UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PUBLIC PENSION FUND GROUP, et al.	:	No.: 4:08-CV-1859 (CEJ)
v.	:	
KV PHARMACEUTICAL COMPANY, et al.	:	

DECLARATION OF JAVIER BLEICHMAR IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND LEAD COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT: THE SIGNIFICANT RECOVERY ACHIEVED 2

II. FACTUAL SUMMARY OF LEAD PLAINTIFFS' CLAIMS 4

III. RELEVANT PROCEDURAL HISTORY 5

A. Appointment of Lead Plaintiffs 5

B. The Complaint and Motions to Dismiss 5

C. Motion for Relief from the Court's Dismissal Order 9

D. Appeal to the Court of Appeals for the Eighth Circuit 9

E. Bankruptcy Case and the Stay of Proceedings 10

F. Individual Defendant's Pending Motion to Dismiss 11

IV. SETTLEMENT NEGOTIATIONS 11

A. Initial Discussions with Defendants in 2011 11

B. Discussions with Defendants in 2013 12

V. RISKS OF CONTINUED LITIGATION 13

A. Bankruptcy and Limited Financial Resources 13

B. Risks Concerning Liability of Defendants 14

a. Risks Concerning Materiality and Falsity of Statements 15

b. Risks of Proving Scienter 15

c. Risks Concerning Loss Causation 16

VI. COMPLEXITY, EXPENSE, AND LIKELY DURATION OF THE LITIGATION 18

VII. LEAD PLAINTIFFS' COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER AND CLASS REACTION TO DATE 18

VIII. PLAN OF ALLOCATION 20

IX. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES 22

A. Lead Plaintiffs Support the Fee and Expense Application 22

B. The Risks and Unique Complexities of the Action 23

C. The Work and Experience of Plaintiffs' Counsel 24

D. Standing and Caliber of Defense Counsel 27

E. The Reaction of the Class to the Fee and Expense Application 28

X. REQUEST FOR PAYMENT OF LITIGATION EXPENSES 28

XI. MISCELLANEOUS EXHIBITS 30

XII. CONCLUSION 30

I, JAVIER BLEICHMAR, declare as follows pursuant to 28 U.S.C. §1746:

1. I am a partner of the law firm of Labaton Sucharow LLP, court-appointed Lead Counsel for the Norfolk County Retirement System ("Norfolk County") and the State-Boston Retirement System ("State-Boston") ("Lead Plaintiffs") and the proposed Class in this securities class action (the "Action"), and am admitted *pro hac vice* to practice before this Court.[1] I have been actively involved in the prosecution of the Action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my firm's close supervision and active participation in the Action. If called as a witness, I could and would testify competently thereto.

2. The purpose of this declaration is to set forth the background of the Action, its procedural history, and the negotiations that led to the proposed Settlement with KV Pharmaceutical Company ("KV," or the "Company"), Marc S. Hermelin ("Hermelin" or the "Individual Defendant," and together with KV, "Defendants"), David Van Vliet ("Van Vliet"), and Rita Bleser ("Bleser," and together with Van Vliet, "Former Defendants"). This declaration demonstrates why the Settlement is fair, reasonable, and adequate and should be approved by the Court, why the proposed Plan of Allocation is reasonable, and why the application for attorneys' fees and expenses is reasonable and should be approved by the Court.

3. The Settlement will resolve all claims asserted in the Action against Defendants and Former Defendants on behalf of a class that consists of: all persons and entities that, between June 15, 2004 and January 23, 2009, inclusive, purchased or otherwise acquired the publicly

[1] All capitalized terms not otherwise defined herein have the same meaning as that set forth in the Stipulation and Agreement of Settlement, dated December 20, 2013 (the "Stipulation"), attached hereto as Ex. 1.

Citations to "Ex.___" herein refer to exhibits to this declaration. For clarity, exhibits that themselves have attached exhibits will be referenced as "Ex. __-__." The first numerical reference refers to the designation of the entire exhibit attached hereto and the second reference refers to the exhibit designation within the exhibit itself.

traded securities of KV and were allegedly damaged thereby (the "Class").[2] The Court preliminarily approved the Settlement by Order entered January 28, 2014 (the "Preliminary Approval Order") (ECF No. 187). To date, there have been no objections or requests for exclusion.

I. PRELIMINARY STATEMENT: THE SIGNIFICANT RECOVERY ACHIEVED

4. After more than four years of vigorously contested litigation, Lead Plaintiffs and Lead Counsel have succeeded in obtaining a recovery for the Class in the amount of $12.8 million, which has been deposited in an interest-bearing escrow account for the benefit of the Class. The Settlement provides a very favorable result for the Class, which faced the genuine possibility of a much smaller recovery or no recovery at all had the case continued to be litigated, given, among other things, the Company's bankruptcy and wasting insurance policies. The Settlement provides an immediate recovery exceeding 80% of available insurance and is well-above median settlement amounts reported in 2013. As set forth in the Stipulation, in exchange for the Settlement Amount, the proposed Settlement resolves all claims asserted, or that could have been asserted, by Lead Plaintiffs and the Class against the Released Defendant Parties.

5. The proposed Settlement was reached only after arm's-length settlement discussions spanning the course of two years, including a mediation session conducted in part under the auspices of Robert Meyer of Loeb & Loeb LLP, an experienced mediator.

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[2] Excluded from the Class are: (i) Defendants; (ii) Former Defendants; (iii) the officers and directors of the Company; (iv) any subsidiaries and affiliates of the Company; (v) members of the immediate families of the Individual Defendant and the Former Defendants and their legal representatives, heirs, successors or assigns; (vi) any entity in which Defendants and Former Defendants have or had a controlling interest; and (vii) any benefit plan on behalf of employees of the Company and its subsidiaries or affiliates. Also excluded from the Class are those Class Members who properly exclude themselves by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice.

6. Before agreeing to the Settlement, Lead Counsel conducted an extensive investigation into the events underlying the claims alleged in the Complaint, filed a thorough complaint, briefed Defendants' motions to dismiss, successfully appealed the dismissal of the Action to the Eighth Circuit, successfully lifted a bankruptcy stay as to the Individual Defendant and navigated through the bankruptcy proceeding, and completed confirmatory discovery. Lead Counsel analyzed the evidence adduced during this investigation, which included, among other things, reviewing and analyzing: (i) publicly available information concerning KV, Defendants, and Former Defendants, including press releases, news articles, and other public statements; (ii) research reports issued by financial analysts concerning KV; (iii) information concerning investigations conducted by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Justice (DOJ); (iv) approximately 150,000 pages of documents produced by KV that were focused on the key allegations in the Action; (v) pleadings filed in other pending litigation naming certain parties herein as defendants or nominal defendants; and (vi) the applicable law governing the claims and potential defenses. Lead Counsel also consulted with experts on pharmaceutical manufacturing practices and FDA regulatory practices, bankruptcy, damages, and causation issues.

7. Thus, at the time Settlement was reached, Lead Plaintiffs and Lead Counsel had a well-founded understanding of the strengths and weaknesses of the Settling Parties' positions, honed through the investigation, appellate efforts, and discovery.

8. The Settlement has the full support of Lead Plaintiffs. *See* Declaration of Daniel Greene, Interim Executive Director of Boston Retirement Board, in Support of (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses ("Greene Decl.") (attached

hereto as Ex. 2) and Declaration of Joseph Connolly, Chairman of the Board of Trustees and the Treasurer of the Norfolk County Retirement System, in Support of (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses ("Connolly Decl.") (attached as Ex. 3 hereto).

II. FACTUAL SUMMARY OF LEAD PLAINTIFFS' CLAIMS

9. Lead Plaintiffs' claims in the Action are stated in the Consolidated Amended Complaint for Violations of the Federal Securities Laws, filed May 22, 2009. ECF No. 66. The Complaint asserts claims against Defendants, and previously the Former Defendants, for violations of the federal securities laws, specifically Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder. ¶¶146-81.[3]

10. Lead Plaintiffs' claims arose from Defendants' allegedly false and misleading statements and omissions during the Class Period regarding KV's compliance with the regulatory requirements of the FDA and Current Good Manufacturing Practices (cGMP). Lead Plaintiffs alleged that Defendants knowingly manufactured adulterated drugs with incorrect dosages and repeatedly made positive statements about their business practices despite the FDA's continuous warnings of regulatory noncompliance, which Defendants concealed from the public. Defendants' alleged persistent lack of compliance with such requirements ultimately forced KV to completely shutdown its manufacturing operations.

11. Lead Plaintiffs alleged that as a result of the FDA violations and the subsequent shutdown of the Company's operations, the Company's stock price collapsed from more than

[3] All references herein to "¶__" refer to paragraph cites of the Complaint.

$30 at the height of the Class Period to 51 cents at the close of trading on January 26, 2009. *Id*. ¶7.

III. RELEVANT PROCEDURAL HISTORY

12. This Action was commenced on December 2, 2008 by the filing of an initial complaint alleging that defendants violated the federal securities laws. Thereafter, two additional securities class action complaints were filed and subsequently consolidated into this Action by an Amended Order dated April 28, 2009. ECF No. 58.

A. Appointment of Lead Plaintiffs

13. On February 2, 2009, Norfolk, State-Boston, and The El Paso Firemen and Policemen's Pension Fund ("El Paso") moved for appointment as lead plaintiffs and requested that their counsel, Labaton Sucharow and Bernstein Litowitz Berger & Grossman LLP be appointed co-lead counsel. ECF No. 16.[4] One other shareholder group moved for lead plaintiff.

14. After the parties fully briefed their positions, on April 28, 2009 the Court appointed Norfolk and State-Boston (the Public Pension Fund Group) as Lead Plaintiff and approved their selection of Labaton Sucharow LLP as lead counsel to represent the putative class, and Osburn, Hine, Kuntze, Yates & Murphy, L.L.C. ("Osburn") as liaison counsel.[5]

B. The Complaint and Motions to Dismiss

15. On February 22, 2009, Lead Plaintiffs filed the Complaint against KV, Hermelin (former CEO and former Chair of the Board of Directors at KV), Van Vliet (Corporate President and interim CEO during the Class Period), and Bleser (President of KV's Pharmaceutical Manufacturing Division and executive officer of KV during the Class Period). As noted above,

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[4] El Paso and its counsel subsequently withdrew its application as a movant for lead plaintiff. ECF No. 35.

[5] On June 21, 2013, the Court issued an order granting a motion to substitute Osburn with Danna McKitrick, P.C. as liaison counsel. ECF No. 172.

the securities fraud claims arose from the Company's issuance of allegedly false and misleading statements and omissions regarding KV's compliance with FDA requirements, including the FDA's cGMP. The Complaint also alleged that when the truth was revealed concerning the alleged fraud, investors who purchased during the Class Period were harmed.

16. In particular, Lead Plaintiffs alleged that Defendants' statements throughout the Class Period that KV was in compliance with FDA requirements, including cGMP, were materially false and misleading because Defendants knew, and failed to disclose, that throughout the Class Period the FDA issued Forms 483 to KV that included detailed lists of cGMP violations and that, despite Defendants' assurances to the FDA after each of the Forms 483 were issued that the cGMP violations would be rectified, Defendants failed to resolve the cGMP violations. *See* ¶¶102-118.

17. Lead Plaintiffs also alleged that Defendants made false and misleading statements concerning the Company's earnings. In July 2007, KV launched Generic Metoprolol, a cardiovascular drug. Lead Plaintiffs alleged that Defendants' statements about Generic Metoprolol rendered certain statements made by KV about its earnings false and misleading since Generic Metoprolol was falsely reported to be a primary driver of KV's revenues and profits. As alleged, Defendants knew, but failed to disclose, that according to the Form 483 issued by the FDA on February 2, 2009, KV's manufacturing process for Generic Metoprolol violated FDA regulations, including cGMP, because (a) the Generic Metoprolol product line had not been developed in a scientifically sound manner with appropriate specifications and process controls; (b) the active pharmaceutical ingredient used in producing the drug was different than the one used in the design process; and (c) the particle size of post-validation lots of Generic

Metoprolol was smaller than the one used in a prior validation study. *Id*. ¶¶107-10, 112-13, 115-18.

18. The Complaint was the result of a rigorous investigation. Lead Counsel undertook, among other things, a review and analysis of (i) documents filed publicly by KV with the SEC; (ii) press releases, news articles, and other public statements issued by or concerning KV, Defendants, and Former Defendants; (iii) research reports issued by financial analysts concerning KV; (iv) publicly available information concerning investigations conducted by the FDA and the DOJ; (v) pleadings filed in other pending litigation naming certain Defendants as defendants or nominal defendants; and (v) the applicable law governing the claims and potential defenses.

19. In addition, in preparing the Complaint, Lead Counsel consulted with several experts in the areas of FDA regulations and pharmaceutical manufacturing practices, damages, and causation. Notably, this case involved unique issues relating to the pharmaceutical industry and FDA regulation that required Lead Counsel's focus. Lead Plaintiffs therefore retained Benjamin England & Associates to provide expert consulting advice with respect to the FDA regulatory process, cGMP, the allegations of violations of FDA regulations, and Forms 483. Benjamin England is a 17-year veteran of the FDA and served as the Regulatory Counsel to the Associate Commissioner for Regulatory Affairs. Mr. England has also previously served as an FDA Consumer Safety Officer, Compliance Officer, and Senior Special Agent with the FDA's Office of Criminal Investigations.

20. Defendants and Former Defendants filed separate motions to dismiss the Complaint on July 27, 2009. *See* ECF Nos. 91, 94, 95, and 99. Defendants and Former Defendants argued, *inter alia*, that: (i) Lead Plaintiffs' allegations did not demonstrate the

requisite scienter; (ii) Lead Plaintiffs failed to show that the Company's compliance and financial statements were materially false and misleading; (iii) Lead Plaintiffs failed to plead loss causation; and (iv) Lead Plaintiffs failed to allege scheme liability against the Former Defendants.

21. On August 24, 2009, Lead Plaintiffs filed their omnibus opposition to Defendants' and Former Defendants' motions to dismiss (ECF No. 109) and on September 3, 2009, Defendants and Former Defendants filed reply briefs in support of their motions to dismiss (ECF Nos. 110, 111, 115).

22. On February 22, 2010, the Court granted Defendants' and Former Defendants' motions (the "dismissal order") on the grounds that Lead Plaintiffs had failed to sufficiently allege false and misleading statements, or scheme liability, but did not rule on the issues of whether Lead Plaintiffs properly pled scienter or loss causation. ECF No. 117.

23. With respect to falsity and materiality of the Defendants' compliance statements, the Court held:

> Upon careful review, the Court concludes that lead plaintiffs have failed to allege with sufficient particularity that the compliance statements in the Form 10-K that the FDA issued to KV in 2004, 2005, 2006, 2007, and 2008 were false and misleading. The first page of every Form FDA 483 states that the "document lists observations made by the FDA representative(s) during the inspection[, and that t]hey are inspectional observations, and do not represent a final determination regarding [a company's] compliance." (Doc. #66-3) (emphasis added). Furthermore, the FDA recognized the "misuse of and concerns with the [Form 483,]" and added this clarifying language to resolve any "perceived ambiguity [that might] result in inaccurate conclusions about the compliance of an inspected firm." See http://www.fda.gov/Drugs/DevelopmentApprovalProcess/Manufacturing/QuestionsandAnswersonCurrentGoodManufacturingPracticescGMPforDrugs/ucm072012.htm (last visited Feb. 10, 2010). Thus, the Form 483s issued to KV only contained observations—not "a list of cGMP violations" as alleged by lead plaintiffs. . . .[T]he FDA explicitly states on its website that a Form 483 does not represent the FDA's final determination of a company's compliance. . . .Even assuming the observations listed in the Form 483s indicate that KV was not in material compliance at the time KV filed the five Form 10-Ks,

> lead plaintiffs plead no specific facts that show that KV was not in compliance when KV filed each of the Form 10-Ks.

See dismissal order at 16-17.

C. Motion for Relief from the Court's Dismissal Order

24. On March 18, 2010, Lead Plaintiffs moved pursuant to Federal Rules of Civil Procedure 59(e) and 60(b)(2) to vacate the Court's dismissal order and moved, pursuant to Rule 15, to amend the Complaint to add allegations regarding a plea agreement reached between ETHEX, a KV subsidiary, and the United States Attorneys' Office for the Eastern District of Missouri and the Office of Consumer Litigation of the Department of Justice. ECF No. 119. Defendants and Former Defendants opposed Lead Plaintiffs' motion (ECF Nos. 124, 130, 131) and on October 20, 2010, the Court denied Lead Plaintiffs' motion for relief from the Court's dismissal order and denied Lead Plaintiffs' motion to amend the Complaint (ECF No. 135) ("relief order").

D. Appeal to the Court of Appeals for the Eighth Circuit

25. On March 18, 2010, Lead Plaintiffs filed a notice of appeal of the Court's dismissal order to the United States Court of Appeals for the Eighth Circuit. ECF No. 121.

26. On January 6, 2011, Lead Plaintiffs submitted their opening brief in support of their appeal. Among other things, Lead Plaintiffs argued that (i) Defendants made materially false and misleading statements concerning KV's purported compliance with cGMP and FDA regulations and that Lead Plaintiffs properly pled the false and misleading statements in the Complaint with particularity; (ii) Defendants made materially false and misleading statements concerning earnings based on Generic Metoprolol and had a duty to disclose the manufacturing problems with Metoprolol; (iii) the conduct of Van Vliet and Bleser met the elements for scheme

liability; and (iv) an amendment would not be futile because Lead Plaintiffs pled new statements arising from new allegations.

27. However, Defendants argued in their opposing brief, among other things, that the Court did not err in dismissing the Complaint and that (i) the Complaint did not contain any particularized factual allegations as to why the compliance statements were false and misleading; (ii) KV had no duty to disclose the Forms 483 because those documents were readily available to the public, and even if they were disclosed, Lead Plaintiffs had failed to plead why such nondisclosure rendered the statements false and misleading; (iii) the Complaint did not adequately plead scienter; and (iv) the Court properly denied the motion to amend the Complaint.

28. On September 22, 2011, the Court of Appeals heard oral argument from the parties. By order entered June 4, 2012, the Court of Appeals affirmed in part, reversed in part, and remanded the case to this Court for further proceedings consistent with its opinion. Specifically, the Court of Appeals reversed the dismissal of claims against KV and the Individual Defendant, finding that for purposes of a motion to dismiss, Lead Plaintiffs adequately alleged that KV and the Individual Defendant made false and misleading statements with respect to compliance with cGMP. However, it affirmed the dismissal of claims relating to false statements about the financial results of Generic Metoprolol. It also dismissed the claims against the Former Defendants and did not rule on whether the Complaint adequately pled the elements of scienter or loss causation. The case was remanded to this Court for further proceedings.

E. Bankruptcy Case and the Stay of Proceedings

29. As described in greater detail below, after the Court of Appeals heard oral argument, the parties commenced settlement negotiations. During the pendency of the Court's consideration of the remaining issues on the motion to dismiss and prior to the resolution of

settlement negotiations, on August 4, 2012, KV filed for bankruptcy protection pursuant to Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York, *In re K-V Discovery Solutions, Inc., et al.*, Case No. 12-13346 (ALG) (the "bankruptcy case").

30. On August 10, 2012, pursuant to the automatic stay provision of 11 U.S.C. §362(a)(1), the Court stayed all proceedings in the Action pending completion of the bankruptcy case or further order of the Court. ECF No. 148.

31. On December 6, 2012, Lead Plaintiffs moved to vacate or modify the stay with respect to non-debtor, the Individual Defendant. ECF No. 150. Defendants opposed Lead Plaintiffs' motion on December 26, 2012. ECF Nos. 155 and 156. On March 28, 2013, the Court granted Lead Plaintiffs' motion and vacated the Court's stay order with respect to the Individual Defendant. ECF No. 161.

F. Individual Defendant's Pending Motion to Dismiss

32. On April 30, 2013, the Court denied the Individual Defendant's motion to dismiss and found that (i) when taken as a whole, the Complaint adequately pled that Hermelin acted with scienter; and (ii) the Complaint sufficiently pled loss causation. ECF No. 165.

33. On May 20, 2013, the Individual Defendant filed an Answer to the Complaint. ECF No. 166.

IV. SETTLEMENT NEGOTIATIONS

A. Initial Discussions with Defendants in 2011

34. After the Eighth Circuit oral argument in September 2011, Lead Plaintiffs and Defendants engaged in mediated negotiations with the assistance of an experienced mediator, Robert Meyer of Loeb & Loeb, in an effort to resolve the claims. In advance of a formal mediation session, the Settling Parties prepared and exchanged detailed mediation statements

which afforded them the opportunity to synthesize and further analyze and assess their respective positions. However, the mediation was not successful. The negotiations were not fruitful and terminated in November 2011.

B. Discussions with Defendants in 2013

35. Settlement discussions resumed in June of 2012 but stalled after the Company's bankruptcy filing in August 2012. Thereafter, Lead Plaintiffs and Defendants renewed their settlement discussions in early 2013, after the Court lifted the bankruptcy stay with respect to the Individual Defendant.[6] Following further arm's-length discussions, Defendants, Former Defendants, and Lead Plaintiffs reached an agreement in principle to settle the claims in the Action, resulting in the Memorandum of Understanding ("MOU") entered into on August 28, 2013. The MOU provided for KV and the Individual Defendant to pay, or cause their insurance carriers to pay, $12.8 million, subject to certain conditions, to settle the class claims asserted against them.

36. In connection with the agreement to settle, KV agreed to provide Lead Plaintiffs with confidential internal information which included 150,000 pages of core documents relating to the key issues in the Action. Over the course of three weeks, Lead Plaintiffs dedicated three attorneys to the review of these materials. These attorneys conducted electronic as well as a document-by-document review. The results of this review were then examined by the senior attorneys on this matter. The documents confirmed Lead Counsel's understanding of the strengths and weaknesses of the claims against KV and the Individual Defendant, and the reasonableness of the proposed Settlement.

[6] On September 16, 2013, the effective date of the KV Sixth Amended Plan occurred. All pre-confirmation injunctions and stays terminated.

37. The Settling Parties memorialized the final terms of settlement in the Stipulation, which was filed with the Court on December 20, 2013.

V. RISKS OF CONTINUED LITIGATION

38. Based on publicly available documents, information and internal documents obtained through their own investigation, the investigations of the FDA and the DOJ, and their discussions with consultants with expertise in the fields of damages and FDA regulation, Lead Counsel believes that the Settlement is fair, reasonable, and adequate. Lead Counsel also realizes, however, that Lead Plaintiffs faced considerable risks and obstacles to achieving a greater recovery, were the case to continue. Lead Plaintiffs and Lead Counsel carefully considered these challenges during the months leading up to the Settlement and during the settlement discussions with Defendants.

A. Bankruptcy and Limited Financial Resources

39. Had the litigation continued, there was a real possibility the Lead Plaintiffs and the Class would have recovered less than the amount provided for in the Settlement or nothing at all due to the Company's bankruptcy and reorganization, the limited and wasting insurance available to the Defendants, and the limited financial resources of the Individual Defendant. The Company's bankruptcy and reorganization eliminated it as a source of recovery for the Class. These facts strongly militated in favor of an immediate negotiated recovery now in lieu of the risk of a lesser recovery after a year or more of fact and expert discovery, dispositive motion practice, a trial, and the inevitable appeals regardless of who wins at trial.

40. When the Company entered bankruptcy, in addition to the stay of litigation, claims against the Company arising from the purchase of KV securities lost essentially all value and were subordinated below tiers of other creditors. Absent a settlement of the claims, investors' claims against the Company became essentially worthless. The main source of

recovery then became insurance proceeds. The Company did have, primarily for the benefit of its officers and directors, a total of $20 million in liability insurance that could be used to resolve the claims of investors, however the insurance was also used to pay for attorneys' fees and costs arising out of the litigation. Section 12.13 of the Sixth Amended Joint Chapter 11 Plan of Reorganization for K-V Discovery Solutions, Inc. and its Affiliated Debtors, which was confirmed by the bankruptcy court on August 29, 2013, was heavily negotiated and essentially permits, among other things, Lead Plaintiffs to pursue claims against the Defendants in the Action, obtain discovery, and enter into a settlement; however, any recovery on claims against KV was limited to available insurance. Ex. 4.

41. By the time of renewed settlement discussions, there was slightly less than $16 million in insurance coverage still available and discovery had barely started. Of course if the parties continued to litigate, these insurance funds would quickly diminish. The parties had not commenced depositions, which would have considerably increased defense costs. Accordingly, there was a real threat that at the point of a judgment favorable to the Class, the Defendants would have no, or only limited, insurance funds to satisfy the judgment.

42. Additionally, Lead Plaintiffs conducted a thorough asset search and review of the Individual Defendant's ability to pay and concluded that the Individual Defendant did not appear to have sufficient personal resources to meaningfully contribute to a judgment or the Settlement.

B. Risks Concerning Liability of Defendants

43. Although Lead Plaintiffs believe in the strength of the claims against Defendants, securities fraud claims are known to be difficult and complex to litigate and the facts here also presented significant challenges, given, among other things, the highly scientific nature of the alleged fraud at issue and the vigorous opposition advanced by Defendants.

a. Risks Concerning Materiality and Falsity of Statements

44. Defendants would be expected to argue at summary judgment and trial, as they had in their motions to dismiss and before the Court of Appeals, that Lead Plaintiffs could not prove the falsity of any material statements. Although the Court of Appeals found that Lead Plaintiffs had adequately pled falsity and materiality of the alleged misstatements and omissions, this does not mean that Lead Plaintiffs would have been able to establish these elements in order to survive a summary judgment challenge or achieve a jury verdict in the Class's favor. Indeed, Defendants have consistently maintained that their statements concerning the Company's compliance with regulatory requirements were not materially false and misleading.

45. For example, Defendants would no doubt argue at summary judgment or before a jury the relative unimportance of Forms 483 in general, that a Form 483 is an "inspectional observation" and does "not represent a final Agency determination," and that the items highlighted in the Form 483s were minor deviations from cGMP that would not put the Company out of material compliance. Defendants would also likely focus on the fact that after each and every Form 483 was received by the Company, the FDA notified KV that its inspection was "closed" and that inspections were only closed when a final decision had been made not to take further administrative action. Therefore, Defendants would likely argue that the statements, that KV was in material compliance with FDA regulations, were true and a factfinder could find that even known deviations may not constitute a lack of "material" compliance with FDA regulations.

b. Risks of Proving Scienter

46. Even if Lead Plaintiffs surmounted the challenge of proving the materiality and falsity of the alleged misstatements, Lead Plaintiffs would have been required to prove that each of the Defendants acted with scienter—that is, that they knew or were severely reckless in not

knowing that their statements were false or misleading when made. (Lead Plaintiffs would of course expect Defendants to maintain that all challenged statements were true when made.) With respect to scienter, Defendants would have likely presented evidence of the "marginal importance" of the 483 Forms' "observations," and the fact that the FDA did not escalate its enforcement for years, and would likely argue that this demonstrated that Defendants believed in the truth of their statements.

47. Although the FDA filed a Complaint for Permanent Injunction on March 2, 2009 against the Defendants, and others, that ended with a consent decree, the proceeding did not result in any admissions that would establish scienter here. Defendants would likely argue that the consent decree expressly stated that neither Hermelin or KV admit or deny any allegations and therefore, the decree cannot serve as a basis to impute knowledge of the alleged fraud, and that the decree related to a discrete period of time and not the entirety of the Class Period, which spans almost five years. Similarly, although Hermelin pled guilty to two counts of standing in the position of a responsible corporate officer under the applicable provisions of the Food, Drug, and Cosmetic Act in connection with the introduction of a misbranded drug, he would likely continue to vigorously distance this conduct from the alleged fraud in the Action. Defendants could also contend that Lead Plaintiffs could not prove that they had any motive to commit the alleged fraud. Finally, the U.S. Securities and Exchange Commission never formally investigated the allegations of securities fraud raised in this case or brought a proceeding against the Defendants.

c. Risks Concerning Loss Causation

48. Defendants would have vigorously challenged Lead Plaintiffs' ability to establish loss causation and damages. Defendants have argued, and would continue to argue at summary judgment and trial, *inter alia*, that Lead Plaintiffs could not establish that the Class's losses were

caused by the alleged fraud. They would have instead argued that the stock price decreases stemmed from previously reported conditions or economic losses that inevitably arise from product recalls and the suspension of production, as well as the economic downturn that devastated stock prices during the same time period.

49. In particular, Defendants would have argued (i) that the May 30, 2008 allegedly corrective disclosure had nothing to do with FDA compliance but instead dealt only with earnings reports and previously reported issues and, therefore, any stock drop following this disclosure was not related to the alleged fraud; (ii) the November 13, 2008 allegedly corrective disclosure included confounding news relating to matters not alleged to be the basis of the alleged fraud; and (iii) the December 23, 2008 and January 26, 2009 allegedly corrective disclosures regarding the suspension of manufacturing and shipment of products were not due to a revelation of prior fraud but due to the market's reaction to the Company's future business prospects and were therefore not "corrective."

50. Proof of loss causation, and the technical aspects of damages, would have required significant expert testimony and analysis. Because establishing these elements would involve a "battle of experts" regarding whether Lead Plaintiffs could establish causation and the extent of damages, the outcome of trial was and remains difficult to predict.

51. In short, Lead Plaintiffs faced numerous obstacles to proving both liability and damages and there was no certainty, given Defendants' asserted defenses, that Lead Plaintiffs and the Class would prevail on either. Additionally, Defendants would likely appeal any verdict and damage award. The appeals process would likely span several years, during which time Class Members would have received no distribution on any award. An appeal of any verdict would also carry the risk of reversal, resulting in no recovery for the Class. Because of the risks

and delays associated with continuing to litigate and proceeding to trial, there was a real danger that any litigated recovery would be much less than the recovery achieved in this Settlement. Therefore, Lead Counsel believes that the Settlement obtained is fair, reasonable, adequate, and in the best interest of Class Members.

VI. COMPLEXITY, EXPENSE, AND LIKELY DURATION OF THE LITIGATION

52. During the course of the Action, a period of more than four years, Lead Counsel engaged in motion practice on Defendants' motions to dismiss, appealed to the Circuit Court, engaged in motion practice relating to the bankruptcy case, and spent many hours in negotiations leading to the Settlement. Further litigation against Defendants would have likely consumed significant time and money for document and deposition discovery, expert discovery, class certification, summary judgment proceedings, trial, and possible appeals. A settlement at this juncture results in an immediate recovery without the considerable risk, expense, and delay of further litigation.

VII. LEAD PLAINTIFFS' COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER AND CLASS REACTION TO DATE

53. Pursuant to the Preliminary Approval Order, the Court appointed A.B. Data as Claims Administrator in the Action and instructed A.B. Data to disseminate copies of the Notice of Pendency of Class Action and 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 and Proposed Settlement and Motion for Attorneys' Fees and Expenses.

54. The Notice, attached as Ex. A to the Declaration of Adam D. Walter on Behalf of A.B. Data, Ltd. Regarding Mailing of Notice to Potential Class Members and Publication of Summary Notice ("Mailing Decl.") (attached as Ex. 5 hereto) provides potential Class Members

with information on the terms of the Settlement and, among other things: their right to exclude themselves from the 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 Proof of Claim in order to be eligible for a payment from the proceeds of the Settlement. The Notice also informs Class Members of Lead Counsel's intention to apply for an award of attorneys' fees of no more than 30% of the Settlement Fund and for payment of litigation expenses in an amount not to exceed $750,000.

55. As detailed in the Mailing Declaration, on February 13, 2014, A.B. Data began mailing Notice Packets to potential Class Members as well as banks, brokerage firms, and other third party nominees whose clients may be Class Members. Mailing Decl. ¶¶ 2-5. In total, to date, A.B. Data has mailed 49,569 Notice Packets to potential nominees and Class Members by first-class mail, postage prepaid. *Id.* ¶ 9. To disseminate the Notice, A.B. Data obtained the names and addresses of potential Class Members from listings provided by KV and its transfer agent and from banks, brokers and other nominees. *Id.* ¶¶ 3-8.

56. On March 4 and March 5, 2014, respectively, A.B. Data caused the Summary Notice to be published in *Investor's Business Daily* and to be transmitted over *PR Newswire*. *Id.* ¶ 10, and Exhibits B and C.

57. A.B. Data also maintains and posts information regarding the Settlement on a dedicated website established for the Action, www.kvpharmasecuritieslitigation.com, to provide Class Members with information concerning the Settlement, as well as downloadable copies of the Notice Packet and the Stipulation. *Id.* ¶ 13. In addition, Lead Counsel has made relevant documents concerning the Settlement available on its firm website.

58. Pursuant to the terms of the Preliminary Approval Order, the deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, or the fee and expense application, or to request exclusion from the Class is April 2, 2014. To date, Lead Counsel has not received any objections and the Claims Administrator has not received any requests for exclusion from the Class. *Id.* ¶ 14. Should any objections or requests for exclusion be received, Lead Plaintiffs will address them in their reply papers, which are due April 16, 2014.

VIII. PLAN OF ALLOCATION

59. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Class Members who wish to participate in the distribution of the Settlement proceeds must submit a valid Proof of Claim and all required information postmarked no later than June 19, 2014. As provided in the Notice, after deduction of Court-awarded attorneys' fees and expenses, notice and administration costs, and 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").

60. The Plan of Allocation proposed by Lead Plaintiffs, which is set forth in full in the Notice (Ex. 5 – A at 8-14), is designed to achieve an equitable and rational distribution of the Net Settlement Fund to eligible claimants, 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 one of Lead Plaintiffs' consulting damages experts and believes that the plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

61. Stanford Consulting Group, Inc. (SCG), one of Lead Plaintiffs' consulting damages experts, provides research, analysis, and expert testimony in complex litigation and regulatory proceedings. SCG's consultants all hold doctoral or master degrees in finance, business, economic or operations research and provide analysis and expertise on issues including

materiality, causation, and damages in many securities class action lawsuits nationwide. *See* Resume of SCG (attached as Ex. 6 hereto).

62. 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. SCG analyzed the movement of KV's securities and took into account the portion of the stock drops allegedly attributable to the challenged statements. The Plan of Allocation ensures that the net settlement proceeds will be fairly and equitably distributed based upon the amount of inflation in the price of KV's securities during the Class Period that was allegedly attributable to the alleged wrongdoing. In this respect, inflation tables were created for the four categories of KV publicly traded securities traded during the Class Period that are eligible for a recovery from the Settlement. Investors in KV's Class A common stock, Class B common stock, 7% Cumulative Convertible Preferred shares, and Contingent Convertible Subordinated Notes due 2033 are eligible for a recovery from the Settlement.

63. The Plan of Allocation further provides a formula for calculating a claimant's "Recognized Loss" for each acquisition/purchase of an eligible KV security during the Class Period. Calculation of Recognized Loss will depend upon several factors, including when the Authorized Claimant's KV securities were purchased during the Class Period and whether these securities were sold during the Class Period, and if so, when.

64. As recognized in the Plan of Allocation, beginning May 30, 2008, alleged inflation in prices of the four KV securities was reduced sequentially, as corrective disclosures were allegedly made on May 30, 2008, on November 13, 2008, on December 23 and 24, 2008, and January 26, 2009.

65. A.B. Data, Ltd., as the Court-approved Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Loss compared to the aggregate Recognized Losses of all Authorized Claimants, as calculated in accordance with the Plan of Allocation.

66. To date, there have been no objections to the Plan of Allocation and Lead Plaintiffs and Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable, and should be approved.

IX. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES

67. In addition to seeking final approval of the Settlement and the Plan of Allocation, Lead Counsel is making an application for a fee award of 30% of the Settlement Fund (which includes accrued interest) on behalf of all plaintiffs' counsel that contributed to the prosecution of the Action. This request is fully supported by Lead Plaintiffs. *See* Greene Decl. ¶ 6; Connolly Decl. ¶ 6. Lead Counsel also requests payment of expenses incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of $488,531.75, plus accrued interest. This amount is well below the $750,000 maximum expense amount that the Class was advised could be requested. The legal authorities supporting the requested fees and expenses are set forth in Lead Counsel's separate memorandum of law in support of the fee and expense application. Below is a summary of the primary factual bases for Lead Counsel's request.

A. Lead Plaintiffs Support the Fee and Expense Application

68. Lead Plaintiffs are two sophisticated institutional investors. State-Boston provides retirement benefits for more than 34,000 active and retired employees of the State of Boston, Massachusetts and manages $3 billion in assets. *See* Greene Decl. ¶1. Norfolk County is one of 106 contributory retirement systems within the Commonwealth of Massachusetts,

representing more than 9,500 active and retired members. Norfolk County has approximately $450 million in assets. *See* Connolly Decl. ¶1.

69. Lead Plaintiffs believe the fee and expense request is fair, reasonable, and warranting consideration and approval by the Court. *See* Greene Decl. ¶6; Connolly Decl. ¶6. In coming to this conclusion, Lead Plaintiffs considered the work conducted, the size of the recovery obtained, and the considerable risks of litigation. *See id*. Lead Plaintiffs take their roles in this representative action seriously in order to ensure that Lead Counsel's fee request is fair in light of the work performed and result achieved for the Class. *See id*.

B. The Risks and Unique Complexities of the Action

70. The Action presented substantial challenges from the outset of the case. The specific risks Lead Plaintiffs faced in proving Defendants' liability, scienter, and loss causation, along with the challenges of litigating a case against a company in bankruptcy, are detailed in paragraphs 39 - 51, 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 was undertaken on a contingent basis.

71. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, risky, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking this 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, plaintiffs' counsel have received no compensation during the course of the Action and have incurred $488,531.75 in expenses in prosecuting the

Action for the benefit of the Class (*see* Section X, below, for further detail on counsel's incurred expenses).

72. 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. 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.

73. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. If this important public policy is to be carried out, courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

74. Here, Lead Counsel's persistent efforts in the face of substantial risks and uncertainties have resulted in a favorable and immediate recovery for the benefit of the Class. In circumstances such as these, and in consideration of Lead Counsel's hard work and the very favorable result achieved, the requested fee of 30% of the Settlement Fund and reimbursement of $488,531.75 in expenses is reasonable and should be approved.

C. The Work and Experience of Plaintiffs' Counsel

75. 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 more than four years and settled only after Lead Counsel overcame multiple legal and factual challenges, including an argument and briefing before the Court of Appeals and the Company's bankruptcy. Among

other efforts, Lead Counsel conducted a comprehensive investigation into the Class's claims; researched and prepared a detailed amended complaint; briefed an extensive opposition to Defendants' separate motions to dismiss; pursued an appeal to the Eighth Circuit; successfully lifted the bankruptcy stay with respect to the Individual Defendant and navigated through the bankruptcy proceeding; consulted with experts and consultants; obtained and reviewed 150,000 pages of core documents from KV; and engaged in a hard-fought settlement process with experienced defense counsel.

76. 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 Class, whether through settlement or trial, by the most efficient means necessary.

77. Attached hereto are declarations from plaintiffs' counsel to support Lead Counsel's request for an award of attorneys' fees and reimbursement of litigation expenses. *See* Declaration of Javier Bleichmar on behalf of Labaton Sucharow LLP, dated March 18, 2014 (Ex. 7 hereto); Declaration of Daniel G. Tobben on behalf of Danna McKitrick, PC, dated March 11, 2014 (Ex. 8 hereto); Declaration of Jack Reise on behalf of Robbins Geller Rudman & Dowd LLP, dated March 14, 2014 (Ex. 9 hereto); and Declaration of Jason G. Crowell on behalf of Osburn, Hine, Yates & Murphy, L.L.C., dated March 13, 2014 (Ex. 10 hereto).

78. Included with these declarations are schedules (Exhibit B to each declaration) that summarize the number of hours worked by each attorney and each professional support staff employed by the firms and the value of that time at current billing rates, *i.e.* the "lodestar" of the firms, as well as the expenses incurred by category.[7] As set forth in each declaration, the

[7] Attached hereto as Exhibit 11 is a summary table reporting the lodestars and expenses of counsel.

declarations were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which are available at the request of the Court.

79. The hourly billing rates of plaintiff' counsel here range from $260 to $975 for partners, $620 to $750 for of counsel, and $410 to $690 for other attorneys. *See* Exs. 7-10. It is respectfully submitted that the hourly rates for attorneys and professional support staff included in these schedules are reasonable and customary. Exhibit 12, attached hereto, is a table of billing rates for defense firms compiled by Labaton Sucharow from fee applications submitted by such firms in bankruptcy proceedings in 2013. The table indicates, among other things, that the median partner billing rate was $975, the median of counsel rate was $790, and the median associate rate was $595. Similarly, the *National Law Journal's* annual survey of law firm billing rates in 2013 shows that average partner billing rates among the Nation's largest firms ranged from $930 to $1,055 per hour and average associate billing rates ranged from $590 to $670 per hour. With respect to defense counsel in this Action, the *National Law Journal* reported that Gibson Dunn's 2013 partner billing rates ranged from $765 to $1800 per hour, with an average partner rate of $980, and its associate rates ranged from $175 to $930, with an average rate of $590 per hour.

80. Counsel have collectively expended more than 4,239 hours in the prosecution and investigation of the Action. *See* Exs. 7 – B, 8 – B, 9 – B, 10 – B, and 11. The resulting collective lodestar is $2,346,367.25. *Id*. Pursuant to a lodestar "cross-check," the requested fee of 30% of the Settlement Fund ($3,840,000) results in a "multiplier"[8] of approximately 1.6 on the lodestar, which does not include any time that will necessarily be spent from this date forward administering the Settlement.

[8] The multiplier is calculated by dividing the $3,840,000 fee request by the $2,346,367.25 lodestar of plaintiffs' counsel.

81. Lead Counsel is highly experienced in prosecuting securities class actions and worked diligently and efficiently in prosecuting the Action. Labaton Sucharow, as demonstrated by the firm resume attached to its declaration, is among the most experienced and skilled firms in the securities litigation field, and has a long and successful track record in such cases. *See* Labaton Fee Decl. Ex. 7 - A. Labaton Sucharow 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); and *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). *See also* Exs. 8 - A, 9 - A, 10 - A, for the qualifications of other plaintiffs' counsel.

D. Standing and Caliber of Defense Counsel

82. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Defendants and Former Defendants are represented by Gibson Dunn & Crutcher LLP, Steptoe & Johnson LLP, and Reeg Lawyers, LLC, well-known and respected law firms with attorneys who vigorously represented the interests of their respective clients. In the face of this experienced, formidable, and well-financed opposition, Lead Counsel was nonetheless able to achieve a settlement very favorable to the Class.

E. The Reaction of the Class to the Fee and Expense Application

83. As mentioned above, consistent with the Preliminary Approval Order, more than 49,000 Notice Packets have been mailed to potential Class Members advising them that Lead Counsel would seek an award of attorneys' fees that would not exceed 30% of the Settlement Fund, and payment of expenses in an amount not greater than $750,000. *See* Mailing Decl. Ex. A at 2, 6. Additionally, the Summary Notice was published in *Investor's Business Daily*, and disseminated over *PR Newswire*. *Id.* ¶ 10. The Notice and the Stipulation have also been available on the settlement website maintained by A.B. Data. *Id.* ¶ 13. While the deadline set by the Court for Class Members to object to the requested fees and expenses has not yet passed, to date no objections have been received. Lead Counsel will respond to any objections received in our reply papers, which are due April 16, 2014.

X. REQUEST FOR PAYMENT OF LITIGATION EXPENSES

84. Lead Counsel seek, on behalf of plaintiffs' counsel, payment from the Settlement Fund of $488,531.75 in litigation expenses reasonably and necessarily incurred by plaintiffs' counsel in connection with commencing and prosecuting the claims against Defendants.

85. From the beginning of the case, plaintiffs' counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Thus, counsel were motivated to take steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

86. As set forth in the fee and expense schedules, plaintiffs' counsel have incurred a total of $488,531.75 in unreimbursed litigation expenses in connection with the prosecution of the Action. 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 each firm's declaration, which identifies the specific category of expense—*e.g.*, online/computer research, experts' fees, travel costs, duplicating, telephone, fax and postage expenses, and other costs incurred for which counsel seek payment. These expense items are billed separately and such charges are not duplicated in the respective firms' billing rates.

87. Of the total amount of expenses, $423,488.77, or more than 86%, was expended on experts and consultants. Early in the litigation, Lead Counsel retained consultants in the areas of FDA regulations and pharmaceutical manufacturing practices, damages, and loss causation to assist in drafting the detailed and extensive Complaint and investigating the claims. Due to KV's bankruptcy, Lead Counsel retained an expert to advise on bankruptcy related matters. Lead Counsel also worked with one of its consulting damages experts to assist in developing a fair and reasonable Plan of Allocation. Ex. 7 - C.

88. Another large component of the litigation expenses was for online legal and factual research. In addition to researching the law pertaining to such complex areas such as, *inter alia*, falsity of statements, scienter, and causation, Lead Counsel necessarily spent considerable time and expense performing factual research.

89. The other expenses for which plaintiffs' counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include court fees, costs of out-of-town travel, copying costs, long distance telephone and facsimile charges, and postage and delivery expenses.

90. All of the litigation expenses incurred, which total $488,531.75, were necessary to the successful prosecution and resolution of the claims against Defendants.

XI. MISCELLANEOUS EXHIBITS

91. Attached hereto as Exhibit 13 is a compendium of unreported cases, in alphabetical order, cited in the accompanying Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses.

92. Attached hereto as Exhibit 14 is a true and correct copy of the article by Dr. Renzo Comolli and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation: 2013 Full Year Review" (NERA Jan. 21, 2014).

XII. CONCLUSION

93. In view of the significant recovery to the Class and the substantial risks of this litigation, as described above and in the accompanying memorandum of law, Lead Plaintiffs 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 memoranda of law, Lead Counsel respectfully submits that a fee in the amount of 30% of the Settlement Fund be awarded, and that the requested litigation expenses in the amount of $488,531.75, plus accrued interest be paid.

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

Executed on March 19, 2014.

Javier Bleichmar

Javier Bleichmar

CERTIFICATE OF SERVICE

I certify that a true copy of the following was served electronically via the CM/ECF system on all counsel of record on this 19th day of March 2014.

Respectfully submitted,

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