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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

IN RE BECKMAN COULTER, INC. SECURITIES LITIGATION

Case No. 8:10-cv-1327-JST (RNBx)

JOINT DECLARATION OF CHRISTOPHER J. MCDONALD AND SHERRIE R. SAVETT IN SUPPORT OF MOTIONS FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT, AWARD OF ATTORNEYS' FEES AND PLAN OF ALLOCATION

Judge: Hon. Josephine Staton Tucker
Date: February 27, 2012
Time: 10:00 a.m.
Courtroom: 10A

CHRISTOPHER J. MCDONALD and SHERRIE R. SAVETT declare as follows, pursuant to 28 U.S.C. §1746:

1. Christopher J. McDonald is a partner of the law firm of Labaton Sucharow LLP ("Labaton Sucharow") and Sherrie R. Savett is a partner of the law firm of Berger & Montague, P.C. ("Berger & Montague"), Court-appointed class counsel ("Lead Counsel") for the proposed Class in the above-captioned class action (the "Action") brought by Arkansas Teacher Retirement System ("ATRS") and Iron Workers District Council of New England Pension Fund ("Iron Workers," and together with ATRS, "Lead Plaintiff").[1] We are admitted to practice before this Court *pro hac vice*.

2. We were actively involved in the prosecution of the Action, are intimately familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon our close supervision and active participation in the Action.

3. The Settlement, which this Court preliminarily approved in its Order Granting Plaintiff's Motion for Preliminary Settlement Approval and Setting a Fairness Hearing for February 27, 2012 at 10:00 a.m., entered on September 8, 2011 (the "Preliminary Approval Order"), provides for the payment of $5 million in cash and an additional amount, not to exceed $500,000, for the expenses incurred in providing notice to the Class and administering the Settlement ("Notice and Administration Expenses"), to secure a settlement (the "Settlement") of the claims alleged in the Action against defendants Beckman Coulter, Inc. ("Beckman" or the "Company"), Scott T. Garrett and Charles P. Slacik (the "Individual Defendants," and, together with Beckman, "Defendants"). If

[1] All capitalized terms used herein, unless otherwise defined, have the same meaning as that set forth in the Stipulation of Settlement (the "Stipulation"), dated as of September 13, 2011. (D.E. #59-1.)

approved, the Settlement will finally resolve and release all Released Claims against Defendants and the Released Defendant Parties in the Action.

4. We respectfully submit this declaration in support of Lead Plaintiff's motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for final approval of the Settlement and approval of the proposed plan of allocation (the "Plan of Allocation").[2] We also submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses incurred during the prosecution of the Action and ATRS's application for reimbursement of its reasonable costs and expenses (including lost wages) directly relating to its representation of the Class, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4 (a)(4).[3]

5. On the basis of this declaration and for all the reasons set forth in the accompanying motions and memoranda, Lead Plaintiff respectfully submits that the terms of the Settlement and Plan of Allocation are fair, reasonable and adequate in all respects and, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, should be approved by this Court. In addition, Lead Counsel respectfully submits that its request for an award of attorneys' fees and reimbursement of expenses, and ATRS's application for reimbursement of its reasonable costs and litigation expenses, are warranted and should be awarded in full.

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[2] Because this declaration is submitted in support of a negotiated settlement, it is therefore subject to Rule 408 of the Federal Rules of Evidence and inadmissible in any proceeding, other than in connection with this Settlement. In the event that the Settlement is not approved by the Court, this declaration and the statements contained herein and in any supporting memoranda are made without prejudice to Lead Plaintiff's position on the merits. Defendants deny wrongdoing or liability in all respects and admit nothing as part of the Settlement.

[3] In conjunction with this declaration, Lead Counsel is also submitting (i) Lead Plaintiff's Motion for Final Approval of Proposed Class Action Settlement and Memorandum of Points and Authorities in Support Thereof, and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses and Memorandum of Points and Authorities in Support Thereof.

6. The remainder of this declaration is organized as follows: Part I provides an overview of the Action, including the procedural history and parties, Lead Counsel's investigation and consultations with regulatory, industry, and economic experts, and the Complaint's substantive allegations as further informed by Lead Counsel's investigation and consultations with experts; Part II provides an overview of the Settlement, including a discussion of the risks of continued litigation, the negotiation process, the Court's preliminary approval, the notice program, the plan of allocation, and the reaction of the Class to the Settlement; Part III discusses Lead Counsel's application for attorneys' fees and reimbursement of expenses and Lead Plaintiff ATRS's application for reimbursement of its costs and expenses; and Part IV lists miscellaneous exhibits.

I. OVERVIEW OF THE ACTION

A. Procedural History

7. The Action began in September 2010 when two proposed class actions were filed in the United States District Court for the Central District of California. On December 8, 2010, the Court issued an order consolidating these cases into the present Action and appointing ATRS and Iron Workers as Lead Plaintiff and Labaton Sucharow and Berger & Montague as Lead Counsel for the putative Class. (D.E. #34.)

8. Lead Plaintiff filed a Consolidated Class Action Complaint for Violations of Federal Securities Laws (the "Complaint") on February 7, 2011, alleging that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") between July 31, 2009 and July 22, 2010, inclusive (the "Class Period"). (D.E. #46.)

9. On April 22, 2011, Defendants filed a Motion to Dismiss alleging, *inter alia*, that Lead Plaintiff failed to adequately plead: (i) any materially false or misleading statement or omission by Defendants; (ii) any omissions by Defendants

regarding quality, safety or compliance; and (iii) that Defendants had the requisite scienter. (D.E. #53.)

10. On or about June 9, 2011, the Parties entered into a Memorandum of Understanding setting forth the general terms of their agreement. The Parties entered into the Stipulation on September 13, 2011. (D.E. #59-1.)

11. On September 19, 2011, Lead Plaintiff filed a motion for preliminary approval (D.E. #71.), which was granted by the Court's Preliminary Approval Order entered on November 8, 2011 (D.E. #70.) and its Supplemental Preliminary Approval Order Providing for Notice and Hearing in Connection with Proposed Class Action Settlement, (the "Supplemental Order"), entered on November 30, 2011 (D.E. #73.)

B. The Parties

Lead Plaintiff

12. ATRS is a government-sponsored, defined benefit retirement plan for the current and former employees of the Arkansas public schools and educationally related agencies with approximately $10 billion in assets. Its principal office and place of business is located at 1400 West Third Street, Little Rock, Arkansas. (Complaint ¶17.)

13. Iron Workers is a pension fund that has approximately 2000 participants and $291 million in assets. Its principal place of business is 161 Granite Avenue, Dorchester, Massachusetts. (Complaint ¶18.)

14. Lead Plaintiff purchased Beckman's common stock during the Class Period. (Complaint ¶¶17-18.)

Defendants

15. Beckman is a manufacturer and marketer of biomedical testing instrument systems, tests and supplies. According to its website (www.beckmancoulter.com), Beckman "develops, manufactures and markets

products that simplify, automate and innovate complex biomedical testing." Beckman has its principal place of business at 250 S. Kraemer Boulevard, Brea, California. (Complaint ¶20.)

16. The Individual Defendants include Defendant Scott T. Garrett, Chairman of the Board, President and Chief Executive Officer of Beckman during the relevant time period, and Charles P. Slacik, Chief Financial Officer and Senior Vice President of Finance of Beckman during the relevant time period. (Complaint ¶¶21-22.)

C. Lead Counsel's Investigation and Expert Consultations

17. The Settlement was negotiated on an informed basis and with a thorough understanding of the merits and value of the Parties' claims and defenses.

18. Despite the automatic stay provision of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Lead Plaintiff, through their counsel, conducted an extensive investigation of the claims asserted in the Action that began before the filing of the Complaint and continued for months thereafter.

19. Lead Counsel reviewed all relevant public information, including Beckman's filings with the SEC; securities analysts' reports; public statements by Defendants; media reports about Defendants; court records in multiple actions involving Beckman; trading data; documents obtained from the Food and Drug Administration ("FDA") pursuant to requests made under the Freedom of Information Act; adverse event reports from the FDA's Manufacturer and User Facility Device Experience database; and product and other information available on Beckman's website. Lead Counsel also extensively analyzed the frequency and severity of FDA recall notices concerning Beckman products dating back to 2006.

20. Lead Counsel also spent a significant amount of time and effort identifying and interviewing potential witnesses. Lead Counsel located and contacted more than 140 former Beckman employees from several Company

locations in California, Florida, Minnesota, Indiana, Ohio, Texas and Tennessee, and conducted interviews of more than 60 of these former employees. These interviews garnered valuable information that provided further support to the allegations in the Complaint and/or aided Lead Counsel in fully understanding the intricacies of the facts at issue in the Action.

21. Furthermore, in connection with both the prosecution of the Action and the negotiations culminating in the Settlement, Lead Counsel consulted with experts. They included expert consultants with extensive experience working for the FDA and within the industry concerning medical devices and radiation producing electronic products, site and plant inspections, good manufacturing practices, quality control, health and safety requirements and pre-market notification requirements pursuant to Section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 360(k)), as well as expert economists concerning loss causation issues, class-wide damages and the composition of the Class.

22. With the benefit of a thorough investigation and full legal analyses of the claims and defenses of the Parties, Lead Plaintiff and named Plaintiff Steelworkers Pension Trust, as advised by Lead Counsel, have concluded that the Settlement is in all respects fair, adequate, reasonable and in the best interests of the Class. (*See* Declarations of Michael J. Ruggieri, Administrator of Iron Workers District Council of New England Pension Fund, George Hopkins, Executive Director of Arkansas Teacher Retirement System, and William J. Gimpel, Esq., Counsel and Assistant Director of Operations of Steelworkers Pension Trust, annexed hereto as Exhibits 1, 2 and 3.)

D. The Alleged Fraud

23. Beckman manufactures and markets biomedical testing instrument systems, tests and supplies using a recurring revenue "razors-and-blades" business model. The systems – machines the Company sells or leases that automate

biomedical testing processes – are the razors. The tests – kits that Beckman's customers (*i.e.*, the operators of the systems) need to perform the desired biomedical analyses – are the blades. The kits contain reagents that react with patient samples (*e.g.*, blood, urine or other bodily fluids) to determine the presence or concentration of substances within the samples. (Complaint ¶¶2, 43.) One of the specific products at issue in the Action is Beckman's reagent test kit for troponin, a cardiac enzyme released into the blood stream when a patient suffers a heart attack. (*Id*. ¶¶ 6, 37-39.)

24. As reflected in the Complaint and as further informed by Lead Counsel's investigation and consultations with regulatory, industry, and economic experts, Lead Plaintiff contends (i) that Defendants made materially false and misleading misrepresentations and omissions regarding product quality, safety, FDA regulatory compliance, the Company's troponin test, likely customer retention, recurring revenue, business prospects, earnings forecasts, and guidance during the Class Period, in violation of the Exchange Act, (ii) that Defendants' misrepresentations and omissions had the purpose and effect of concealing from the investing public material information concerning Beckman's operations, products, and prospects, and supporting the artificially inflated price of its common stock, (iii) that Defendants had actual knowledge of their misrepresentations and omissions of material facts, or acted with deliberately reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them, and (iv) that as a direct and proximate cause of Defendants' misrepresentations or omissions, Beckman's public shareholders who purchased or acquired Beckman common stock during the Class Period suffered losses in the market when the truth was revealed. (*Id*. ¶¶ 1, 14-16, 163.)

25. The Class Period begins on July 31, 2009, the first trading day after Beckman, *inter alia*, reported "excellent" financial results, touted "the resilience of

[its] recurring revenue business model," and boasted of its ability to "bring[] higher levels of productivity, quality, and safety to the laboratory." The Class Period ends less than a year later, on July 22, 2010, following the Company's disclosure of, *inter alia*, "quality challenges in the U.S. market" that forced Beckman to reduce its guidance for the remainder of the year, and contributed to a one-day drop in Beckman's common stock of more than $12 – a decline of 21% that caused the Company to lose over $875 million in market capitalization in a single day. (*Id*. ¶¶3-4, 103, 110, 115-116.)

26. The so-called "recent" compliance and quality challenges disclosed on July 22, 2010, prompted defendant Garrett to announce that extensive "remediation plans" were required. The "significant additional focus and investment" needed to fix the Company's problems – including "some projects continuing through 2011" – also caused Beckman to "defer[] some other initiatives pending resolution of the aforementioned issues." (*Id*. ¶¶3, 103.)

27. Lead Plaintiff contends the scope and scale of the Company's corrective disclosures on July 22, 2010 make clear that Beckman's underlying problems were long-standing and systemic. Lead Plaintiff further contends that information provided by a former Beckman senior engineer whose job included "product compliance engineering" responsibilities confirmed that Beckman's quality, safety, and compliance functions were in a steady state of decline after annual rounds of layoffs in the years leading to the start of the Class Period in July 2009. (*Id*. ¶¶5, 54-57.)

28. Lead Plaintiff contends that Defendants also made partial corrective disclosures reflecting information that Defendants allegedly knew or should have known and disclosed earlier during the Class Period on March 22, 2010 and May 14, 2010. Preceding those disclosures, however, was a February 2010 "product

corrective action" Beckman issued concerning discrepancies relating to its reagent test kit for troponin. (*Id*. ¶¶7-13, 70-90, 100, 173.)

29. Lead Plaintiff contends that Beckman's February 2010 "product corrective action" concerning its troponin test was the first in a series of announcements during the Class Period to the investing public concerning bad news about Beckman. With its February 2010 "product corrective action" announcement, Beckman informed investors that it had instructed customers with the "DxI" family of immunoassay analyzers to "immediately discontinue" running the troponin test kit if an alternative was available. Results of troponin tests on DxI systems had shown a "positive bias of up to 48%"; while a patient sample analyzed on a different type of Beckman immunoassay analyzer would provide results within an acceptably accurate range, there was a significant chance that testing a sample from the same patient on a DxI system would return erroneous results of elevated troponin levels. (*Id*. ¶¶7-13, 70-80.)

30. On March 22, 2010, the Company disclosed that the FDA had determined that the Company made modifications to its troponin test kits without obtaining the appropriate product clearance from the FDA, that additional restrictions would be placed on the use of the kits, and that the Company needed to reapply for regulatory approval to market the kits. Beckman further disclosed that in light of the issues concerning Beckman's troponin test kits previously disclosed in February 2010, and a recall relating to sodium testing on certain clinical chemistry analyzers disclosed in January 2010, Beckman was conducting an evaluation of its "internal processes and procedures regarding our product, quality and regulatory systems." On this news, Beckman's common stock dropped $4.88 per share, or over 7%, on high volume. (*Id*. ¶¶8, 81-90)

31. In early April 2010 the Company announced that it would be recalling its troponin assay test kit from use on the DxI system. Later that month, because

of costs associated with addressing a discrete list of issues, including its troponin test, its sodium and glucose tests, and the Company's internal evaluation (collectively described by the Company as its "pending product compliance and quality matters"), the Company announced that it was revising full year 2010 guidance downward. That news actually caused Beckman's stock price to increase because the market had expected a steeper reduction in guidance. (*Id*. ¶¶9-10, 91-98.)

32. On May 14, 2010, the Company announced that it would take until the first half of 2011 to conduct the clinical trials necessary to permit it to reapply for regulatory clearance from the FDA for its troponin test kits. On this news, Beckman's stock dropped from a previous close of $61.09 to $58.85, a $2.24 drop, or 3.7%, on high volume. (*Id*. ¶¶11, 100.)

33. Lead Plaintiff contends that the Company's incrementally negative announcements concerning troponin test kits were accompanied by a months-long effort to gradually manage the market's expectations downward. In the Company's February 2010 announcement concerning its recommendation that DxI system customers "immediately discontinue" the use of troponin test kits, the Company stated that while it "currently believe[d]" its action "will not have a material adverse affect on our results of operations," it added that it could "not provide any assurances" to that effect. With the Company's March 22, 2010 disclosure that the FDA had determined that Beckman made unapproved modifications to its troponin test kits, the message changed: "these matters ***may*** have a material adverse impact on our previously issued outlook for the full year 2010." (Emphasis added.) Moreover, the Company rolled out the possibility of more bad news: "It is ***possible*** that more of our products ***could*** be affected and the actions with respect to those products ***could*** adversely affect our operating results." (*Id*. ¶¶12, 70, 77, 81, 144) (Emphasis added.)

34. By April 2010, the possibility of a "material adverse impact" became a reality – the Company revised its guidance downward – and the Company again announced the possibility that other "corrective actions . . . ***might*** adversely affect our operating results." (Emphasis added.) That too became a reality with the Company's July 22, 2010 corrective disclosures and further reduced guidance. (*Id*. ¶¶13, 149, 152.)

35. Lead Plaintiff contends the fatal flaw with the unfolding nature of Beckman's narrative is that Defendants knew or were deliberately reckless in not knowing all along about the Company's systemic, and self-inflicted, problems, and fraudulently misled investors with their omissions and misrepresentations about them. The Company itself made the modifications to its troponin test kits without obtaining the appropriate product clearance from the FDA; recalls, regulatory action, and reduced earnings were thus entirely foreseeable when the changes were being made. (*Id*. ¶¶14, 113, 153.)

36. Lead Plaintiff contends that the Company's underlying – and undisclosed – quality, safety and compliance issues (which were also of its own making) predated its claimed ability to deliver "higher levels of productivity, quality, and safety" in July 2009. The question, therefore, was not whether Beckman's operating results would be adversely impacted by quality and compliance problems (as the Company's statements in March and April 2010 about what "could" or "might" occur suggest), but when. Lead Plaintiff contends that when defendant Garrett first provided insight into the depth and breadth of adverse information about Beckman's product compliance and quality systems on July 22, 2010, it became clear to the investing public that the Company's problems were long-standing and deeply rooted. And as confirmed by the information gleaned from Beckman's former senior engineer, the Company's large-scale

mobilization and repurposing of resources to fix those problems was long overdue. (*Id*. ¶¶15, 112-113.)

II. OVERVIEW OF THE SETTLEMENT

A. The Risks Inherent in Prosecuting the Action

37. In the absence of a settlement, Lead Plaintiff faces a significant risk that Defendants will continue to maintain a number of legal and factual defenses, as they did in their Motion to Dismiss, that could limit or eliminate a future litigated recovery, including that the alleged misrepresentations and omissions were not materially misleading to investors, that Defendants did not act with scienter, and that Lead Plaintiff cannot establish loss causation or damages. There was also a risk that the Court could grant the Motion to Dismiss, leading to an amended complaint and potential appeal of any dismissal.

38. Lead Plaintiff believes that it could have established that: (i) Defendants knew or were deliberately reckless in not knowing about the Company's systemic, and self-inflicted, problems; (ii) Defendants fraudulently misled investors with their omissions and misrepresentations regarding the problems and the likely impacts on the Company's recurring revenue and earnings; (iii) Defendants' omissions and misrepresentations served to inflate the value of the Company, and (iv) when Defendants finally made corrective disclosures, the drops in Beckman's market price damaged Class Members. As discussed above, Lead Plaintiff contends that the Company itself made the modifications to its troponin test kits without obtaining the appropriate product clearance from the FDA, and that recalls, regulatory action, and reduced earnings were thus entirely foreseeable when the changes were being made. Likewise, the Company's underlying – and undisclosed – quality, safety and compliance issues (which were also of its own making) predated its claimed ability to deliver "higher levels of productivity, quality, and safety" in July 2009.

39. Were the Action to continue, however, Defendants would likely have maintained, as they did in their Motion to Dismiss, that they did not make any materially false or misleading statements or omissions. Defendants would likely argue to the Court and/or a jury that Lead Plaintiff could not prove any omission with respect to: (i) disclosure of a bias in troponin test results prior to February 2010; (ii) disclosure prior to March 2010 that the FDA would require clearance for earlier changes to the troponin test kit; and (iii) Beckman's alleged failure to predict the future effects of the troponin test issues and FDA actions on future recurring revenue, customer retention or business prospects.

40. Defendants characterized Lead Plaintiff's allegations as "fraud-by-hindsight," claiming that Lead Plaintiff seized on Defendants' reports in 2010 regarding troponin and FDA issues and, working backwards from there, alleged that Defendants' earlier public statements "fraudulently omitted" information that Lead Plaintiff purports to glean from these later disclosures. (Motion to Dismiss, D.E. #53, at 3, 13, 17, 20, 28-29.)

41. In their Motion to Dismiss, Defendants also identified what they believe are multiple pleading defects. For example, Defendants argued that Lead Plaintiff offered no particularized facts showing that Beckman actually had any long standing safety, compliance and quality problems, or what the problems were, or when, or who knew about them. Defendants contended that comments by one anonymous former engineer about how a few product issues were handled (Complaint ¶¶ 54-69) do not demonstrate that Beckman had "long standing" problems, and instead are merely vague criticisms of management and not securities fraud. Defendants argued that in troponin test results prior to February 2010, Plaintiff alludes vaguely to earlier, unspecified "customer reports" of a bias (*Id*. ¶ 73), but pleads no particularized facts regarding any such reports, or any

reason why Beckman should have or even could have disclosed the test bias any earlier than it did. (Motion to Dismiss at 3, 17, 20-22, 29-31.)

42. Defendants also argued that Lead Plaintiff has not sufficiently alleged, or could prove, any omission with respect to disclosure prior to March 2010 that the FDA would require clearance for earlier changes to the troponin test kit because as a matter of law, companies have no duty to offer legal opinions about their actions, much less predict the actions of regulators. (*Id*. at 3-4, 21-24.) Moreover, Defendants contended that Lead Plaintiff has not sufficiently alleged, or could prove, any omission regarding Beckman's alleged failure to predict the future effects of the troponin test issues and FDA actions on future recurring revenue, customer retention, or business prospects. Defendants assert that Beckman had no duty to make any such predictions, and its accurately reported historical results contain no implicit representations about the future. (*Id*.)

43. Defendants also argued that any purported claim based on Beckman's 2010 financial forecasts or other forward-looking statements is barred by the Safe Harbor under the PSLRA, which completely insulates Defendants from liability and requires dismissal at the pleading stage on multiple independent bases. (*Id*. at 14-15, 23-26, 34, 36, 38.)

44. Defendants would also likely vigorously contest, as they did in their Motion to Dismiss, that they acted with the requisite scienter to be liable under the Exchange Act. Defendants would likely argue that many of their statements were soft opinion and puffery and that there is no evidence to infer that statements were false when made. They would also argue that former employee statements and assertions cited by Lead Plaintiff is also not sufficient evidence of scienter. (*Id*. at 19, 27-33.)

45. For example, Defendants argued in their Motion to Dismiss that Lead Plaintiff identifies no documents whatsoever, and only one former employee who

meets none of the indicia of credibility required by the Ninth Circuit to plead scienter. Defendants contended that (i) the comments of the sole former employee cited in the Complaint have nothing to do with troponin, and are based on observations regarding a handful of products mostly outside the alleged class period; (ii) the former Beckman employee does not purport to have knowledge of any of the alleged omissions on which Lead Plaintiff's claims are based; and (iii) the former employee never claimed to have spoken with Defendants Garrett, Slacik, or any person responsible for Beckman's public statements. Defendants argued that the former employee's comments are irrelevant to any Defendant's state of mind and do not support scienter. (*Id*. at 4-5, 27-30.)

46. Defendants also argue that Lead Plaintiff's so-called "fraud-by-hindsight" allegations actually conflict with any inference of scienter. Defendants contend that the proactive efforts of Beckman's management team to search out potential problems contradict any inference of intent to hide issues from investors or anyone else, demonstrate good management practice to comply with FDA regulations, and show the integrity of Beckman's statements regarding its commitment to quality. (*Id*. at 4-5, 29.)

47. With respect to Lead Plaintiff's ability to overcome the Motion to Dismiss, Defendants also argued that in assessing the adequacy of scienter allegations, the Court must consider inferences favorable to the Defendants and, in this case, the allegations suggest no motive whatsoever for Beckman or its management team to lie to investors. Defendants assert that the allegations show that Beckman's executives told investors about the troponin test and the FDA's actions as these matters arose, and worked hard to address the issues. (*Id*. at 4-5, 29.) This defense could also be credited by a jury, undermining Lead Plaintiff's efforts to prove scienter and liability.

48. Although Lead Plaintiff believes that its allegations raise strong inferences that Defendants made misleading statements and omissions and had the requisite scienter, there was a real risk that the Court might grant Defendants' Motion to Dismiss in whole or in part or that a jury could disregard the testimony of Lead Plaintiff's witnesses or agree with Defendants' evidence on these issues and award no damages.

49. Likewise, Lead Plaintiff also faced significant risks in establishing loss causation and damages, if any.

50. Had the Complaint survived Defendants' Motion to Dismiss in whole or in part, Defendants likely would have presented evidence, supported by expert analysis and testimony, that loss causation could not be established and that: (i) the stock price drops were not statistically significant; and/or (ii) the stock price drops were caused by other macroeconomic and business factors and not "corrective" disclosures by the Company.

51. Defendants would also likely have argued that on two of Lead Plaintiff's alleged corrective disclosure dates – March 22 and July 22, 2010 – Beckman disclosed material information that was completely unrelated to quality assurance, regulatory compliance, or troponin. (In March, Beckman also disclosed unanticipated weakness in the Euro which persisted in July when Beckman reported industry-wide softening of demand in life sciences, and product delays in the cellular division, among other dynamic and evolving factors.) Therefore, Defendants likely would have argued that macroeconomic and business factors caused the decline in Beckman's stock price rather than any alleged fraud.

52. Although Lead Plaintiff believes it could counter these arguments with expert testimony and survive a motion for summary judgment or at trial, such battles between experts are notoriously difficult to assess. There was a risk that Defendants' evidence and experts could be credited by the Court or a jury,

resulting in a recovery that would be less than that achieved by the Settlement or no recovery at all.

53. The Settlement avoids all of the inherent risks that the Class could recover less, or nothing at all, from Defendants if the litigation were to continue.

B. The Negotiation Process

54. Lead Plaintiff and Defendants engaged in a series of informal arm's-length settlement communications that culminated in an in-person negotiation and mediation session before Honorable Daniel Weinstein (Ret.),[4] an experienced mediator at JAMS, for a lengthy discussion of a potential settlement of the Action.

55. Throughout the settlement negotiations and mediation session, the strengths and weaknesses of the Parties' respective claims and defenses were fully explored among the Parties and separately with Judge Weinstein. A representative of Lead Plaintiff ATRS attended and actively participated in the mediation. At the mediation the Parties exchanged information regarding the merits of the claims and damages in the Action. Lead Plaintiff informally shared information concerning its ongoing investigation and Defendants informally provided Lead Plaintiff with North American and worldwide trend data concerning Beckman's headcount and expenses related to quality systems dating back to 2006.

56. The investigation, negotiations and mediation enabled Lead Plaintiff and Lead Counsel to thoroughly evaluate the strengths and weaknesses of the Class's claims and the risks of continued litigation and appeal, and accordingly, to enter into the Settlement on a fully-informed basis.

57. In reaching their decision to enter into the Settlement, Lead Plaintiff and Lead Counsel considered, among other things: (i) the substantial immediate benefit to Class Members under the terms of the Stipulation; (ii) the expense of

[4] Daniel H. Weinstein is a former Judge of the Superior Court of the County of San Francisco, CA.

completing fact and expert discovery; (iii) the risk that the Court could grant Defendants' Motion to Dismiss in whole or in part; (iv) the strong likelihood of a complex and risky expert-driven challenge to class certification and the attendant risks (especially in a complex action such as this one) of maintaining class status through judgment; (v) the probability that Defendants would move for summary judgment at the close of discovery, leading to a battle of the experts with respect to scienter, damages and loss causation issues; (vi) the risk of prevailing through summary judgment; (vii) the risks of presenting a complex, fact-intensive case to a jury; and (viii) the risks and delays inherent in such litigation, including interlocutory appeals or appeal after judgment.

C. Preliminary Approval

58. Lead Plaintiff moved for preliminary approval of the Settlement on September 19, 2011. (D.E. #58.) On November 8, 2011, this Court issued its Preliminary Approval Order. (D.E. #70.) On November 30, 2011, this Court issued the Supplemental Order, which set out certain mechanical rulings necessary for the effectuation of the notice program and Settlement, see Exhibit 4, hereto. The two orders, collectively, *inter alia*:

(a) granted preliminary approval to the Settlement as sufficiently fair, reasonable and adequate to warrant dissemination of notice to the Class;

(b) preliminarily certified the Action as a class action on behalf of the Class for the purposes of settlement only;

(c) preliminarily certified Lead Plaintiff as Class Representative and Labaton Sucharow and Berger & Montague as Class Counsel;

(d) scheduled a hearing (the "Settlement Hearing") for February 27, 2012, at 10:00 a.m. to determine whether: (i) the proposed

Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Class and should be granted final approval by the Court; (ii) the Judgment as provided under the Stipulation should be entered; (iii) the proposed Plan of Allocation should be approved; (iv) the Class should be granted final certification for purposes of effectuating a settlement only; and (v) Lead Counsel's application for attorneys' fees and expenses and Lead Plaintiff's application for its reasonable costs and expenses directly relating to the representation of the Class should be awarded in full;

(e) approved the form, substance and requirements of the Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses ("Notice"), Summary Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses ("Summary Notice") and the Proof of Claim and Release form ("Proof of Claim") and approved the mailing and distribution of the Notice and publishing of the Summary Notice;

(f) appointed A.B. Data, Ltd. ("A.B. Data") to administer the notice program and Settlement, under the supervision of Lead Counsel; and

(g) established procedures and deadlines for providing notice to the Class and for Class Members to exclude themselves from the Class or to object to the Settlement, Plan of Allocation, and/or the application for attorneys' fees and reimbursement of expenses.

D. Dissemination of the Notices

59. Annexed hereto as Exhibit 5 is the Declaration of Michelle M. La Count, Esq. ("La Count Decl."), Vice President of Case Management with A.B. Data's Class Action Administration Division. In compliance with the Supplemental Order, under the supervision of Lead Counsel, A.B. Data mailed a total of 44,016 copies of the Notice and Proof of Claim (together, the "Notice Packet") to all potential Class Members who could be reasonably identified and to known brokers/nominees. (*Id*. at ¶10.) A.B. Data and Lead Counsel also made copies of the Notice and Proof of Claim available for easy downloading at a dedicated website, www.BeckmanCoulterSecuritiesSettlement.com, and on the website of Labaton Sucharow, www.labaton.com. Also in compliance with the Supplemental Order, A.B. Data caused the Summary Notice to be timely published in *Investor's Business Daily* and transmitted over *PRNewswire*. (*Id*. at ¶¶13-14.)

60. The Notice describes, *inter alia*, the claims asserted in the Action, the contentions of the Parties, the course of the Action, the terms of the Settlement, the Plan of Allocation, and the right of Class Members to object to the Settlement and the right to seek to be excluded from the Class. The Notice also provides recipients with deadlines for filing objections to the Settlement or seeking exclusion from the Class and advises potential Class Members of the scheduled Settlement Hearing. The Notice further notifies Class Members that attorneys' fees for Lead Counsel will not exceed 25% of $5,500,000, plus interest, litigation expenses will not exceed $148,000, plus interest, and Lead Plaintiff's request for reimbursement of its reasonable costs and expenses directly related to its representation of the Class will not exceed $40,000, plus interest. (Exhibit 5-A at ¶17.)[5]

[5] Citations to exhibits that also attach sub-exhibits, will be referenced as "Ex. ___-___." The first numerical reference refers to the designation of the entire

E. Plan of Allocation

61. Pursuant to the Preliminary Approval Order and Supplemental Order, and as explained in the Notice, all Class Members wishing to participate in the Settlement are required to submit a Proof of Claim to the Claims Administrator, postmarked no later than April 12, 2012.

62. As set forth in the Notice, all eligible Class Members who submit timely and valid Proofs of Claim will receive a distribution from the Net Settlement Fund, which is the Settlement Fund after deduction of Court-awarded attorneys' fees and expenses; Notice and Administration Expenses in excess of $500,000; Taxes; and any other fees or expenses approved by the Court, including any award to Lead Plaintiff for reasonable costs and expenses (including lost wages). The distribution of the Net Settlement Fund will be made in accordance with the Plan of Allocation set forth and described in detail in the Notice and after a motion is approved by the Court. (*See* Exhibit 5-A at pages 8-10.) The Plan of Allocation was developed in consultation with expert economists.[6]

63. As explained in the Notice, the Plan of Allocation apportions the recovery among Class Members who submit valid and timely Proofs of Claim and purchased or acquired Beckman common stock during the Class Period.

64. The objective of the Plan of Allocation is to equitably distribute the settlement proceeds to those Class Members who suffered economic losses as a result of the alleged misrepresentations and omissions of the Defendants during the Class Period. Under the federal securities laws, persons who purchased Beckman common stock may recover, in general, only for losses proximately caused by disclosures correcting Defendants' prior misleading statements, and may not recover for any price declines caused by general market factors or by disclosures of

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

[6] Defendants had no input into the Plan of Allocation.

other negative information not alleged to have corrected prior misstatements. Recognized Loss amounts in the plan are based on the level of alleged artificial inflation in the price of Beckman common stock at the time of purchase or other acquisition, based on Lead Counsel and Lead Plaintiff's consulting damages expert's analysis. This analysis included a review of publicly available information regarding Beckman and statistical analyses of the price movements of Beckman common stock.

65. The Plan of Allocation distributes the recovery according to when Class Members purchased, acquired and/or sold their shares of Beckman common stock. Specifically, a claimant must have purchased Beckman common stock during the Class Period and have held shares past at least the first allegedly corrective disclosure on March 22, 2010 in order to be eligible to recover, consistent with *Dura Pharms. Inc. v. Broudo*, 544 U.S. 336 (2005).

66. Authorized Claimants can not recover more than their out-of-pocket loss.

67. Lead Plaintiff and Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable and should be approved by the Court.

F. Reaction of the Class

68. The Notice provides that any objections to the Settlement, Plan of Allocation and/or the application for attorneys' fees and reimbursement of expenses are to be submitted to the Court and counsel and received or postmarked by February 6, 2012. (Exhibit 5-A.) Similarly, any requests for exclusion from the Class must be submitted to the Claims Administrator and received or postmarked by February 6, 2012. Although 44,016 Notices have been disseminated to potential Class Members, to date no objections and no exclusion requests have been received.

69. Any objections or requests for exclusion that are received will be addressed in Lead Plaintiff's reply papers, to be submitted to the Court on February 13, 2012.

III. THE BASIS OF LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND LEAD PLAINTIFF ATRS'S APPLICATION FOR EXPENSES

A. Lead Counsel's Application for Attorneys' Fees

70. The Notice informs Class Members that Lead Counsel will apply for attorneys' fees not to exceed 25% of $5,500,000, plus interest at the same rate as is earned by the Settlement Fund, and for reimbursement of litigation expenses paid, or incurred in connection with the prosecution and resolution of the Action, in an amount not to exceed $148,000, plus interest from the date of funding at the same rate as earned by the Settlement Fund.

71. To date, Lead Counsel have not been paid any fees or expenses for their efforts in achieving the Settlement and have undertaken their representation of the Class on a wholly contingent basis.

72. Labaton Sucharow is among the nation's preeminent law firms in this area of practice and has served as lead or co-lead counsel on behalf of major institutional investors in numerous class litigation since the enactment of the PSLRA, including *In re American International Group, 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 New Mexico State Investment Council, the New Mexico Educational Retirement Board and the State of Michigan Retirement System and securing settlements of more than $600 million); *In re Broadcom Corp. Class Action Litigation*, No. 06-5036 (C.D.Cal.) (representing the New Mexico State Investment Council and securing settlement of $160.5 million); and

In re Countrywide Sec. Litig., No. 07-5295 (C.D.Cal.) (representing the State of New York and New York City Pension Funds and reaching settlements of more than $600 million). (Exhibit 6-D.)

73. Berger & Montague also has extensive experience providing representation to public funds and other institutional investors in securities litigation under the PSLRA as lead or co-lead counsel in many major securities class actions and individual matters. As examples, the firm currently represents the Ohio State Teachers Retirement System in the subprime mortgage-related securities class action *In re Merrill Lynch & Co., Inc. Securities Derivative & ERISA Litigation*, No. 07-CV-09633 (S.D.N.Y.), where a settlement of $475 million was approved in August 2009 that is among the largest recoveries ever under the PSLRA. The firm represented lead plaintiff the Pennsylvania State Employees' Retirement System in *In re CIGNA Corp. Securities Litigation*, Master File No. 2:02-CV-8088 (E.D. Pa.), which settled for $93 million. The firm has also achieved several other of the largest recoveries since the passage of the PSLRA, including *In re Rite Aid Corp. Sec. Litig.*, No. 99-CV-1349 (E.D. Pa.) ($334 million settlement), *In re Waste Management, Inc. Sec. Litig.*, No. 97-CV-7709 (N.D. Ill.) ($220 million settlement), and *In re Sunbeam Inc. Sec. Litig.*, No. 98-cv-8258 (S.D. Fla.) ($141 million settlement). (Exhibit 7-C.)

74. Lead Counsel, along with liaison counsel Motley Rice LLP, have expended 4,571.4 hours in the prosecution of the claims, from the inception of the case through January 6, 2012. (*See* Declaration of Christopher J. McDonald in Support of Labaton Sucharow LLP's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, dated January 12, 2012, ¶9, Declaration of Sherrie R. Savett in Support of Petition for Attorneys' Fees and Reimbursement of Litigation Expenses Filed on Behalf of Berger & Montague, P.C., dated January 6, 2012, ¶9, and Declaration of Mark I. Labaton in Support of Lead Plaintiff's Motion

for Attorneys' Fees and Reimbursement of Expenses, on behalf of Motley Rice LLP, dated January 11, 2012, ¶8, annexed hereto as Exhibits 6, 7 and 8.) This figure includes time spent: (i) seeking appointment as lead plaintiff; (ii) investigating the claims and consulting with experts; (iii) preparing and filing the Complaint; (iv) identifying, locating and interviewing potential witnesses; and (v) negotiating, mediating and finalizing the Settlement. It does not include any time related to the application for attorneys' fees and expenses. Additional time will be expended during the administration of the Settlement, however counsel will not seek a fee for that work.

75. Plaintiffs' Counsel's total "lodestar" is $2,176,587.50, when one multiplies the number of hours worked by the current billing rates for Lead Counsel's various professionals. (Exhibits 6-A, 7-A, 8-A.) Dividing the requested fee by Plaintiffs' Counsel's lodestar results in a "lodestar multiplier" of just 0.63, meaning that counsel's requested fee *is less* than the amount of fees billed.

76. Plaintiffs' Counsel also request reimbursement of the expenses incurred in connection with the Action, in the amount of $88,928.73. Each firm requesting reimbursement of expenses has submitted a declaration, which states that the expenses are: (i) reflected in the books and records maintained by the firm; and (ii) accurately recorded in their declaration. (Exhibits 6-B, 7-B and 8-B.)

77. Labaton Sucharow also maintained a Litigation Fund on behalf of Plaintiffs' Counsel that received deposits totaling $30,000 from Plaintiffs' Counsel and incurred a total of $48,518.75 in unreimbursed expenses in connection with the prosecution of the Action. (Exhibit 6 at ¶13 and Exhibit 6-C thereto.) The majority of these expenses related to experts. The firms' contributions to the Litigation Fund are reflected in their declarations. (Exhibits 6-B, and 7-B.) Because expenses were greater than contributions, there is a negative balance of $18,518.75 in the fund,

the reimbursement of which is being requested by Labaton Sucharow and is part of the total expenses requested by Lead Counsel. (Exhibit 6-B.)

78. Approximately $38,776, or 44% of these expenses, relate to the cost of experts. Such expenses were critical to Plaintiffs' Counsel's understanding of the claims and damages in the Action and its success in achieving the proposed Settlement. Plaintiffs' Counsel's expenses also reflect routine and typical expenditures incurred in the course of litigation, such as the costs of experts, legal research (*i.e.*, Westlaw and Lexis fees), travel, document duplication, telephone, FedEx, etc.). (*Id.*) These expenses are reasonable and were necessary for the successful prosecution of the case.

79. Lead Plaintiff Iron Workers and named Plaintiff Steelworkers support the request for attorneys' fees and expenses. (Exhibits 1 and 3.) Lead Plaintiff Arkansas Teacher believes that Lead Counsel should be awarded a fair and reasonable attorneys' fee and reimbursement of expenses in light of the amount and quality of the work performed and considering the substantial recovery obtained for the Class. However, it is their practice in securities class actions to defer to the Court with respect to the amount of attorneys' fees and expenses that should be awarded. (Exhibit 2.)

80. To date, no objection has been raised as to Lead Counsel's application for attorneys' fees and reimbursement of litigation expenses.

B. Lead Plaintiff ATRS's Application for Reimbursement of its Costs and Expenses

81. The Notice informs Class Members that Lead Plaintiff may apply for reimbursement of its reasonable costs and expenses directly related to its representation of the Class in an amount not to exceed $40,000.

82. Lead Plaintiff ATRS seeks reimbursement of its reasonable costs and expenses, including lost wages, pursuant to the PSLRA, 15 U.S.C. §78u-4(a)(4),

that it directly incurred in connection with its representation of the Class in the total amount of $3,534.30.[7] The amount of time and effort devoted to this Action by ATRS is detailed in the accompanying separate declaration of George Hopkins, annexed hereto as Exhibit 2.

83. Specifically, Mr. Hopkins has spent approximately 45.9 hours prosecuting the Action on behalf of the Class, including attending the mediation. This was time he was unable to dedicate to his regular duties on behalf of ATRS. Based upon his annual salary and the number of hours he works a week, his hourly rate is $77 per hour, which results in a $3,534.30 request for reimbursement. *Id.* ¶¶8-9.

84. To date no objection has been raised as to the request for reimbursement of litigation expenses by Lead Plaintiff.

85. Lead Counsel respectfully submits that this award, which will be paid directly to Lead Plaintiff ATRS, is fully consistent with Congress's intent, as expressed in the PSLRA, of encouraging institutional and other highly experienced plaintiffs to take an active role in bringing and supervising actions of this type.

IV. MISCELLANEOUS EXHIBITS

86. Annexed hereto as Exhibit 9 is a table of billing rates for defense firms compiled by Labaton Sucharow from fee applications submitted by such firms in bankruptcy proceedings in 2010.

87. Annexed hereto as Exhibit 10 is a compilation of slip opinions and class action notices cited in the two memoranda of points and authorities submitted herewith, that show the amounts of approved settlements.

[7] Lead Plaintiff Iron Workers is not seeking reimbursement of any of its costs and expenses in the Action.

We declare under penalty of perjury that the foregoing is true and correct.

Executed on January 12, 2012.

CHRISTOPHER J. MCDONALD

SHERRIE R. SAVETT

We declare under penalty of perjury that the foregoing is true and correct. Executed on January 12, 2012.

CHRISTOPHER J. MCDONALD

SHERRIE R. SAVETT