

**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

**PROPOSED ORDER PRELIMINARILY
APPROVING PROPOSED SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, a securities class action is pending in this Court entitled *In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig.*, MDL No. 1658 (SRC), Case No. 2:05-CV-01151-SRC-CLW (D.N.J.), Case No. 2:05-CV-02367-SRC-CLW (D.N.J.) (the "Action");

WHEREAS, by Order dated January 30, 2013, the Court certified a class consisting of all persons and entities who, from May 21, 1999, to September 29, 2004, inclusive, purchased or otherwise acquired Merck Common Stock or Merck Call Options, or sold Merck Put Options (the "Certified Class"), and by Order dated August 6, 2013, directed that notice of the pendency of the class action be sent to potential members of the Certified Class ("Certified Class Notice");

WHEREAS, the Certified Class Notice was sent to Certified Class Members beginning on September 4, 2013 and the Summary Notice of Pendency of Class Action was published once in *The Wall Street Journal* and transmitted once over the *PR Newswire* on September 12, 2013;

WHEREAS, the Certified Class Notice provided Certified Class Members with the opportunity to request exclusion from the Certified Class, stated that it was within the Court's discretion whether to permit a second opportunity to request exclusion if there is a settlement, and stated that Certified Class Members who choose to remain a member of the class "will be

bound by all past, present and future orders and judgments in the Action, whether favorable or unfavorable”;

WHEREAS, certain persons and entities exercised their right to request exclusion from the Certified Class in response to the Certified Class Notice;

WHEREAS, (a) Lead Plaintiffs Public Employees’ Retirement System of Mississippi, Steven LeVan, Jerome Haber and Richard Reynolds (collectively, “Lead Plaintiffs”), on behalf of themselves and the Settlement Class (defined below); and (b) Merck Sharp & Dohme Corp., on behalf of its affiliates and subsidiaries, including defendant Merck & Co., Inc.¹ and defendants Edward M. Scolnick and Alise S. Reicin (collectively, the “Individual Defendants,” and together with Merck, “Defendants”), have entered into the Stipulation and Agreement of Settlement dated February 8, 2016 (the “Stipulation”) to settle all claims asserted against Defendants in this Action with prejudice on the terms and conditions set forth in the Stipulation, subject to approval of this Court (the “Settlement”);

WHEREAS, Lead Plaintiffs have made an application, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Stipulation, certifying the Settlement Class for purposes of the Settlement only, and providing for notice to Settlement Class Members as more fully described herein;

WHEREAS, the Court has read and considered: (a) Lead Plaintiffs’ motion for preliminary approval of the Settlement, and the papers filed and arguments made in connection therewith; and (b) the Stipulation and the exhibits attached thereto, including the proposed Settlement Notice, Claim Form, Summary Settlement Notice, and Judgment, and finds substantial and sufficient grounds for entering this Order; and

¹ As used herein, “Merck” means Merck Sharp & Dohme Corp. and Merck & Co., Inc., the named defendant in this action, together with any of their subsidiaries and affiliates.

WHEREAS, unless otherwise defined herein, all capitalized words and terms contained herein shall have the same meanings as they have in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes** – Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the proposed Settlement, a Settlement Class consisting of all persons and entities who, from May 21, 1999, through October 29, 2004, inclusive (the “Settlement Class Period”), purchased or otherwise acquired Merck Common Stock or Merck Call Options, or sold Merck Put Options (the “Settlement Class”). Excluded from the Settlement Class are Defendants; the officers and directors of Merck at all relevant times; members of the Immediate Family of any excluded person; the legal representatives, heirs, successors, and assigns of any excluded person or entity; any entity in which any excluded person or entity has or had a controlling interest; and the Merck & Co., Inc. Employee Savings & Security Plan (now known as the Merck U.S. Savings Plan), the Merck and Co., Inc. Employee Stock Purchase & Savings Plan (now known as the MSD Employee Stock Purchase & Savings Plan), the Merck Puerto Rico Employee Savings & Security Plan (now known as the MSD Puerto Rico Employee Savings & Security Plan), and the Merck-Medco Managed Care, LLC 401(k) Savings Plan (and any successor or successors thereto). Also excluded from the Settlement Class are: (i) any person or entities whose only purchases of Merck Common Stock or Merck Call Options or sales of Merck Put Options during the Settlement Class Period occurred from September 30, 2004, through October 29, 2004, inclusive, who would otherwise fall into the definition of Settlement Class Member, and who submit a request for exclusion from the Settlement Class in connection with the Settlement Notice that is accepted by the Court; and (ii) any Persons who previously requested

exclusion from the Certified Class, as listed in Appendix 1 to the Stipulation, who do not opt back into the Settlement Class by no later than three business days before the Settlement Hearing (the date of which is set below in paragraph 5 of this Order) in accordance with the Stipulation and the instructions set forth in the Settlement Notice.

2. **Class Findings** – Solely for purposes of the proposed Settlement of this Action, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiffs and Co-Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

3. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiffs are adequate class representatives and certifies them as the Class Representatives for the Settlement Class. The Court also appoints, for purposes of Settlement only, Co-Lead Counsel as Class Counsel for the Settlement Class, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

4. **Preliminary Approval of Settlement** – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation and the exhibits and Supplemental Agreement thereto, as being fair, reasonable, and adequate to Settlement Class Members, subject to further consideration at the Settlement Hearing to be conducted as described below.

5. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement Hearing”) on June 28, 2016 at 10:00 a.m. in Courtroom No. 2 of the U.S. Courthouse and Post Office Building, 2 Federal Square, Newark, NJ 07102, for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered dismissing the Action with prejudice against Defendants; (c) to determine whether the proposed Plan of Allocation for the Net Settlement Fund is fair and reasonable, and should be approved; (d) to determine whether the motion by Co-Lead Counsel for an award of attorneys’ fees and reimbursement of Litigation Expenses to be paid out of the Fee/Expenses Fund should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to potential Settlement Class Members as set forth in paragraph 7 of this Order.

6. The Court may adjourn the Settlement Hearing and approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

7. **Retention of Claims Administrator and Manner of Notice** – Co-Lead Counsel are hereby authorized to retain Epiq Class Action & Claims Solutions, Inc. (the “Claims Administrator”), to supervise and administer the notice procedure as well as the processing of Claims. Notice of the Settlement and the Settlement Hearing shall be given by Co-Lead Counsel as follows:

(a) within ten (10) business days of the date of entry of this Order, Merck shall use reasonable efforts to provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the Settlement Funds, Co-Lead Counsel or the Claims Administrator) documentation or data in the possession of Merck or its present or former transfer agents, if any, showing the record holders of Merck Common Stock during the period from September 30, 2004 through October 29, 2004, inclusive, and their addresses. In the event Merck is unable to provide or cause to be provided documentation or data showing record holders and their addresses for the period from September 30, 2004, through October 29, 2004, notice shall be provided by mailing to the list of Certified Class Members previously provided by Merck to Co-Lead Counsel, by dissemination of notice through brokers and nominees, and by publication in accordance with the terms of this Order;

(b) not later than twenty-five (25) business days after the date of entry of this Order (the "Notice Date"), the Claims Administrator shall cause copies of the Settlement Notice and Claim Form, substantially in the forms attached hereto as Exhibits 1 and 2, respectively (the "Notice Packet"), to be mailed by first-class mail to all potential Settlement Class Members who (i) are identified in the records provided or caused to be provided by Merck pursuant to paragraph 7(a) above, (ii) who were identified in connection with the mailing of the Certified Class Notice, and (iii) who may otherwise be identified through reasonable effort;

(b) contemporaneously with the mailing of the Notice Packet, the Claims Administrator shall cause copies of the Settlement Notice and Claim Form to be posted on the website designated for the Action, www.merckvioxsecuritieslitigation.com, from which potential Settlement Class Members may download copies of the Settlement Notice and Claim Form;

(c) not later than twenty (20) calendar days after the Notice Date, the Claims Administrator shall cause the Summary Settlement Notice, substantially in the form attached hereto as Exhibit 3, to be published once in the national edition of *The Wall Street Journal*, and to be transmitted three times over internet newswires such as the *PR Newswire*, *BusinessWire*, or *Reuters*; and

(d) not later than seven (7) calendar days prior to the Settlement Hearing, Co-Lead Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

8. **Approval of Form and Content of Notice** – The Court (a) approves, as to form and content, the Settlement Notice, the Claim Form, and the Summary Settlement Notice, attached hereto as Exhibits 1, 2, and 3, respectively, and (b) finds that the mailing and distribution of the Notice Packet and the publication of the Summary Settlement Notice in the manner and form set forth in paragraph 7 of this Order (i) is the best notice practicable under the circumstances, (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the proposed Settlement, of the effect of the proposed Settlement (including the Releases contained therein), and of their right to object to any aspect of the proposed Settlement, to opt-back into the Settlement Class if they previously submitted a request for exclusion in connection with the Certified Class Notice, and to request exclusion from the Settlement Class if they are not a member of the previously certified Certified Class; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23(e) of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(a)(7), and all

other applicable laws and rules. The date and time of the Settlement Hearing shall be included in the Settlement Notice and Summary Settlement Notice before they are mailed and published.

9. **Nominee Procedures** – In the previously disseminated Certified Class Notice, brokers and other nominees (“Nominees”) were advised that if, for the beneficial interest of any person or entity other than themselves, they purchased or acquired Merck Common Stock or Merck Call Options and/or sold Merck Put Options during the period from May 21, 1999 to September 29, 2004, inclusive, they must either: (a) within seven (7) calendar days of receipt of the Certified Class Notice, request from the Class Notice Administrator² sufficient copies of the Certified Class Notice to forward to all such beneficial owners, and within seven (7) calendar days of receipt of the copies of the Certified Class Notice forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of the Certified Class Notice, provide a list of the names and addresses of all such beneficial owners to the Class Notice Administrator.

(a) For Nominees who previously chose the first option (*i.e.*, elected to mail the Certified Class Notice directly to beneficial owners), the Claims Administrator shall forward the same number of Notice Packets to such Nominees, and the Nominees shall within seven (7) calendar days of receipt of the Notice Packets mail them to the beneficial owners;

(b) For Nominees who previously chose the second option (*i.e.*, provided a list of names and addresses of beneficial holders to the Notice Administrator), the Claims Administrator shall promptly mail a copy of the Notice Packet to each of the beneficial owners whose names and addresses the Nominee previously supplied;

(c) All Nominees will also be asked whether they purchased or acquired Merck Common Stock or Merck Call Options and/or sold Merck Put Options for beneficial owners during the period from September 30, 2004, through October 29, 2004, inclusive, or if

² The Class Notice Administrator was The Garden City Group, Inc.

they purchased or acquired Merck Common Stock or Merck Call Options and/or sold Merck Put Options for beneficial owners during the period from May 21, 1999 through September 29, 2004, inclusive, whose names and addresses were not previously provided to the Class Notice Administrator. Such Nominees shall within seven (7) calendar days of receipt of the Notice Packet, provide a list of the names and addresses of all such beneficial owners to the Claims Administrator, or shall request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners which the Nominee shall, within seven (7) calendar days of receipt of the Notice Packets from the Claims Administrator, mail to the beneficial owners; and

(d) Upon full compliance with this Order, Nominees who mail the Notice Packets to beneficial owners, or who provide additional names and addresses of beneficial owners to the Claims Administrator, may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by Nominees in compliance with the terms of this Order shall be paid from the Settlement Class Fund, with any disputes as to the reasonableness or documentation of expenses subject to review by the Court.

10. **Participation in Settlement** – Settlement Class Members who wish to be eligible to receive a distribution from the proceeds of the Net Settlement Fund must complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later than one hundred and eighty (180) calendar days after the Notice Date. Notwithstanding the foregoing, Co-Lead Counsel may, at their discretion, accept late Claims for processing, provided such acceptance does not delay the

distribution of the Net Settlement Fund to the Settlement Class. By submitting a Claim, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim and the subject matter of the Settlement.

11. Each Claim Form that is submitted must satisfy the following conditions: (a) it must be properly completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for the transactions and holdings reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Co-Lead Counsel or the Claims Administrator; (c) if the person executing the Claim Form is acting in a representative capacity, a certification of his, her, or its current authority to act on behalf of the Settlement Class Member must be included in the Claim Form to the satisfaction of Co-Lead Counsel or the Claims Administrator; (d) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein; and (e) it must be signed under penalty of perjury.

12. Any Settlement Class Member that does not submit a timely and valid Claim Form, or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her, or its right to share in the Net Settlement Fund; (b) shall forever be barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation, the Settlement, and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Judgment (or Alternative Judgment, if applicable), and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining, or prosecuting any of

the Released Plaintiffs' Claims against any and all of the Defendants and the other Defendants' Releasees, as more fully described in the Stipulation and the Settlement Notice. Notwithstanding the foregoing, late Claim Forms may be accepted for processing as set forth in paragraph 10 above.

13. **Opting Back into the Class** – Any Person listed in Appendix 1 to the Stipulation may elect to opt back into the Settlement Class at any time up to and including three business days before the Settlement Hearing in accordance with the Stipulation. Any Person whose only purchases of Merck Common Stock or Merck Call Options or sales of Merck Put Options during the Settlement Class Period occurred from September 30, 2004, through October 29, 2004, inclusive, who would otherwise fall into the definition of Settlement Class Member, and who submits a request for exclusion from the Settlement Class, may elect to opt back into the Settlement Class at any time up to and including three business days before the Settlement Hearing in accordance with the Stipulation. By opting back into the Settlement Class, such Person shall be eligible to receive payment from the Net Settlement Fund, subject to the requirement applicable to all Persons that he, she, or it establish membership in the Settlement Class and eligibility for payment under the Plan of Allocation. Any such Person who wishes to opt back into the Settlement Class must either, individually or through counsel, request to opt back into the Settlement Class in writing to the Claims Administrator within the time and in the manner set forth in the Settlement Notice, which provides that any such request must be mailed or delivered such that it is received no later than three business days before the Settlement Hearing, at the address set forth in the Settlement Notice. By opting back into the Settlement Class, such Person will be barred from commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims against any and all of the Defendants and the other Defendants'

Releasees, as more fully described in the Stipulation and the Settlement Notice. Each request to opt back into the Settlement Class must: (a) provide the name, address and telephone number of the person or entity requesting to opt back into the Settlement Class; (b) state that such person or entity “requests to opt back into the Settlement Class in *In re Merck & Co., Inc. Vioxx Securities Litigation*”; and (c) be signed by the person or entity requesting to opt back into the Settlement Class or an authorized representative.

14. Any Person listed in Appendix 1 to the Stipulation that does not opt back into the Settlement Class in accordance with the requirements set forth in this Order and the Settlement Notice, shall be excluded from the Settlement Class. Such Person shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement, the Stipulation, or any other orders or judgments in the Action, and shall not receive any payment out of the Net Settlement Fund.

15. **No Second Opportunity to Request Exclusion** – The Court, in the exercise of its discretion, determines and directs that there shall not be a second opportunity for Settlement Class Members who were also members of the Certified Class to exclude themselves from the Settlement Class.

16. **Exclusion from the Settlement Class (for those Settlement Class Members who were not members of the Certified Class)** – The only potential members of the Settlement Class that are eligible to exclude themselves from the Settlement Class at this time are those persons and entities whose only purchases of Merck Common Stock or Merck Call Options or sales of Merck Put Options during the Settlement Class Period occurred from September 30, 2004 through October 29, 2004, inclusive. Any such Settlement Class Member who wishes to exclude himself, herself or itself from the Settlement Class must request exclusion in writing within the time and in the manner set forth in the Settlement Notice, which shall provide that:

(a) any such request for exclusion must be mailed or delivered such that it is received no later than forty-five (45) calendar days prior to the Settlement Hearing, to: *In re Merck & Co., Inc. Vioxx Securities Litigation*, EXCLUSIONS, c/o Epiq Systems, P.O. Box 6659, Portland, OR 97228-6659 and (b) each request for exclusion must (i) state the name, address and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity “requests exclusion from the Settlement Class in *In re Merck & Co., Inc. Vioxx Securities Litigation*”; (iii) state the number of shares of Merck Common Stock, Merck Call Options, and/or Merck Put Options that the person or entity requesting exclusion purchased, acquired and sold from September 30, 2004 through October 29, 2004, inclusive, as well as the dates and prices of each such purchase/acquisition and sale; (iv) ***expressly state*** that the person or entity requesting exclusion had no purchases of Merck Common Stock or Merck Call Options or sales of Merck Put Options from May 21, 1999 through September 29, 2004; and (v) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be effective unless it provides all the required information and is received within the time stated above, or is otherwise accepted by the Court.

17. Any eligible person or entity who or which timely and validly requests exclusion in compliance with the terms stated in this Order and is excluded from the Settlement Class shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or judgments in the Action, and shall not receive any payment out of the Net Settlement Fund.

18. Any eligible person or entity who or which does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to

have waived his, her, or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation and Settlement and all proceedings, determinations, orders and judgments in the Action, including, but not limited to, the Judgment or Alternate Judgment, if applicable, and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of the Released Plaintiffs' Claims against any of the Defendants' Releasees, as more fully described in the Stipulation and Notice.

19. **Appearance and Objections at Settlement Hearing** – Any Settlement Class Member may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to Co-Lead Counsel and Defendants' Counsel, at the addresses set forth in paragraph 20 below, such that it is received no later than forty-five (45) calendar days before the Settlement Hearing, or as the Court may otherwise direct. Any Settlement Class Member who does not enter an appearance will be represented by Co-Lead Counsel.

20. Any Settlement Class Member may file a written objection to any aspect of the proposed Settlement, the proposed Plan of Allocation, and/or Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses and enter an appearance to show cause (if any can be shown) as to why the proposed Settlement, the proposed Plan of Allocation, and/or Co-Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses should not be approved; *provided, however*, that no Settlement Class Member shall be heard or entitled to contest any aspect of the proposed Settlement, the proposed Plan of Allocation, and/or the motion for attorneys' fees and reimbursement of Litigation

Expenses unless that person or entity has filed a written objection with the Court and served copies of such objection on Co-Lead Counsel and Representative Defendants' Counsel at the addresses set forth below such that they are received no later than forty-five (45) calendar days before the Settlement Hearing. Persons who are excluded from the Settlement Class pursuant to request, including those who are listed in Appendix 1 to the Stipulation and who do not opt back into the Settlement Class, and those who submit a request for exclusion as provided in paragraph 16 above, may not file an objection.

Co-Lead Counsel

Salvatore J. Graziano, Esq.
Bernstein Litowitz Berger
& Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020

Robert A. Wallner, Esq.
Milberg LLP
One Pennsylvania Plaza
New York, NY 10119

David A.P. Brower, Esq.
Brower Piven,
A Professional Corporation
475 Park Avenue South,
33rd Floor
New York, NY 10016

Mark Levine, Esq.
Stull, Stull & Brody
6 East 45th Street
New York, NY 10017

**Representative
Defendants' Counsel**

Daniel J. Kramer, Esq.
Paul, Weiss, Rifkind Wharton
& Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

Karin A. DeMasi, Esq.
Cravath, Swaine & Moore
LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

William H. Gussman, Jr., Esq.
Schulte, Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

21. Any objections, filings, or other submissions by an objecting Settlement Class Member must: (a) provide the name, address, telephone number, and signature of the objector; (b) state the objection(s), and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) include documents sufficient to establish the objector's membership in the Settlement Class, such as the number of shares of Merck Common Stock, Merck Call Options, and/or Merck Put

Options purchased, acquired and sold during the Settlement Class Period, as well as the dates and prices of each such purchase, acquisition, and sale. Objectors who enter an appearance and desire to present evidence at the Settlement Hearing in support of their objection must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing.

22. Any Settlement Class Member who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived his, her, or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation, and/or Co-Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses. Such Settlement Class Member shall forever be barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Plan of Allocation, or the requested attorneys' fees and Litigation Expenses, and otherwise from being heard concerning the Settlement, the Plan of Allocation, or the attorneys' fees and expense request in this or any other proceeding.

23. **Stay** – Until and unless otherwise ordered by the Court, the Court shall continue to stay all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation, provided however the stay will not apply to any related action brought by any person or entity listed on Appendix 1. Pending final approval of the Settlement, the Court enjoins Lead Plaintiffs and all other Settlement Class Members from commencing or prosecuting any and all of the Released Plaintiffs' Claims against any and all of the Defendants and the other Defendants' Releasees in this or any other court or forum.

"Released Plaintiffs' Claims" means:

any and all claims, actions, causes of action, controversies, demands, duties, debts, damages, obligations, contracts, agreements, promises, issues, judgments, liabilities, losses, sums of money, matters, suits, proceedings, and rights of every nature and description, whether known claims or Unknown Claims, suspected or

unsuspected, concealed or unconcealed, foreseen or unforeseen, fixed or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether based on federal, state, local or foreign statutory law, rule, regulation, common law, or equity, and whether direct, representative, class, or individual, to the fullest extent permitted by law, that Lead Plaintiffs or any other member of the Settlement Class: (i) asserted in the Action, including in the Sixth Amended Complaint or in any prior complaint in the Action; or (ii) could have asserted in any forum arising out of, related to, or based in whole or in part upon, in connection with, or in any way involving any of the occurrences, alleged causes, alleged breaches of duty, alleged neglect, alleged error, alleged misstatements, alleged misleading statements, representations, alleged omissions, acts, or facts, circumstances, situations, events, or transactions alleged, involved, set forth, contained, or referred to in the Action, including in any pleading and including any claim relating in any way to the subject matter of any prior complaint in the Action, and arise out of the purchase or acquisition of Merck Common Stock or Merck Call Options, or sale of Merck Put Options during the Settlement Class Period. Released Plaintiffs' Claims do not include: (i) any claims of New Opt Outs; or (ii) any claims of any Person listed in Appendix 1 [to the Stipulation] who does not opt back into the Settlement Class (collectively, the "Excluded Claims"). Additionally, Released Plaintiffs' Claims do not include claims relating to the enforcement of, or compliance with, the Settlement or [the Stipulation].

24. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in identifying and notifying members of the Certified Class and the Settlement Class, as well as in administering the Settlement Funds, shall be paid as set forth in the Stipulation without further order of the Court.

25. **Settlement Funds** – The contents of the Settlement Funds held by Citibank, N.A. (which the Court approves as the Escrow Agent), shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

26. **Taxes** – Co-Lead Counsel are authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Settlement Funds, to pay from the Settlement Funds any Taxes owed with respect to the Settlement Funds, and otherwise to

perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

27. **Termination of Settlement** – If the Stipulation is terminated, the Settlement is not approved, or the Effective Date of the Settlement does not occur, this Order (except for paragraph 28 below) shall become null and void and be without prejudice to the rights of Lead Plaintiffs, the other Settlement Class Members, the Defendants, and the Parties – all of whom shall be restored to their respective positions in the Action immediately prior to December 17, 2015, as provided in the Stipulation. Within thirty (30) calendar days of such termination or cancelation, (i) any and all Settlement Funds advanced to and/or in possession of the Escrow Agent (including accrued net interest thereon and any funds to be received by Co-Lead Counsel pursuant to ¶ 22 of the Stipulation), less any expenses and any costs which have either been disbursed or incurred and chargeable to reasonable Notice and Administration Costs, less fees paid to the Special Master, and less any Taxes paid or due or owing, shall be refunded by the Escrow Agent to Merck and/or the entity(ies) that paid any portion of the Settlement Amounts in proportion to their contributions pursuant to instructions to be provided by Merck to Co-Lead Counsel (provided that any deductions from the refund for expenses and costs related to Notice and Administration Costs shall be deducted from Merck's proportional share of the contributions to the Settlement Amounts), and (ii) any and all Settlement Funds advanced or paid to Co-Lead Counsel pursuant to an award of attorneys' fees and Litigation Expenses in accordance with ¶ 22 of the Stipulation shall be refunded in full by Co-Lead Counsel to Merck and/or the entity(ies) that paid any portion of the Settlement Amounts in proportion to their contributions pursuant to instructions to be provided by Merck to Co-Lead Counsel. Such refunds shall be made in accordance with wiring instructions to be provided by Merck to Co-Lead Counsel.

28. **Use of this Order** – Neither this Order, the superseded Term Sheet, the Stipulation and the exhibits thereto (whether or not finally approved or consummated), the Supplemental Agreement, the Judgment (or Alternative Judgment, if applicable), nor any negotiations, proceedings, agreements, opinions, or orders related to the same, shall be offered or received against the Parties or other Releasees for any purpose, and particularly: (a) shall not be offered against Defendants or the other Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or the other Defendants' Releasees with respect to the truth of any fact alleged by Lead Plaintiffs or the Settlement Class, or the validity of any claim that was or could have been asserted, or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, damages, or other wrongdoing of any kind of Defendants or any of the other Defendants' Releasees; (b) shall not be offered against any of the Lead Plaintiffs, any other Settlement Class Members, or any of the other Plaintiffs' Releasees as evidence of, or construed as, or deemed to be evidence of, any presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind of the Lead Plaintiffs, any of the other Settlement Class Members, or any of the other Plaintiffs' Releasees; (c) shall not be referred to for any reason against the Parties or other Releasees, in any civil, criminal, or administrative action or proceeding; (d) shall not be construed against the Parties or other Releasees as an admission, concession, or presumption that the consideration to be given represents the amount which could be or would have been recovered after trial; and (e) shall not be construed against the Lead Plaintiffs, the other Settlement Class Members, or the other Plaintiffs' Releasees as an admission, concession, or presumption that any of their claims are without merit, that any of the Defendants or the other Defendants' Releasees had meritorious

defenses, or that damages recoverable under the Sixth Amended Complaint would not have exceeded the Settlement Amounts.

29. Notwithstanding the foregoing, the Parties and other Releasees may file or refer to this Order, the Stipulation, the Judgment (or Alternative Judgment, if applicable), and/or any Claim Form: (a) to effectuate the liability protections granted hereunder or thereunder, including without limitation, to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (b) to enforce the terms of the Stipulation and/or the Judgment (or Alternative Judgment, if applicable); (c) as necessary by Merck in connection with any tax proceedings; or (d) to effectuate the liability protections granted under any applicable insurance policies. The Parties and other Releasees submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

30. **Supporting Papers** – Co-Lead Counsel shall file and serve papers in support of the proposed Settlement, the Plan of Allocation, and Co-Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses no later than sixty (60) calendar days before the Settlement Hearing. If reply papers are necessary, they are to be filed and served no later than thirty-five (35) calendar days before the Settlement Hearing.

31. The Court retains jurisdiction to consider all further applications arising out of the proposed Settlement.

SO ORDERED this 10 day of February, 2016


The Honorable Stanley R. Chesler
United States District Judge

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