

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO
5 Becker Farm Road
Roseland, NJ 07068
(973) 994-1700

Liaison Counsel for Lead Plaintiffs

Mark Levine (admitted *pro hac vice*)
Patrick Slyne (admitted *pro hac vice*)
Jason D'Agnenica
STULL, STULL & BRODY
6 East 45th Street
New York, NY 10017
(212) 687-7230

*Co-Lead Counsel for Lead Plaintiffs and
the Settlement Class and Counsel for Jerome Haber*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC. SECURITIES,
DERIVATIVE & "ERISA" LITIGATION

MDL No. 1658 (SRC)

Civil Action No. 05-1151 (SRC) (CLW)

Civil Action No. 05-2367 (SRC) (CLW)

THIS DOCUMENT RELATES TO: THE
CONSOLIDATED SECURITIES ACTION

NOTICE OF MOTION

To: All Persons on ECF service list:

PLEASE TAKE NOTICE that on June 28, 2016 at 10:00 a.m. or at such later date and time as the Court shall determine, Lead Plaintiff and Class Representative Jerome Haber, by his undersigned counsel, shall move before The Honorable Stanley R. Chesler, United States District Judge, at the United States Post Office and Courthouse Building, Newark, New Jersey 07101, for

an award pursuant to 15 U.S.C. § 78u-4(a)(4) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, and for entry of the proposed Order.

The undersigned intend to rely upon the annexed Memorandum of Law and the Declaration of Jerome Haber in Support of His Application for Reimbursement of Litigation Expenses.

Dated: April 29, 2016

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO

By: /s/ James E. Cecchi

James E. Cecchi

5 Becker Farm Road
Roseland, NJ 07068
(973) 994-1700

Liaison Counsel for Lead Plaintiffs

Mark Levine (admitted *pro hac vice*)
Patrick Slyne (admitted *pro hac vice*)
Jason D'Agnew

STULL, STULL & BRODY
6 East 45th Street
New York, NY 10017
(212) 687-7230

*Co-Lead Counsel for Lead Plaintiffs and
the Settlement Class and Counsel for Jerome
Haber*

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO
5 Becker Farm Road
Roseland, NJ 07068
(973) 994-1700

Liaison Counsel for Lead Plaintiffs

Mark Levine (admitted *pro hac vice*)
Patrick Slyne (admitted *pro hac vice*)
Jason D'Agnew
STULL, STULL & BRODY
6 East 45th Street
New York, NY 10017
(212) 687-7230

*Co-Lead Counsel for Lead Plaintiffs and
the Settlement Class and Counsel for Jerome Haber*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC. SECURITIES,
DERIVATIVE & "ERISA" LITIGATION

THIS DOCUMENT RELATES TO: THE
CONSOLIDATED SECURITIES ACTION

MDL No. 1658 (SRC)

Civil Action No. 05-1151 (SRC) (CLW)

Civil Action No. 05-2367 (SRC) (CLW)

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF JEROME HABER

PRELIMINARY STATEMENT

Lead Plaintiff and Class Representative Jerome Haber (“Dr. Haber”) respectfully submits this memorandum of law in support of his motion for entry of the proposed Order submitted herewith granting his request for an award pursuant to 15 U.S.C. § 78u-4(a)(4) of the Private Securities Litigation Reform Act of 1995 (the “PSLRA”).¹

FACTS

For more than twelve years, Dr. Haber, as a lead plaintiff and/or Class Representative, devoted substantial time and effort directly related to the representation of the Class in this Action. *See* Declaration of Jerome Haber in Support of His Application for Reimbursement of Litigation Expenses (the “Haber Decl.” or “Haber Declaration”), at ¶ 10. Dr. Haber was appointed as a lead plaintiff in the Action on February 26, 2004 (Haber Decl. ¶ 6), and was appointed as a Class Representative on January 30, 2013. *See In re Merck & Co. Sec., Derivative & ERISA Litig.*, No. 1658 (SRC), 2013 U.S. Dist. LEXIS 13511, at *54 (D.N.J. Jan. 30, 2013) (appointing Dr. Haber as a class representative). At all times Dr. Haber was an adequate representative of the Class. *See In re Merck & Co., Sec., Derivative & ERISA Litig.*, 2013 U.S. Dist. LEXIS 13511, at *54 (“the Court finds that Lead Plaintiffs MPERS, Reynolds, Haber and LeVan satisfy Rule 23(a)(4)[‘s adequacy requirement] and may be appointed as class representatives.”); *see generally* Haber Decl. (describing Dr. Haber’s involvement in the Action).

As reflected in his accompanying Haber Declaration, Dr. Haber became involved in this Action in December 2003 when he certified his willingness to serve as a representative party and that he understood he may be required to provide testimony at deposition and trial. Haber Decl. ¶ 2.

¹ Capitalized terms herein that are not otherwise defined have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of February 8, 2016, entered into by and among Lead Plaintiffs and Defendants. ECF No. 949-2.

Since December 2003, Dr. Haber has fulfilled the duties that he undertook. *E.g.*, Haber Decl. ¶¶ 6-9. Among his efforts, Dr. Haber engaged in regular communications with his counsel regarding developments in the Action (*Id.* ¶¶ 6-9), provided responses to discovery requests (Haber Decl. ¶ 6), traveled to and appeared at deposition (*Id.* ¶ 8), developed an understanding of the risks involved in the litigation (*Id.* ¶ 11), and ultimately supported the settlement of the Action. *Id.* ¶ 9. By his estimation, Dr. Haber spent approximately 100 hours over a period of approximately twelve and a half years assisting with the prosecution of this Action, which was time that he was unable to spend on other activities (*Id.* ¶ 10), and which time benefited the Class.

ARGUMENT

The Court should grant Dr. Haber's request for an award pursuant to 15 U.S.C. § 78u-4(a)(4).²

While Dr. Haber, a retired psychiatrist, states that he did not incur lost wages or out-of-pocket expenses (Haber Decl. ¶ 10), courts have made similar awards to class representatives in PSLRA cases without reliance on any finding of out-of-pocket costs or lost wages. *E.g.*, *In re PAR Pharm. Secs. Litig.* 2013 U.S. Dist. LEXIS 106150, at *32-33 (D.N.J. July 29, 2013) (granting an award of reasonable costs and expenses to a class representative without any finding of the representative suffering from lost wages or other out-of-pocket expenses); *In re Corel Corp. Sec. Litig.*, 293 F. Supp. 2d 484, 498 (E.D. Pa. 2003) (same); *In re Advanced Battery Techs. Secs. Litig.*, 298 F.R.D. 171, 183-84 (S.D.N.Y. 2014) (same); *In re Giant Interactive Group, Inc.*, 279 F.R.D. 151, 165 (S.D.N.Y. 2011) (same). Similarly, here, the Court should grant Dr. Haber's

² The PSLRA provides: "The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4).

motion for a modest award based on his substantial time and effort devoted to the prosecution of the Action and unwavering representation of the Class.

Accordingly, Dr. Haber requests an award of \$10,000 for the time and effort that he spent pursuing a recovery in this Action. Haber Decl. ¶¶ 6, 12.

CONCLUSION

Based on the foregoing, the Court should grant Dr. Haber's request for an award of \$10,000 pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), for the time and effort that Dr. Haber spent pursuing a recovery in this Action.

Dated: April 29, 2016

Respectfully submitted,

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO

By: /s/ James E. Cecchi
James E. Cecchi
5 Becker Farm Road
Roseland, NJ 07068
(973) 994-1700

Liaison Counsel for Lead Plaintiffs

Mark Levine (admitted *pro hac vice*)
Patrick Slyne (admitted *pro hac vice*)
Jason D'Aggenica
STULL, STULL & BRODY
6 East 45th Street
New York, NY 10017
(212) 687-7230

*Co-Lead Counsel for Lead Plaintiffs and
the Settlement Class and Counsel for Jerome
Haber*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC. SECURITIES,
DERIVATIVE & "ERISA" LITIGATION

MDL No. 1658 (SRC)
Civil Action No. 05-1151 (SRC) (CLW)
Civil Action No. 05-2367 (SRC) (CLW)

THIS DOCUMENT RELATES TO:
THE SECURITIES CLASS ACTION

**DECLARATION OF JEROME HABER IN SUPPORT OF HIS APPLICATION
FOR REIMBURSEMENT OF LITIGATION EXPENSES**

I, JEROME HABER, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration in support of my application for reimbursement for the time I spent in the prosecution of this litigation.
2. On December 3, 2003, I signed a certification indicating, among other things, that I had reviewed the complaint in this matter, that I was willing to serve as a representative party in the Merck securities litigation and that I understood that I might be required to provide testimony at deposition and at trial.
3. The certification I signed also indicated that I had purchased 1,500 shares of Merck stock on November 28, 2001 at \$66.9790 per share for a pre-commission total of \$99,746.85. I sold that stock on October 25, 2004 at \$30.56 a share or a pre-commission total of \$45,840.00. Thus, my total loss in Merck common stock, excluding commission charges, was \$53,906.85.
4. On January 26, 2004, a motion was filed in the *Pringle* action, the original securities class action related to Vioxx, which was pending in the Eastern District of Louisiana at that time, seeking to appoint me, as a lead plaintiff and my counsel, Stull, Stull & Brody as one of Plaintiffs' co-lead counsel.

5. On February 26, 2004, the Court granted the motion and I and another person were appointed lead plaintiffs.
6. Since my appointment as a co-lead plaintiff, I have done my best to stay involved in the litigation. I engaged in regular communication with my counsel at Stull, Stull & Brody to discuss various aspects of the litigation, including the development of the case, Orders from the Court, significant motions that were or were to be filed, the discovery process with respect to discovery obtained from defendants and which defendants were seeking from me, including reviewing documents requests and responses, interrogatories directed to me, provide information for my response and review of drafts of my written responses. I also searched for responsive document.
7. I had communications with my counsel regarding various briefings and court appearances, including motions to dismiss, the motion for summary judgment and the Supreme Court proceedings.
8. In addition, I communicated with my counsel numerous times, in person, by phone and email with regard to preparation and appearance for my deposition and I traveled several hours to appear at the deposition.
9. I also had multiple communications with my counsel regarding settlement negotiations, mediation, and I authorized my counsel to sign the settlement term sheet on my behalf.
10. My best I estimate is that I spent approximately 100 hours over last almost twelve and one half years in my efforts to assist in the prosecution of this litigation. Although I have not incurred any out-of-pocket unreimbursed expenses and because I am retired as a psychiatrist, there were no lost wages, to the extent I was engaged in the various kinds of activities described above, I was not able to participate in other activities. I believe that an award of \$10,000 would be reasonable under the circumstances.

11. I support the settlement reached in this action. Through my communications with counsel over the years I was able to get a feel for the work involved in getting this case to the point where it was almost ready for trial as well as obtain an understanding of the risks involved in a jury trial which could have resulted in a significantly lower recovery or no recovery at all.

12. I respectfully request that the Court approve the settlement in this action and approve my request to reimburse me from the settlement fund in the amount of \$10,000 for the time I spent pursuing a recovery in this action.

13. I understand that up to \$232 million may be available to pay to Plaintiffs' counsel in total for attorneys' fees and litigation expenses and that Judge Chesler will decide how much to award following a recommendation to be made by Special Master Layn Phillips. I have had conversations with my counsel regarding potential attorney's fees applications. I have been informed that Plaintiffs' Co-Lead Counsel have proposed seeking as attorney's fees 20% of the total settlement amount. After discussion and consideration, I approve of an application for that amount. I believe that in view of the size of the settlement, the efforts involved and the risks of counsel spending tens and tens of thousands of hours prosecuting the action and advancing or incurring many millions of dollars of expenses, with no assurance that it would ever be recouped, an award of attorney's fees of this magnitude is reasonable.

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

Executed this 20th day of April, 2016



Jerome Haber

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC. SECURITIES,
DERIVATIVE & “ERISA” LITIGATION

MDL No. 1658 (SRC)

Civil Action No. 05-1151 (SRC) (CLW)

Civil Action No. 05-2367 (SRC) (CLW)

THIS DOCUMENT RELATES TO: THE
CONSOLIDATED SECURITIES ACTION

[PROPOSED] ORDER GRANTING MOTION OF JEROME HABER

WHEREAS Plaintiffs’ claims in this case arise from Sections 10(b), 20(a) and 20(A) of the Securities Exchange Act of 1934;¹

WHEREAS Jerome Haber (“Dr. Haber”) was appointed as a lead plaintiff in the Action pursuant to § 21(d)(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), upon stipulation so ordered on February 26, 2004 by Judge Englehardt in *Pringle v. Merck & Co.*, Case No. 2:03-cv-3125-KDE-JCW (E.D. La.) (“*Pringle*”);

WHEREAS pursuant to 28 U.S.C. § 1407, by Order of the Judicial Panel on Multidistrict Litigation dated February 23, 2005, in *In re Merck & Co., Inc. Securities, Derivative & “ERISA” Litigation*, MDL No. 1658, the *Pringle* action, and all related actions pending in the Eastern District of Louisiana were consolidated, transferred, and assigned to this Court for coordinated or consolidated pretrial proceedings with all related actions pending in this District;

WHEREAS on April 8, 2005, this Court entered an Order, which, among other things, confirmed the appointment of Dr. Haber as one of the lead plaintiffs;

¹ Capitalized terms herein that are not otherwise defined have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of February 8, 2016, entered into by and among Lead Plaintiffs and Defendants. ECF No. 949-2.

WHEREAS on April 10, 2012, Lead Plaintiffs moved to certify the Action as a class action pursuant to Fed. R. Civ. P. 23;

WHEREAS on January 30, 2013, following full briefing, the Court granted Lead Plaintiffs' motion and, among other things, appointed the Lead Plaintiffs, including Dr. Haber, as Class Representatives;

WHEREAS the Parties reached an agreement-in-principle to settle the Action on December 17, 2015, which provides for a payment of \$830 million for the benefit the Settlement Class, and another \$232 million to be used to pay Lead Plaintiffs' attorneys' fees and litigation expenses and the fees of the Special Master appointed by the Court;

WHEREAS Stull, Stull & Brody and Carella, Byrne, Cecchi, Olstein, Brody & Agnello have submitted a motion, on behalf of Dr. Haber, requesting that the Court award Dr. Haber \$10,000 pursuant to 15 U.S.C. § 78u-4(a)(4);

WHEREAS the Court has read and considered Dr. Haber's request for an award of \$10,000 pursuant to 15 U.S.C. § 78u-4(a)(4);

WHEREFOR this Court hereby grants Dr. Haber's motion and awards him the sum of \$_____, pursuant to 15 U.S.C. § 78u-4(a)(4), such amount to be paid from the Fee/Expense Fund.

SO ORDERED this _____ day of _____, 2016

Stanley R. Chesler
United States District Judge