 2, 6. In coming to this conclusion, Lead Plaintiff—which was substantially involved in the prosecution of the Action and negotiation of the Settlement—considered the recovery obtained as well as Lead Counsel's substantial effort in obtaining the recovery. Particularly in light of the considerable risks of litigation, ATRS agreed to allow Lead Counsel to apply for 25% of the Settlement Fund. *Id.* ¶ 6. ATRS takes its role as Lead Plaintiff seriously to ensure that Lead Counsel's fee request is fair in light of work performed and the result achieved for the Settlement Class. *Id.* ¶¶ 3-4, 6.

2. The Favorable Settlement Achieved

71. Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *See* Fee Brief, §I.D.1. Here, the $7,000,000 Settlement is a very good result, particularly when considered in view of the substantial risks and obstacles to recovery if the Action was to continue through summary judgment, to trial, and through likely post-trial motions and appeals.

72. As discussed above, Lead Plaintiff's expert has estimated that the Settlement Class sustained maximum damages in the range of approximately $80 million to $110 million, assuming that liability and loss causation were proven. Against this yardstick, the Settlement will compensate Settlement Class Members for approximately 6% to 9% of their estimated maximum losses.

Defendants argued that the Settlement Class sustained maximum damages in the range of approximately $35 to $45 million, assuming that liability and loss causation were proven; measured against this damages figure, the Settlement represents 16% to 20% of estimated damages. As discussed above, and in the Approval Brief, Section I.B.4., the Settlement secures a very favorable recovery for the Settlement Class.

73. This recovery was the result of very thorough and creative prosecutorial and investigative efforts, contentious and complicated motion practice, and arduous settlement negotiations. As a result of this Settlement, thousands of Settlement Class Members will benefit and receive compensation for their losses and avoid the very substantial risk of no recovery in the absence of a settlement.

3. The Risks and Unique Complexities of Contingent Class Action Litigation

74. This Action presented substantial challenges from the outset of the case. The specific risks Lead Plaintiff faced in proving Defendants' liability and damages are detailed in paragraphs 44 to 56, above. These case-specific risks are in addition to the more typical risks accompanying securities class action litigation, such as the fact that this Action is governed by stringent PSLRA requirements and case law interpreting the federal securities laws and was undertaken on a contingent basis.

75. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. With an average lag time of several years for 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, Plaintiff's Counsel received no compensation during the course of the Action but have incurred 3,528.90 hours of time for a total lodestar of $2,088,443.00 and have incurred $73,439.66 in expenses in prosecuting the Action for the benefit of the Settlement Class. *See* §§ VII.A.4. and VII.B., *infra*.

76. Lead 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.

77. Lead Counsel know from experience that the commencement of a 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 convince sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

78. Lead Counsel is aware of many hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, or changes in the law during the pendency of the case, or a decision of a competent judge or jury following a trial on the merits, excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel.

79. Federal appellate reports are filled with opinions affirming dismissals with prejudice in securities cases. The many appellate decisions affirming summary judgments and directed verdicts for defendants show that surviving a motion to dismiss is not a guarantee of recovery. *See, e.g.*, *Oracle Corp., Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010); *In re Silicon Graphics Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. Scientific-Atlanta, Inc.*, 489 F. App'x. 339 (11th Cir. 2012); *In re Smith & Wesson Holding Corp. Sec. Litig*, 669 F.3d 68 (1st Cir. 2012); *McCabe v. Ernst &*

Young, LLP, 494 F.3d 418 (3d Cir. 2007); *In re Digi Int'l Inc. Sec. Litig*., 14 F. App'x. 714 (8th Cir. 2001); *Geffon v. Micrion Corp*., 249 F.3d 29 (1st Cir. 2001).

80. Successfully opposing a motion for summary judgment is also not a guarantee that plaintiffs will prevail at trial. Indeed, while only a few securities class actions have been tried before a jury, several have been lost in their entirety, such as *In re JDS Uniphase Securities Litigation*, Case No. C-02-1486 CW (EDL), slip op. (N.D. Cal. Nov. 27, 2007), litigated by Lead Counsel, or substantially lost as to the main case, such as *In re Clarent Corp. Securities Litigation*, Case No. C-01-3361 CRB, slip op. (N.D. Cal. Feb. 16, 2005).

81. Even plaintiffs who succeed at trial may find their verdict overturned on appeal. *See, e.g., Glickenhaus & Co., et al. v. Household Int'l, Inc., et al*., 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S.Ct. 2296 (2011)); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc*., 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation). And, the path to maintaining a favorable jury verdict can be arduous and time consuming. *See, e.g., In re Apollo Grp., Inc. Sec. Litig.*, Case No. CV-04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court tossing unanimous verdict for plaintiffs, which was later reinstated by the Ninth Circuit Court of Appeals (2010 WL 5927988 (9th Cir. June 23, 2010)) and judgment re-entered (*id*.) after denial by the Supreme Court of the United States of defendants' Petition for Writ of Certiorari (*Apollo Grp. Inc. v. Police Annuity and Benefit Fund*, 562 U.S. 1270 (2011)).

82. Losses such as those described above are exceedingly expensive for plaintiff's counsel to bear. The fees that are awarded in successful cases are used to cover enormous overhead expenses incurred during the course of litigations and are taxed by federal, state, and local authorities.

83. Courts have repeatedly held that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. Vigorous private enforcement of the federal securities laws and state corporation laws can only occur if private plaintiffs can obtain some semblance of parity in representation with that available to large corporate defendants. If this important public policy is to be carried out, courts should award fees that will adequately compensate private plaintiffs' counsel, taking into account the enormous risks undertaken with a clear view of the economics of a securities class action. *See* Fee Brief, §I.D.4. fn 4.

84. As discussed in greater detail above, this case was fraught with significant risk factors concerning liability and damages. Lead Plaintiff's success was by no means assured. Defendants disputed whether Lead Plaintiff could establish each element of liability and would no doubt contend, as the case proceeded to trial, that even if liability existed, the amount of damages was substantially lower than Lead Plaintiff alleged. Were this Settlement not achieved, and even if Lead Plaintiff prevailed at trial, Lead Plaintiff and Lead Counsel faced potentially years of costly and risky appellate litigation against Defendants, with ultimate success far from certain and the prospect of no recovery significant. It is also possible that a jury could have found no liability or no damages. Lead Counsel therefore respectfully submits that based upon the considerable risk factors present, this case involved a very substantial contingency risk to counsel.

4. The Work of Lead Counsel and the Lodestar Cross-Check

85. The work undertaken by Lead Counsel in investigating and prosecuting this case and arriving at the present Settlement in the face of serious hurdles has been time-consuming and challenging. As more fully set forth above, the Action was prosecuted for just shy of three years and settled only after Lead Counsel overcame multiple legal and factual challenges. Among other efforts, Lead Counsel conducted a comprehensive investigation into the class's claims; researched and prepared a detailed Complaint; briefed a thorough opposition to Defendants' motion to dismiss and motion for reconsideration; obtained and reviewed, almost 31,000 pages of core documents from Defendants in connection with the mediation; consulted with an expert on loss causation and damages; and engaged in a hard-fought settlement process with experienced defense counsel.

86. At all times throughout the pendency of the Action, Lead Counsel's efforts were driven and focused on advancing the litigation to bring about the most successful outcome for the Settlement Class, whether through settlement or trial, by the most efficient means necessary.

87. Attached hereto are declarations from Plaintiff's Counsel, which are submitted in support of the request for an award of attorneys' fees and payment of litigation expenses. *See* Declaration of Jonathan Gardner on Behalf of Labaton Sucharow LLP in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses (attached as Exhibit 4 hereto) and the Declaration of David C. O'Mara on Behalf of The O'Mara Law Firm in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses (attached as Exhibit 5 hereto).

88. Included with these declarations are schedules that summarize the time of each firm, as well as the expenses incurred by category (the "Fee and Expense Schedules").[6] The attached declarations and the Fee and Expense Schedules (Exhibits A and B to the declaration submitted on behalf of Labaton Sucharow and paragraphs 3 and 5 of the declaration submitted on behalf of The O'Mara Law Firm), report the amount of time spent by each attorney and professional support staff employed by Plaintiff's Counsel and the "lodestar" calculations, *i.e.*, their hours multiplied by their billing rates. As explained in each declaration, they were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which are available at the request of the Court.

89. The hourly billing rates of Plaintiff's Counsel here range from $375 to $950 for partners, $710 to $ 775 for of counsels, and $335 to $725 for other attorneys. *See* Ex. 4–A and Ex. 5 ¶ 3. It is respectfully submitted that the hourly rates for attorneys and professional support staff included in these schedules are reasonable and customary. Exhibit 7, attached hereto, is a table of billing rates for defense firms compiled by Labaton Sucharow from fee applications submitted by such firms nationwide in bankruptcy proceedings in 2015. The analysis shows that across all types of attorneys, Plaintiff's Counsel's rates here are consistent with, or lower than, the firms surveyed.

90. Plaintiff's Counsel have collectively expended more than 3,500 hours in the prosecution and investigation of the Action. *See* Ex. 6. The resulting collective lodestar is $2,088,443.00. *Id*. Pursuant to a lodestar "cross-check," applied within the Ninth Circuit, the requested fee of 25% of the Settlement Fund ($1,750,000) results in a *negative* "multiplier" of .84 on the lodestar, which does not include any time that will necessarily be spent from this date forward administering the Settlement, preparing for and attending the Settlement Hearing, assisting class

[6] Attached hereto as Exhibit 6 is a summary table of the lodestars and expenses of Plaintiff's Counsel.

members, and moving for a distribution order. Accordingly, Plaintiff's Counsel are seeking approximately 84% of their legal fees.

5. The Skill Required and Quality of the Work

91. Lead Counsel Labaton Sucharow is among the most experienced and skilled securities litigation law firms in the field. The expertise and experience of its attorneys involved in this litigation are described in Exhibit 4–C, annexed hereto. Since the passage of the PSLRA, Labaton Sucharow has been approved by courts to serve as lead counsel in numerous securities class actions throughout the United States, and in several of the most significant federal securities class actions in history. Here, Labaton Sucharow attorneys have devoted considerable time and effort to this case, thereby greatly benefiting the outcome by bringing to bear years of collective experience.

92. For example, Labaton has served as lead counsel in a number of high profile matters, for example: *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of $1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1501 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State Investment Council, and the New Mexico Educational Retirement Board and securing settlements of more than $600 million); *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds and reaching settlements of more than $600 million); *In re Schering-Plough Corp. / ENHANCE Securities Litigation*, Civil Action No. 08-397 (DMC) (JAD) (D.N.J.) (representing Massachusetts Pension Reserves Investment Management Board and reaching a settlement of $473 million). *See* Ex. 4–C hereto.

93. This depth of experience was called upon here given the unique and complex facts underlying the claims and defenses in the Action, which interwove the securities laws and financial reporting with practices in the pharmaceutical industry and healthcare.

B. Request for Litigation Expenses

94. Lead Counsel seeks payment from the Settlement Fund of $73,439.66 in litigation expenses reasonably and necessarily incurred by Plaintiff's Counsel in connection with commencing and prosecuting the claims against Defendants.

95. From the beginning of the case, Lead Counsel was aware that it might not recover any of its expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Thus, Lead Counsel was motivated to, and did, take steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

96. As set forth in the Fee and Expense Schedules and the Summary Table of Lodestar and Expenses, Plaintiff's Counsel have incurred a total of $73,439.66 in litigation expenses in connection with the prosecution of the Action. *See* Exs. 4–B, 5 ¶ 5, and 6. As attested to, these expenses are reflected on the books and records maintained by each firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses are set forth in detail in Plaintiff's Counsel's declarations, which identify the specific category of expense—*e.g.*, online/computer research, experts' fees, travel costs, costs related to discovery, photocopying, telephone, fax and postage expenses.

97. Of the total amount of expenses, more than $16,000 or approximately 22% of total litigation expenses, was expended on experts. As discussed above, Lead Plaintiff consulted extensively with its loss causation and damages expert.

98. Additionally, Lead Counsel paid almost $13,000 in mediation fees assessed by the mediator in this matter.

99. The other expenses for which Lead Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These

expenses include, among others, travel costs, overtime transportation and meals, legal and factual research, expenses related to electronic discovery and Lead Counsel's factual investigation, duplicating costs, long distance telephone and facsimile charges, and postage and delivery expenses.

100. All of the litigation expenses incurred, which total $73,439.66, were necessary to the successful prosecution and resolution of the claims against Defendants.

IX. THE REACTION OF THE SETTLEMENT CLASS TO THE FEE AND EXPENSE APPLICATION

101. As mentioned above, consistent with the Preliminary Approval Order, a total of 15,360 Notices have been mailed to potential Settlement Class Members advising them that Lead Counsel would seek an award of attorneys' fees not to exceed 25% of the Settlement Fund, and payment of expenses in an amount not greater than $125,000. *See* Ex. 3 ¶ 8. Additionally, the Summary Notice was published in *Investor's Business Daily*, and disseminated over *PR Newswire*. *Id*. ¶ 9. The Notice and the Stipulation have also been available on the settlement website maintained by the Claims Administrator. *Id.* ¶ 11.[7] While the deadline set by the Court for Settlement Class Members to object to the requested fees and expenses has not yet passed, to date Lead Plaintiff has received no objections. Lead Counsel will respond to any objections received in its reply papers, which are due June 6, 2016.

X. MISCELLANEOUS EXHIBITS

102. Attached hereto as Exhibit 8 is a compendium of unreported cases, in alphabetical order, cited in the accompanying Fee Brief.

[7] Lead Plaintiff's motion for approval of the Settlement and Lead Counsel's motion for an award of attorneys' fees and expenses will also be posted on the Settlement website.

XI. CONCLUSION

103. In view of the significant recovery to the Settlement Class and the substantial risks of this litigation, as described above and in the accompanying memorandum of law, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved as fair, reasonable, and adequate. In view of the significant recovery in the face of substantial risks, the quality of work performed, the contingent nature of the fee, and the standing and experience of Lead Counsel, as described above and in the accompanying memorandum of law, Lead Counsel respectfully submits that a fee in the amount of 25% of the Settlement Fund be awarded and that litigation expenses in the amount of $73,439.66 be paid in full.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 9th day of May, 2016.

/s/ Jonathan Gardner
JONATHAN GARDNER

CERTIFICATE OF SERVICE

I hereby certify that I am a member of Labaton Sucharow LLP, and on the 9th day of May 2016, I caused to be electronically filed the Declaration of Jonathan Gardner in Support of Lead Plaintiff's Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses, using ECF. Accordingly, I also certify that the Declaration was served on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ *Jonathan Gardner*
Jonathan Gardner