

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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

THIS DOCUMENT RELATES TO: THE
CONSOLIDATED SECURITIES CLASS
ACTION

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

**ORDER APPROVING
DISTRIBUTION PLAN**

Lead Plaintiffs, on notice to Defendants' counsel, moved this Court for an order approving a Distribution Plan for the Net Settlement Fund in the above-captioned class action (the "Action"). Having considered all the materials and arguments submitted in support of the motion, including the Declaration of Tara Donohue (the "Donohue Declaration"), the Declaration of Stephanie A. Thurin (the "Thurin Declaration") and Lead Plaintiffs' Brief in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan, submitted herewith;

IT IS THIS 13 day of September, 2018 ORDERED as follows:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated February 8, 2016 (ECF No. 949-2) (the "Stipulation") and the Thurin Declaration, and all terms used herein shall have the same meanings as set forth in the Stipulation or in the Thurin Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. ~~Lead Plaintiffs' plan for distribution of the Net Settlement Fund to Authorized~~
Claimants is **APPROVED**. Accordingly:

(a) The administrative recommendations of the Court-approved Claims Administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), to accept the Timely

Eligible Claims set forth in Exhibit C-1 to the Thurin Declaration and the Late But Otherwise Eligible Claims set forth in Exhibit C-2 to the Thurin Declaration are adopted;

(b) The Claims Administrator's administrative recommendations to reject wholly ineligible Claims, as set forth in Exhibit C-3 to the Thurin Declaration including the Disputed Claims discussed in paragraphs 27-31 of the Thurin Declaration and Exhibit B to the Thurin Declaration, are adopted;

(c) Epiq is directed to conduct an Initial Distribution of the Net Settlement Fund after deducting all payments previously allowed and the payments approved by this Order, and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, as set forth in paragraph 43(a) of the Thurin Declaration. Specifically, as set forth in paragraph 43(a) of the Thurin Declaration, (i) Epiq will calculate award amounts to all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now by calculating their *pro rata* share of the fund in accordance with the Plan of Allocation; (ii) Epiq will, pursuant to the terms of the Plan of Allocation, eliminate from the distribution any Authorized Claimant whose *pro rata* share of the Net Settlement Fund as calculated under subparagraph 43(a)(ii) of the Thurin Declaration is less than \$10.00 and such Claimants will not receive any distribution from the Net Settlement Fund and Epiq will send notice to those Authorized Claimants advising them of that fact; (iii) after eliminating Claimants who would have received less than \$10.00, Epiq will calculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more pursuant to the calculations described in subparagraph 43(a)(iii) of the Thurin Declaration ("Distribution Amount"); (iv) Authorized Claimants whose Distribution Amount calculates to less than

\$100.00 pursuant to subparagraph 43(a)(iii) of the Thurin Declaration will be paid their full Distribution Amount in the Initial Distribution (“Claims Paid in Full”) and will get no additional funds in subsequent distributions; and (v) after deducting the payments to the Claims Paid in Full, 90% of the remaining balance of the Net Settlement Fund will be distributed to Authorized Claimants whose Distribution Amounts calculate to \$100.00 or more pursuant to subparagraph 43(a)(iii) of the Thurin Declaration on a *pro rata* basis based on their Distribution Amounts. The remaining 10% of the Net Settlement Fund will be held in reserve (the “Reserve”) to address any contingencies that may arise. To the extent the Reserve is not depleted, the remainder will be distributed in the “Second Distribution.”

(d) In order to encourage Authorized Claimants to promptly cash their checks, all Initial Distribution checks shall bear the following notation: “CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED WITHIN 90 DAYS OF ISSUE DATE.” Co-Lead Counsel and Epiq are authorized to take appropriate action to locate and/or contact any Authorized Claimant who has not cashed his, her, or its check within said time as detailed in paragraph 43(a)(vi) footnote 7 of the Thurin Declaration;

(e) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions set forth in paragraph 43(a)(vi) footnote 7 of the Thurin Declaration shall irrevocably forfeit all recovery from the Settlement, and the funds allocated to all such stale-dated checks shall be available to be re-distributed to other Authorized Claimants in the Second Distribution as described below. Similarly, Authorized Claimants who do not cash their second or subsequent distributions (should

such distributions occur) within the time allotted or on the conditions set forth in paragraph 43(a)(vi) footnote 7 of the Thurin Declaration shall irrevocably forfeit any further recovery from the Net Settlement Fund;

(f) After Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks (as set forth in paragraph 43(a)(vi) footnote 7 of the Thurin Declaration), but no earlier than nine (9) months after the Initial Distribution, Epiq shall conduct the Second Distribution, in which any amounts remaining in the Net Settlement Fund after the Initial Distribution (including from the Reserve and the funds for all void stale-dated checks), after deducting Epiq's fees and expenses incurred in connection with administering the Settlement for which it has not yet been paid (including the estimated costs of such Second Distribution), and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be distributed to all Authorized Claimants in the Initial Distribution who (i) were not Claims Paid in Full; (ii) cashed their Initial Distribution check; and (iii) who would receive at least \$10.00 from such distribution based on their *pro rata* share of the remaining funds;

(g) In order to allow a final distribution of any funds remaining in the Net Settlement Fund after completion of the Second Distribution, whether by reason of returned funds, tax refunds, interest, uncashed checks, or otherwise:

(i) Not less than six (6) months after the Second Distribution is conducted, Epiq shall conduct a further distribution of the Net Settlement Fund if Co-Lead Counsel, in consultation with Epiq, determine that it is cost effective to do so, in which all funds remaining in the Net Settlement Fund (after deducting

Epiq's unpaid fees and expenses incurred or to be incurred in connection with administering the Net Settlement Fund, including the estimated costs of such distribution), and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees) shall be distributed to Authorized Claimants who cashed their Second Distribution checks and who would receive at least \$10.00 in such further distribution based on their *pro rata* share of the remaining funds. Additional re-distributions, after deduction of the costs and expenses as described above and subject to the same conditions, may occur thereafter in six-month intervals until Co-Lead Counsel, in consultation with Epiq, determine that further re-distribution is not cost effective.

(ii) At such time as Co-Lead Counsel, in consultation with Epiq, determine further re-distribution of funds remaining in the Net Settlement Fund is not cost effective, if sufficient funds remain to warrant the processing of Claims received after July 3, 2018, Epiq shall process such Claims and any such Claims that are otherwise valid as well as any earlier received Claims for which an adjustment was received after July 3, 2018 that resulted in an increased Recognized Claim may be paid in accordance with subparagraph (h) below. If any funds shall remain in the Net Settlement Fund after payment of such late or late adjusted Claims, the remaining balance of the Net Settlement Fund (after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees) shall be

contributed to non-sectarian, not-for-profit 501(c)(3) organization(s) to be recommended by Co-Lead Counsel and approved by the Court.

(h) No new Claims shall be accepted after July 3, 2018, and no further adjustments to Claims received on or before July 3, 2018 that would result in an increased Recognized Claim amount shall be made for any reason after July 3, 2018, subject to the following exception. If Claims are received or modified after July 3, 2018 that would have been eligible for payment or additional payment under the Plan of Allocation if timely received then, at the time that Co-Lead Counsel, in consultation with Epiq, determine a re-distribution is not cost effective as provided in subparagraph (g)(ii) above, after the payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, such Claimants, at the discretion of Co-Lead Counsel, may be paid their distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent possible;

(i) All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted herein, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, are hereby released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they receive payment from the Net Settlement Fund, are hereby barred from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Co-Lead Counsel, the Claims Administrator,

the Escrow Agent or any other agent retained by Lead Plaintiffs or Co-Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund, or any other person released pursuant to the Settlement beyond the amounts allocated to Authorized Claimants;

(j) All of the fees and expenses of Garden City Group, LLC (“GCG”) incurred in connection with the dissemination of the Notice to the Class as set forth in the Donohue Declaration and all of Epiq’s fees and expenses incurred in connection with the administration of the Settlement and estimated to be incurred in connection with the Initial Distribution of the Net Settlement Fund as set forth in Exhibit D to the Thurin Declaration are approved, and Co-Lead Counsel are directed to pay \$281,821.27¹ out of the Settlement Fund to Epiq for the unpaid amount of those fees and expenses; and

(k) Unless otherwise ordered by the Court, one year after the Second Distribution, Epiq shall destroy the paper copies of the Claims and all supporting documentation and, one year after all funds have been distributed, Epiq shall destroy electronic copies of the same.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as this Court deems appropriate.



STANLEY R. CHESLER, U.S.D.J.

¹ Epiq’s fees and expenses of administration for this project through July 3, 2018 is \$5,902,957.64, and Epiq’s estimate of fees and expenses to conduct the initial distribution is \$92,717.00 as set forth in Exhibit D to the Thurin Declaration. To date, Epiq has received \$5,713,853.37 in payment. Accordingly, an outstanding balance of \$281,821.27 is payable to Epiq. GCG’s fees and expenses for the dissemination of the Notice, totaling \$1,282,792.23, have already been paid in full.