UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE SCHERING-PLOUGH CORPORATION ENHANCE ERISA LITIGATION	MASTER FILE NO.: 2:08-cv-1432-DMC-MF
THIS DOCUMENT RELATES TO: ALL ACTIONS	JURY TRIAL DEMANDED

CONSOLIDATED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT ("ERISA")

Plaintiffs Michael Gradone and Maureen Sabatella ("Plaintiffs"), individually and on behalf of all other persons similarly situated, allege the following based upon the investigation by Plaintiffs' counsel, which included, *inter alia*, a review of public documents filed by Schering-Plough Corp. ("Schering-Plough" or the "Company") with the United States Securities and Exchange Commission ("SEC") and the United States Department of Labor ("DOL"), conference calls and announcements made by Defendants, securities analysts' reports, wire and press releases published by and regarding the Company, other publicly available information, and the Company's Employees' Savings Plan and related materials.

INTRODUCTION

1. This is a class action brought pursuant to §§ 502(a)(2) and (a)(3) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1132(a)(2) and (a)(3), on behalf of the Schering-Plough Employees' Savings Plan ("Employees' Savings Plan") and the Schering-Plough Puerto Rico Employees' Retirement Savings Plan ("Puerto Rico Employees' Savings Plan") (collectively, the "Plans"), against the Plans' fiduciaries, including Schering-Plough.

2. Plaintiffs allege that Defendants, as fiduciaries of the Plans, breached their duties to them and to the other participants and beneficiaries of the Plans in violation of ERISA, particularly with regard to the Plans' holdings of Schering-Plough stock.

3. During the Class Period (October 31, 2007 and April 2, 2008), Defendants knew or should have known that Schering-Plough stock was an imprudent investment alternative for the Plans. Defendants had intimate knowledge of, and an active role in, improper business activities that allowed Schering-Plough to artificially inflate and manipulate the Company's earnings.

4. This action seeks relief, derivatively, on behalf of the Plans, for losses to the Plans, for which Defendants are personally liable pursuant to ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109, and 1132(a)(2). In addition, under § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3)), Plaintiffs seek other relief from Defendants, including, without limitation, injunctive relief and, as available under applicable law, a constructive trust, restitution, and other monetary relief.

5. Because Plaintiffs' claims apply to the participants and beneficiaries as a whole, and because ERISA authorizes participants such as Plaintiffs to sue for breaches of fiduciary duty on behalf of the Plans, Plaintiffs bring this as a class action for all participants and beneficiaries of the Plans during the Class Period.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

7. ERISA provides for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). As all Defendants are either residents of the United States or subject to service in the United States, this Court has personal jurisdiction over them.

8. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Company is incorporated, and its corporate headquarters are located, in this District, the Plans are administered in this District, some or all of the fiduciary breaches for which relief is sought occurred in this District, and/or some Defendants reside and/or transact business in this district.

PARTIES

A. Plaintiffs

9. Plaintiff Gradone was and continues to be a Plan participant, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a). Schering-Plough stock was purchased or maintained on his behalf by means of the Plan in the Schering-Plough stock fund ("Stock Fund").

10. Plaintiff Sabatella was and continues to be a Plan participant, within the meaning of ERISA §§ 3(7) and 502(a), 29 U.S.C. §§ 1002(7) and 1132(a). Schering-Plough stock was purchased or maintained on her behalf by means of the Plan in the Stock Fund.

B. Defendants

11. ***Defendant Schering-Plough*** is a New Jersey biopharmaceutical company with headquarters located at 2000 Galloping Hill Road, Kenilworth, NJ 07033. During the Class Period, Schering-Plough common stock traded on the New York Stock Exchange.

12. ***Defendant Schering Corporation*** is a New Jersey corporation with headquarters located at 2000 Galloping Hill Road, Kenilworth, NJ 07033. On information and belief,

Schering Corporation is a wholly-owned subsidiary of Schering-Plough that was established nominally to sponsor the Plans on behalf of Schering-Plough.

13. Schering-Plough is the Plans' Sponsor within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B), and as such, exercises discretionary authority with respect to the management and administration of the Plans and/or management and disposition of the Plans' assets. Schering-Plough's Treasury Department monitors the performance of the funds offered under the Plans.

14. Schering-Plough, at all times, acted through its officers, directors and employees, including members of the Board of Directors ("Board"), and certain of its committees described below. The Board members were appointed by the Company to perform Plan-related fiduciary functions, and did so in the course and scope of their services to the Company.

15. Through the Board, Schering-Plough had the authority and discretion to hire and terminate its officers and employees responsible for Plan-related activities. Schering-Plough also had the authority and discretion to appoint, monitor and remove officers and employees from their individual fiduciary roles with respect to the Plans. Schering-Plough had, upon information and belief, at all applicable times, effective control over the activities of its officers and employees, including their Plan-related activities. As a matter of corporate law, Schering-Plough is imputed with the knowledge of these individuals.

16. By failing to properly discharge their fiduciary duties under ERISA, the officer, director, and employee fiduciaries breached duties to the Plans' participants and beneficiaries. Accordingly, the actions of the Plans' officers, directors, and other employee fiduciaries are imputed to Schering-Plough under the doctrine of *respondeat superior*, and Schering-Plough is liable for these actions.

17. ***Defendant Fred Hassan*** ("Hassan"), at all relevant times, served as, chairman of the Board and Chief Executive Officer of Schering-Plough and Schering Corporation. Defendant Hassan signed relevant Schering-Plough SEC filings described below, participated in the day-to-day management and overall direction of the Company, participated in the preparation of the statements alleged herein to be inaccurate, and communicated both directly and indirectly with the Plans' participants. Defendant Hassan was privy to confidential proprietary information concerning Schering-Plough and its business, operations, products, growth, financial statements, and financial condition.

18. ***Defendant Robert J. Bertolini*** ("Bertolini"), at all relevant times, served as Executive Vice President and Chief Financial Officer of Schering-Plough. Defendant Bertolini signed relevant Schering-Plough SEC filings described below, participated in day-to-day management and overall direction of the Company, participated in the preparation of the statements alleged herein to be inaccurate, and communicated both directly and indirectly with the Plans' participants. Defendant Bertolini was privy to confidential proprietary information concerning Schering-Plough and its business, operations, products, growth, financial statements, and financial condition.

19. ***Defendant Vincent Sweeney*** ("Sweeney") is, on information and belief, a Schering-Plough employee who, at all relevant times, served as the Plan Administrator of the Plans and had fiduciary oversight responsibilities over the Plans. As administrator of the Plans, Sweeney is a fiduciary of the Plans within the meaning of ERISA in that he exercises discretionary authority with respect to: (i) the management and administration of the Plans; and/or (ii) the management and disposition of the Plans' assets; and/or (iii) appointing, monitoring, and removing the Plans' fiduciaries.

Director Defendants

20. ***Defendants Hassan, Hans W. Becherer*** ("Becherer"), ***Thomas J. Colligan*** ("Colligan"), ***C. Robert Kidder*** ("Kidder"), ***Philip Leder*** ("Leder"), ***Eugene R. McGrath*** ("McGrath"), **Carl E. Mundy, Jr.** ("Mundy"), ***Antonio M. Perez*** ("Perez"), ***Patricia F. Russo*** ("Russo"), ***Jack L. Stahl*** ("Stahl"), ***Craig B. Thompson*** ("Thompson"), ***Kathryn C. Turner*** ("Turner"), ***Robert F.W. van Oordt*** ("van Oordt") and ***Arthur F. Weinbach*** ("Weinbach") served as members of the Board at relevant times (the "Director Defendants").

21. The Board, upon information and belief, has primary fiduciary oversight of the Plans. The Director Defendants are fiduciaries of the Plans within the meaning of ERISA in that they exercise discretionary authority with respect to: (i) the management and administration of the Plans; (ii) the management and disposition of the Plans' investments and assets; and/or (iii) appointing, monitoring, and removing the Plans' fiduciaries.

22. Because of the Director Defendants' position, they knew or should have known about the existence of adverse non-public information about the clinical programs and the operations of Schering-Plough, as well as its finances, markets and present and future business prospects, through access to internal corporate documents, discussions with other corporate officers and employees, attendance at Board meetings and committees thereof and through other information provided to them in connection therewith.

23. During the Class Period, upon information and belief, as discussed below, certain of the Director Defendants participated in the issuance of the inaccurate statements, including the preparation of inaccurate press releases and SEC filings.

The Employee Benefits Committee Defendants

24. In accordance with its charter, the purpose of the ***Defendant Schering-Plough Employee Benefits Committee*** ("Benefits Committee") is, to extent not already under the domain of the Compensation or Oversight Committees defined below, "[t]o provide oversight for proposals related to the implementation and modification of employee benefit plans in the United States . . ." and to "act as the 'Administrator' and as a 'Named Fiduciary' . . . with respect to the administration of all ERISA plans sponsored by" the Company.

25. The Benefits Committee consisted of three to five senior managers of the Company. It was chaired by ***Defendant John or Jane Doe 1*****,** Schering-Plough's Executive Director, Global Benefits.

26. ***Defendants John and Jane Does 2-5***, at relevant times, served as members of the Benefits Committee.

27. At all relevant times, the Benefits Committee had responsibility, *inter alia*, to:

- Exercise plan sponsor authority with respect to all employee benefit plans in the United States, to the extent any one exercise of such authority is expected to involve contributions and/or expenses up to $250,000 per year; provided however, that any item or matter that involves the Company's strategic direction or policy with respect to employee benefits is outside of this committee's responsibility and authority unless specifically delegated to the Committee for action.

- Delegate to ***Defendant C. Ron Cheeley*** ("Cheeley"), the Company's Senior Vice President, Global Human Resources, the responsibility to exercise plan sponsor authority with respect to all employee benefit plans sponsored by Schering-

Plough or any of its affiliates in the United States, to the extent any one exercise of such authority is expected to involve contributions and/or expenses up to $100,000 per year.

- Administer employee benefit plans in accordance with ERISA and the plan documents; provided that the Benefits Committee shall delegate, in accordance with plan documents, day-to-day administration of the employee benefit plans to Global Benefits staff.

- Produce reporting required by ERISA, the Internal Revenue Service, the Department of Labor and the Pension Benefit Guaranty Corporation, and implement required communications to participants and beneficiaries of the plans.

28. The above Benefits Committee Defendants are fiduciaries of the Plans within the meaning of ERISA because they exercise discretionary authority with respect to: (i) the management and administration of the Plans; and/or (ii) the management and disposition of the Plans' investments and assets.

The Investment Committee Defendants

29. The purpose of the ***Defendant Schering-Plough Investment Committee*** ("Investment Committee") is to "provide oversight of investments of funded employee benefit plans sponsored" by the Company or any of its global affiliates.

30. At all relevant times, the Investment Committee consisted of three to five senior managers of the Company. The Company treasurer, ***Defendant E. Kevin Moore*** ("Moore"), chairs the Investment Committee.

31. ***Defendants John and Jane Does 6-10***, at relevant times, served as members of the Investment Committee.

32. At all relevant times, the Investment Committee had responsibility, *inter alia*, to:

- Act as a "Named Fiduciary" under ERISA with respect to the control and management of assets of all of funded ERISA employee benefit plans sponsored by Schering-Plough or its affiliates, and to provide oversight of the investments and funding policies and objectives of funded ERISA benefit plans.

- Approve the investment management strategy and investment guidelines of Schering-Plough's funded defined benefit pension plans, including but not limited to, the asset allocations and investment goals and objectives of the pension plans.

- Monitor regularly and review at least annually and approve any changes to the asset allocations of the defined benefit pension plans.

- Approve the appointment of investment managers for the Plans, and the policies and operating procedures governing investment managers.

- Monitor regularly and evaluate at least annually the performance of each investment manager and remove or replace investment managers whose performance is substandard.

- Monitor regularly and evaluate at least quarterly the overall investment performance and performance by asset class of the assets of the funded defined benefit pension plans.

- Review the funded status of the defined benefit pension plans and make annual recommendations to the Schering-Plough Corporation Finance Committee with respect to funding policy.

- Approve the investment funds offered under Schering-Plough's funded qualified and nonqualified defined contribution pension plans, as appropriate.

- Monitor regularly and evaluate at least quarterly the performance of the investment funds offered under the funded defined contribution pension plans and remove or replace investment funds whose performance is substandard.

- Monitor regularly and evaluate the performance of the Stock Fund at least quarterly, and immediately after the announcement of any business decision that is likely to materially depress the performance of the Fund.

- Review, prior to distribution, participant communications regarding the Stock Fund and any other Schering-Plough shareholder communications that are distributed to plan participants to ensure that such communications include appropriate warnings regarding the risks of investing in employer securities and that all disclosures therein that would affect a participant's decision to invest in Schering-Plough common stock are complete and accurate.

- Prepare an annual report to the Schering-Plough Corporation Finance Committee.

33. The above Investment Committee Defendants are fiduciaries of the Plans within the meaning of ERISA in that they exercise discretionary authority with respect to: (i) the management and administration of the Plans; and/or (ii) the management and disposition of the Plans' investments and assets.

The Oversight Committee Defendants

34. According to its charter, the purpose of the ***Defendant Global Benefits and Compensation Oversight Committee*** ("Oversight Committee") is: "To provide global oversight for (i) proposals related to employee benefits and compensation plans and arrangements other than those plans and arrangements administered by the Compensation Committee of the Board of

Directors pursuant to its charter . . . , and (ii) strategic issues relating to employee benefit and compensation plans and arrangements worldwide." Another purpose is "[t]o monitor the governance of the . . . Plans on a global basis."

35. At all relevant times, the Oversight Committee consisted of two to four voting members including employees, officers, or directors of Schering-Plough. It is chaired by Defendant Cheeley, Senior Vice President, Global Human Resources

36. ***Defendants John and Jane Does 11-14***, at relevant times, served as members of the Oversight Committee.

37. At all relevant times, the Oversight Committee was responsible, *inter alia*, to

- Review and consider benefit plans sponsored by Schering-Plough or its affiliates globally, and oversee the management subcommittees with authority respecting the Plans.
- Exercise plan sponsor authority with respect to all employee benefit plans or arrangements sponsored by Schering-Plough or any of its affiliates.
- Appoint and remove members to, and monitor the performance of, the Benefits Committee and the Investment Committee.
- Appoint an internal management committee to oversee the appointment and removal of Company representatives to trustee boards for employee benefit plans that are sponsored by Schering-Plough or its affiliates outside the United States.

38. The above Oversight Committee Defendants are fiduciaries of the Plans within the meaning of ERISA in that they exercise discretionary authority with respect to: (i) the management and administration of the Plans; (ii) the management and disposition of the Plans' investments and assets; and/or (iii) appointing, monitoring, and removing the Plans' fiduciaries.

The Compensation Committee Defendants

39. The ***Defendant Compensation Committee of the Board of Directors*** ("Compensation Committee"), upon information and belief, is also a fiduciary of the Plans. According to the Compensation Committee's charter, available on Schering-Plough's corporate website, the Compensation Committee is entrusted to, *inter alia*, "[d]etermine that the Company has established an appropriate governance structure for the employee benefit plans of the Company and its affiliates."

40. Defendant Becherer, in addition to being a member of the Board, served as the Chairman of the Compensation Committee at relevant times.

41. Defendants Kidder, Russo, Stahl and Weinbach, in addition to being members of the Board, served as members of the Compensation Committee.

42. ***Defendants John and Jane Does 15-18***, at all relevant times, also served as members of the Compensation Committee.

43. The above Compensation Committee Defendants were charged with the authority to appoint and remove the Chairperson and, on information and belief, the other members of the Oversight Committee.

44. The Compensation Committee Defendants are fiduciaries of the Plans within the meaning of ERISA in that they exercise discretionary authority with respect to: (i) the management and administration of the Plans; (ii) the management and disposition of the Plans' assets; and/or (iii) appointing, monitoring, and removing the Plans' fiduciaries.

THE PLANS

A. Nature of the Plans

45. The Plans are "employee pension benefit plan[s]" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A) and defined contribution plans within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34).

46. The Plans are legal entities that can sue or be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). However, in a breach of fiduciary duty action such as this, the Plans are neither plaintiffs nor defendants. Rather, pursuant to ERISA § 409, 29 U.S.C. §1109, and the law interpreting it, the relief requested in this action is for the benefit of, or on behalf of, the Plans. Stated differently, in this action Plaintiffs seek relief that is plan-wide.

47. The Plans cover eligible employees of Schering-Plough and its participating subsidiaries.

48. According to the Company's Form 11-K, for the Employees' Savings Plan, for the fiscal year ended December 31, 2006, under the terms of the Employees' Savings Plan, participants may contribute from 1 to 50 percent of annual eligible compensation to the plan and Schering-Plough can match up to 2% of annual eligible compensation contributed to the plan. Participants have a non-forfeitable right to all contributions plus actual earnings thereon, all of which vest fully and immediately.

49. According to the Company's Form 11-K for the Puerto Rico Employees' Savings Plan, for the fiscal year ended December 31, 2006, under the terms of the Puerto Rico Employees' Savings Plan, participants may contribute from 1 to 10 percent of annual eligible compensation to the plan and Schering-Plough can match up to 5% of annual eligible compensation contributed to the plan. Participants have a non-forfeitable right to all contributions plus actual earnings thereon, all of which vest fully and immediately.

B. Defendants' Fiduciary Status

50. ***Named Fiduciaries***. ERISA requires every plan to provide for one or more named fiduciaries of the plan pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1002(21)(A). The person named as the "administrator" in the plan instrument is automatically a named fiduciary, and in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

51. ***De Facto Fiduciaries***. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under ERISA § 402(a)(1), but also any other persons who in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent he or she "(i) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management of disposition of its assets, (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of such plan, or has any authority or responsibility to do so, or (iii) has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

52. During the Class Period, direct and indirect communications with Plan participants by various Defendants, as described further below, included material misrepresentations and omissions that caused Plaintiffs and members of the Class to purchase, hold and maintain investments in Company stock, and to accept at face value investments in Company stock. These communications included, but were not limited to, SEC filings and press releases.

53. The Company and all Defendants named herein had additional duties and performed further fiduciary functions by communicating with Plan participants with respect to

the Plans, and transmitting, disseminating and disclosing information to the Plans participants intended to enable such participants to make informed decisions regarding investment in Schering-Plough stock. Such communications and/or disclosures occurred via the issuance and distribution of the Plans' Summary Plan Descriptions ("SPD")/Prospectus and other Plan-related communications as well as the Company's Form S-8 filings registering Schering stock sold to the Plans.

54. The Company filed a Form S-8 Registration Statement with the SEC on May 19, 2006 ("Form S-8"). The Form S-8 remained in effect throughout the Class Period.

55. The Form S-8 expressly incorporated by reference all other documents filed by the Company with the SEC under the federal securities laws, including such documents filed subsequently to the Form S-8. Accordingly, the Form S-8 explicitly states:

> **Item 3. Incorporation of Documents by Reference.**
>
> The following documents, which have been filed by the Registrant with the [SEC] pursuant to the [Exchange Act], are incorporated by reference in this Registration Statement:
>
> (a) The Registrant's latest Annual Report on Form 10-K for the fiscal year ended December 31, 2005 filed with the Commission on February 28, 2006;
>
> (b) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2006 filed with the Commission on April 27, 2006;
>
> (c) The Registrant's Current Reports on Form 8-K filed with the Commission on April 20, 2006 and March 15, 2006;
>
> (d) The information contained in the Registrant's 2006 Proxy Statement on Schedule 14A filed with the Commission on March 22, 2006;
>
> (e) The description of the Registrant's Common Shares, par value $0.50 per share, contained in the Registrant's Registration Statement on Form 8-A dated March 16, 1979 for registration of

> such Common Shares under the Exchange Act, and any amendment or report filed for the purpose of updating such description;
>
> (f) The description of the Registrant's Preferred Shares Purchase Rights contained in the Registrant's Registration Statement on Form 8-A dated June 30, 1997 for registration of such rights under the Exchange Act, and any amendment or report filed for the purpose of updating such description; and
>
> (g) The Schering-Plough Employees' Savings Plan's 2004 Report on Form 11-K filed on June 28, 2005.
>
> All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in the Registration Statement and to be part thereof from the date of filing of such documents. Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for all purposes to the extent that a statement contained herein or in any other subsequently filed document that is also incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

56. The SPD/Prospectus and Company filings referenced therein are often the primary repository of information available to the Plans participants for evaluation of Company stock as a plan investment. Therefore, the act of incorporating these filings by reference transformed the statements contained therein into fiduciary disclosures and communications in their own right issued and transmitted to the Plans participants, and upon which these participants relied in making investment decisions under the Plans concerning the propriety of including Schering-Plough stock as part of their savings plan investment portfolio.

57. Each defendant was a fiduciary with respect to the Plans and owed fiduciary duties to the Plans and the Plans' participants under ERISA in the manner and to the extent set forth in the Plans' documents, through their conduct, and under ERISA.

58. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) to manage and administer the Plans, and the Plans' investments solely in the interest of the Plans' participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

59. Plaintiffs do not allege that each defendant was a fiduciary with respect to all aspects of the Plans' management and administration. Rather, as set forth below, Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority assigned to or exercised by each of them, and, as further set forth below, the claims against each defendant are based on such specific discretion and authority.

60. ERISA permits the fiduciary functions to be delegated to insiders without an automatic violation of the rules against prohibited transactions, ERISA § 408(c)(3), 29 U.S.C. § 1108(c)(3), but insider fiduciaries must still in fact act solely in the interest of participants and beneficiaries, not in the interest of the sponsor. Moreover, all Plans' fiduciaries were obliged, when acting in whole or part within their fiduciary roles, to act independently of Schering-Plough, which had no authority to direct the conduct of any of them with respect to the Plans, the Plans' investments, or the disclosure of information between and among fiduciaries or from fiduciaries to the Plans' participants.

C. Defendants' Fiduciary Roles

61. As previously stated, Schering-Plough is the Plans' sponsor.

62. The Plans' documents describe Schering-Plough, the Employee Benefits Committee, the Investment Committee and Sweeney as named fiduciaries of the Plans.

63. Upon information and belief, instead of delegating all fiduciary responsibility for the Plans to external service providers, Schering-Plough chose to internalize many, if not all, of these fiduciary functions.

64. Upon information and belief, the Plans and their assets are administered and managed by the Compensation, Oversight, Employee Benefits and Investment Committees (the "Plan Committees"), selected and monitored by the Board. The Plan Committees exercised broad responsibility for management and administration of the Plans and, among their other duties, were responsible for oversight of the Plans' investment options, policies, and the performance of the Plans' investments, as well as the review of investment managers.

65. In their capacity to select and monitor investment options for the Plans, the Plan Committees had the discretion and authority to suspend, eliminate, or reduce any of the Plans investments, including investments in Schering-Plough stock. The Plan Committees also reported to the Board regarding these duties and the Plans' events pertaining to the same.

66. Upon information and belief, the Plan Committees exercised responsibility for communicating with participants regarding the Plans, and providing participants with information and materials required by ERISA. In this regard, on behalf of Schering-Plough and the Director Defendants, the Plan Committees disseminated Plan documents and materials.

67. The Director Defendants are the Plans' fiduciaries to the extent they have authority to select, monitor, retain, and remove the members of the Plan Committees and, accordingly, exercised authority and oversight over the Plan Committees.

68. Therefore, the participation in and knowledge of Schering-Plough's inappropriate business practices by Defendants as alleged herein is imputed and attributed to Schering-Plough, the Plan Committees, and the Director Defendants.

CLASS ACTION ALLEGATIONS

69. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and the following class of persons similarly situated (the "Class"):

> All persons who were participants in or beneficiaries of the Plans at any time between October 31, 2007 and April 2, 2008 (the "Class Period"), and whose accounts included investments in Schering-Plough stock.

70. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believes there are, at minimum, thousands of members of the Class who participated in, or were beneficiaries of, the Plans during the Class Period. According to the Company's Forms 5500 for the year ended December 31, 2006, there were 25,219 participants of the Employees' Savings Plan and 1,240 participants of the Puerto Rico Employees' Savings Plan.

71. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether Defendants each owed a fiduciary duty to Plaintiffs and members of the Class;

(b) whether Defendants breached their fiduciary duties to Plaintiffs and members of the Class by failing to act prudently and solely in the interests of the Plans' participants and beneficiaries;

(c) whether Defendants violated ERISA; and

(d) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

72. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs and the other members of the Class each sustained damages arising out of Defendants' wrongful conduct in violation of federal law as complained of herein.

73. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in complex ERISA class action litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

74. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

75. Class action status is also warranted under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final

injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (iii) questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

SUBSTANTIVE ALLEGATIONS

Delayed Disclosure of the VYTORIN Study (ENHANCE Trial) Results

76. Schering-Plough is primarily engaged in developing, manufacturing and selling various pharmaceutical products for human and animal health in the United States and internationally. In May 2000, Schering-Plough and Merck & Co., Inc. ("Merck") entered into a joint venture to develop and market new prescription medicines in cholesterol management and respiratory disease in the United States. In December 2001, the joint venture relating to cholesterol products was expanded to include all countries of the world except Japan. The cholesterol-management market is highly lucrative, with total global sales of $32 billion in 2006, and sales in the United States of $22 billion in 2006 (IMS Health). As such, this field is subject to fierce competition, with numerous pharmaceutical companies developing and introducing various cholesterol-fighting drugs into the market.

77. One of the first drugs to be approved by the Food and Drug Administration (the "FDA") and jointly produced and marketed pursuant to this collaboration was VYTORIN® (ezetimibe/simvastatin) ("VYTORIN"), a combination drug comprised of Schering-Plough's ZETIA® (ezetimibe) ("ZETIA") and Merck's statin ZOCOR® (simvastatin) ("ZOCOR"). VYTORIN was introduced in mid-2004 after FDA approval.

78. Merck and Schering-Plough share profits from their joint marketing of ZETIA and VYTORIN and the drugs are very important contributors to both companies' profits.

Analysts estimate that about 70% of Schering-Plough's earnings depend on ZETIA and VYTORIN. Accordingly, Schering-Plough was highly motivated to portray the drugs as viable compounds that demonstrated both efficacy and a solid safety profile.

79. Schering-Plough aggressively marketed VYTORIN during the Class Period by touting it as both a cholesterol lowering agent and an effective tool to lower the risk of heart attacks and heart disease by limiting plaque formation in arteries.

80. While VYTORIN was being produced, marketed and sold, Schering-Plough and Merck conducted a trial study to measure the intima media thickness ("IMT") of the arteries and the reduction of plaque in arteries (the ''ENHANCE trial"). The ENHANCE trial, initiated in 2002, covered 720 patients with very high cholesterol, and it was anticipated that the results would be presented at the American Heart Association's ("AHA") Fall 2006 meeting.

81. The ENHANCE trial concluded in April 2006. Schering-Plough and Merck determined not to present the results at the AHA Fall 2006 meeting and revised the target to the AHA March 2007 meeting. However, the results were not presented at that meeting either, or at any time in 2007. Rather, the results of the ENHANCE study were not publicly revealed until a series of disclosures that occurred between January 14, 2008 and March 31, 2008.

82. Until the ENHANCE trial results were finally publicized in the first quarter of 2008, about one million prescriptions were written worldwide for ZETIA and/or VYTORIN each week. In 2006, ZETIA had sales of $1.92 billion and VYTORIN had sales of $1.95 billion. In 2007, the combined sales of ZETIA and VYTORIN reached $5.2 billion.

83. Schering-Plough expected the ENHANCE study to prove VYTORIN's superior ability to reduce arterial plaque compared to ZOCOR alone. The study, however, did not substantiate Schering-Plough's claims. Instead, the study found that ZOCOR used alone (and

not combined with ZETIA to produce VYTORIN) was just as effective as VYTORIN at reducing plaque.

84. Defendants knew the negative results of the ENHANCE study by the beginning of the Class Period, but Schering-Plough secreted the study results until January 14, 2008. Defendants also knew that publication of the study results showing that VYTORIN was ineffective would greatly diminish both future VYTORIN sales and Schering-Plough's earnings.

85. Defendants further knew that releasing the negative ENHANCE study results would drive down the price of Schering-Plough's stock and, thus, knew that the Company's stock price was artificially inflated during the Class Period.

86. Despite knowing that the Company's stock price was inflated during the Class Period, Defendants continued to offer Schering-Plough stock as an investment option under the Plans, and Defendants continued to permit Plaintiffs and the other plan participants to maintain their Company stock holdings and to make new investments in Company stock.

87. On October 22, 2007, Schering-Plough reported in its Form 8-K filed with the SEC (the "October 22, 2007 Form 8-K") double-digit adjusted sales growth for the third-quarter 2007. Defendant Hassan commented, "Schering-Plough has now recorded its 12th consecutive quarter of double-digit adjusted sales growth. . . . Schering-Plough's long-term strategy continues to unfold. Our strategy to grow the top line, exercise financial discipline and expand our R&D pipeline again delivered strong results."

88. On October 22, 2007, on the Company's Q3 2007 Earnings Conference Call, Defendant Hassan and Carrie Cox, the Company's Executive Vice President and President, Global Pharmaceuticals, made the following statements:

> [Hassan:]
>
> VYTORIN and ZETIA are the only major brands that have continued to grow their market share during the disruption that began in December '06 that was caused by multi-source generics. The lower is better story continues. Evolving medical science continues to find that reaching lower and lower goals for LDL is better for patients and VYTORIN and ZETIA provides very good options.
>
> * * *
>
> [Cox:]
>
> In the U.S, VYTORIN and ZETIA remained the fastest growing brands with total prescriptions for the franchise increasing 17% versus the prior year, growing more than twice as fast as the cholesterol market. Among LDL lowering brands, VYTORIN and ZETIA are the only two major products to grow market share this year. Our franchise is uniquely positioned to get more patients to their LDL goal. Managed care organizations have recognized this important value and continue to provide competitive second tier access for both VYTORIN and ZETIA, despite the availability of multi source generics.
>
> Just last month, guidelines released by the European Society of Cardiology, again reinforced LDL as the primary target of lipid lowering therapy. As clinical practice continues to shift towards more aggressive LDL management, only VYTORIN provides more than a 50% LDL reduction at the usual starting dose.

89. The October 22, 2007 Form 8-K also provided the following information to investors regarding the sales of VYTORIN:

> Global cholesterol joint venture net sales, which include VYTORIN and ZETIA, totaled $1.3 billion for the 2007 third quarter, a 26 percent increase compared to net sales of $1.0 billion in the comparable 2006 period. . . . Schering-Plough records its share of the income from operations in "Equity income from cholesterol joint venture," which totaled $506 million in the 2007 third quarter versus $390 million in the third quarter of 2006.

90. The October 22, 2007 Form 8-K indicated that, at that time, Defendants understood that the onslaught of competitive generic drugs (resulting from expiration of the

Company's patent on several of its bestselling cholesterol medications in 2006 and Merck's patent on ZOCOR, as to which the FDA approved a generic in June 2006), as well as over-the-counter products, would threaten the profitability of the Company, and that to maintain its competitive edge in the cholesterol management arena, Schering-Plough needed to ensure continued successful sales of VYTORIN:

> Schering-Plough's ability to generate profits and operating cash flow is largely dependent upon the continued profitability of Schering-Plough's cholesterol franchise, consisting of VYTORIN and ZETIA . . . .
>
> . . . [T]he profitability of Schering-Plough's cholesterol franchise may be adversely affected by the introduction of multiple generic forms in December 2006 of two competing cholesterol products that lost patent protection earlier in 2006. In addition, on October 4, 2007, the FDA announced a public meeting to solicit comment on making certain prescription drugs available "behind-the-counter" without a prescription. Although the FDA did not indicate what drugs might be included [in] this category, if the FDA approved behind-the-counter sales of products that compete with products of Schering-Plough or the Merck/Schering-Plough cholesterol joint venture, such as generic statins, such competition could have an adverse result of sales and profitability.

91. On November 19, 2007, Schering-Plough/Merck jointly issued a press release entitled "Merck/Schering-Plough Pharmaceuticals Provides Update on ENHANCE Trial," which stated in part that the companies were changing the primary endpoint of the ENHANCE study:

> [A]n independent panel of clinical and biostatistics experts was convened on Friday, November 16, 2007 to offer advice about the prospective analysis of the ENHANCE trial. ENHANCE is a multinational, randomized, double-blind, trial that examines the effects of the highest approved dose of VYTORIN/INEGY (10 mg ezetimibe + 80 mg sirnvastatin) versus the highest approved dose of simvastatin 80 mg alone in patients with Heterozygous Familial Hypercholesterolemia (HeFH). Patients with this uncommon genetic condition usually have very high cholesterol levels. HeFH occurs in approximately 0.2 percent of the population.
>
> The independent panel recommended focusing the primary endpoint to the common carotid artery to expedite the reporting of the study findings. Merck/Schering-Plough now anticipates that

these results of the ENHANCE study will be presented at the American College of Cardiology meeting in March 2008.

While the clinical portion of the ENHANCE study is complete, the study remains blinded and the data are now being analyzed. The rigorous study design and analytical process specified in the study protocol require examination of more than 40,000 scans of the arterial intima-media thickness (IMT) of the carotid and femoral arteries collected in eighteen multi-national study sites. This has been time consuming and taken longer than originally anticipated because during the analysis, observations of variability in some of the data were detected as part of the validation/data review procedures. Such potentially confounding observations are not unusual in studies of this kind.

The primary objective of the ENHANCE trial is to measure the change in the intima media thickness at three points of the carotid artery (the internal carotid, carotid bulb and the common carotid), at the beginning of the study and at two years. The ENHANCE trial employs a novel non-invasive methodology to assess the intima-media thickness using digital single-frame ultrasound imagery of the arteries. This technique was pioneered by Professor John Kastelein, the lead investigator of the ENHANCE study.

"It is critically important for researchers to take the appropriate time and rigor to conduct clinical trials, analyze data and report study results. The ENHANCE trial is complex and is being conducted with great care," said John Kastelein, M.D., Ph.D., professor of medicine and chairman, Department of Vascular Medicine, Academic Medical Center, Amsterdam, Netherlands. "We view the experts panel's recommendation to narrow the primary endpoint to the common carotid artery as helpful, and we will continue to expedite the completion of ENHANCE and reporting of its results, while ensuring the integrity of the data." Kastelein added, "We anticipate that results of the ENHANCE study will be presented at the American College of Cardiology meeting in 2008, dependent upon successful completion of the data analysis."

About ENHANCE

The ENHANCE study was initiated in 2002, and involves over 700 HeFH patients. HeFH is characterized by markedly elevated plasma concentrations of low-density lipoprotein (LDL) cholesterol (LDL-C), typically well above the 95th percentile for age and sex. Images from HeFH patients in this study are analyzed from the right and left carotid arteries at numerous time points (baseline, 6, 12, 18 and 24 months). Images of the femoral arteries are also analyzed at numerous time points in the ENHANCE trial, a surrogate endpoint study.

92. These statements were inaccurate because they omitted material information concerning the results of the ENHANCE trial; specifically, VYTORIN failed to prevent plaque formation in the carotid arteries with any greater efficacy than ZOCOR alone. Defendants knew these statements were inaccurate because, on information and belief, Defendants already possessed enough information about the study's results to know that the study did not support Schering-Plough's claims pertaining to VYTORIN's superior efficacy.

93. On or about November 20, 2007, the Company announced its intent to change the primary end-point of the ENHANCE study to the medical community. The medical community, which had been waiting for the results of the study, viewed this late-study change as an unprecedented violation of basic scientific protocol.

94. On November 21, 2007, *The New York Times* (the "NYT") reported that the delay in releasing the results of the ENHANCE trial has "led to a growing chorus of complaints from cardiologists," prompting Schering-Plough and Merck to promise to publish a portion of the results in March 2008. As Dr. Allen J. Taylor, chief of cardiology at Walter Reed Army Medical Center, noted, "there's clearly some rightful interest in what the results are. You've got millions of people treated with the drugs." The article further reported that "ZETIA and VYTORTN have grabbed nearly 20 percent of the American market for cholesterol-lowering drugs, because of aggressive marketing from Schering-Plough and Merck that highlights ZETIA's uniqueness among cholesterol medicines."

95. On December 11, 2007, *The Wall Street Journal Healthblog*, at http://blogs.wsj.com/health (the "*WSJ Healthblog*"), reported that a Congressional committee was investigating Merck and Schering-Plough for their delay in releasing the results of the ENHANCE trial. A letter from Representatives John Dingell, the Chairman of the Committee on

Energy and Commerce, and Bart Stupak, the Chairman of the Oversight and Investigations Subcommittee, asked the two companies to provide their records to the committee by December 25, 2007. In addition, they expressed concern that while the ENHANCE trial was completed in April 2006, the study "itself was not registered with ClinicalTrials.gov until October 31, 2007 . . . and the endpoint indicated in the ClinicalTrials.gov website appears to differ from the endpoint described in the initial study design." Responding to a question from the *WSJ Healthblog*, a Schering-Plough spokesperson commented that "we have clarified today that we decided not to" change the endpoint, although the Company had not formally received the letter from Congress.

96. Hence, on information and belief, Defendants knew by at least October 31, 2007 that the ENHANCE study results did not support Schering-Plough's claims of VYTORIN's superior efficacy because the Company was contemplating by that date to change the study endpoint and to further delay publishing those results.

97. On January 3, 2008, the *WSJ Healthblog* reported that Defendant Hassan spoke for 45 minutes at Morgan Stanley's "Pharmaceutical CEOs Unplugged" conference, 35 minutes of which was devoted to the controversy around the disclosure of the ENHANCE trial results. At the conference, Hassan downplayed the importance of the trial, stating "[it is] not a large trial" and is "in a very, very special population with very, very high doses. […] I don't know why this would have any impact on mainstream use."

98. On or about January 14, 2008, several reputable news sources reported that Merck and Schering-Plough's much anticipated trial demonstrated that VYTORIN, under the circumstances relative to the study, failed to slow progression of heart disease during a two-year study.

99. After their numerous delays, Schering-Plough and Merck finally announced the results of the EHANCE trial on January 14, 2008. The study's finding was that there was no statistically significant difference between treatment groups on the primary endpoint (the mean change in the IMT measured at three sites in the carotid arteries between patients treated with VYTORIN (ezetimibe/simvastatin) versus patients treated with simvastatin (ZOCOR) alone over a two-year period). Additionally, the overall incidence rates of treatment-related adverse events were similar. The release announced that the full results would be presented at the March 2008 American College of Cardiology ("ACC") meeting.

100. Importantly, statins like ZOCOR and Lipitor lower cholesterol by 35 to 60 percent in most patients and proved to reduce heart attacks. ZETIA, which works by a different mechanism, reduces cholesterol 15 to 20 percent, but it has never been proved to reduce heart attacks.

101. Also on January 14, 2008, the ACC issued a release on its interpretation of the preliminary ENHANCE trial results. It advised that "major clinical decisions" not be based on the ENHANCE data alone, even though the "study deserves serious thought and follow-up," and concluded "there should be no reason for patients to panic."

102. On January 22, 2008, the House of Representatives' Committee on Energy and Commerce, via its Subcommittee on Oversight and Investigations, sent Schering-Plough and Merck a letter demanding additional information. In particular, the Committee requested information about whether a scientific advisory committee was formed by the companies at the outset of the trial to review data and periodically meet to discuss the trial. The Committee stated that it had just learned that such a review panel existed, and that the review process was not limited to an *ad hoc* panel that reviewed the date once the trial was completed.

103. The Committee also stated that a Schering-Plough executive, Carrie Smith Cox, sold a significant number of Schering-Plough stock between the end of the ENHANCE study and release of the preliminary results in January 2008. The Committee requested information concerning these sales, which approached 1,000,000 shares, and whether the sales were related to any knowledge of the study's results.

104. In an effort to stop the decline of both Merck and Schering-Plough's stock prices, on January 25, 2008, Schering-Plough and Merck issued a news release jointly responding to "Issues Raised About ENHANCE Clinical Trial" (the "January 25, 2008 News Release"), in which both "strongly objected to mischaracterizations" about the trial, noting "while the ENHANCE trial was time-consuming and took longer than originally anticipated to complete, our companies acted with integrity and good faith in connection with the trial. We took numerous actions to assure the quality of the reading of the ultrasound images."

105. Peter S. Kim, president of Merck Research Laboratories, was quoted in the January 25, 2008 News Release, as stating, "[w]e stand behind VYTORIN and ZETIA and stand behind our science that has brought these cholesterol-lowering medication to millions of people around the world." The release further reported that:

> **Regarding the ENHANCE trial**
>
> The ENHANCE study involved 720 patients with a rare form of inherited high cholesterol known as Heterozygous Familial Hypercholesterolemia (HeFH) that affects less than 0.2 percent of the population. This imaging trial looked at the effects of ezetimibe/simvastatin versus simvastatin on the intima media thickness (IMT) measured at three sites in the carotid arteries (the right and left common carotid, internal carotid and carotid bulb) between patients treated with ezetimibe/simvastatin 10/80 mg versus patients treated with simvastatin 80 mg alone over a two-year period.
>
> As indicated in the January 14, 2008 announcement, in ENHANCE, there was no statistically significant difference in the mean change in the primary measure of the study, between the maximum approved doses of ezetimibe/simvastatin and

simvastatin alone. ENHANCE was not an outcomes trial; that is, it did not attempt to measure whether the combination of ezetimibe and simvastatin reduced the risk of heart attacks or strokes more than simvastatin alone. The IMPROVE-IT study, an ongoing outcomes trial, is being conducted to answer that question in patients with acute coronary syndrome.

In ENHANCE, ezetimibe/simvastatin achieved significantly greater LDL cholesterol reduction compared to simvastatin alone.

ENHANCE began in October 2002 and the last patient visit occurred in April 2006. Following the last patient visit, the study required the meticulous examination of approximately 30,000 ultrasound images of the carotid arteries and 10,000 ultrasound images of the femoral arteries.

The ENHANCE trial employed a novel non-invasive methodology to assess IMT using digital single-frame ultrasound imagery of the arteries. Examination of these images was a challenging process and the data analysis took significantly longer than expected. Numerous steps were taken in 2006 and 2007 to address quality issues and finalize the data analysis.

Until December 31, 2007, the study remained blinded; that is, neither the patients, nor the researchers, nor the companies knew the group of patients that received each therapy. On that date, statisticians for Schering-Plough Research Institute first became unblinded. Additional personnel at the companies were made aware of the findings during the first two weeks of January, 2008.

On January 14, 2008, the companies announced the results of the primary endpoint and other results.

An abstract has been submitted on the ENHANCE trial to the American College of Cardiology with the expectation that the data will be presented and discussed in an appropriate scientific context at their annual meeting in March, 2008.

The companies look forward to participating in rigorous scientific debates on this important issue in the months ahead. “We are committed to conducting clinical research with the highest integrity and quality, and reporting the results as quickly as possible,” said Dr. Koestler.

“We remain committed to the advancement of the study of high LDL cholesterol, its relationship to heart disease, and the availability of effective therapies in the interest of patients and healthcare providers everywhere,” said Dr. Kim.

To further clarify issues surrounding the timeline of the ENHANCE study, a chronology of events is attached.

Additional background about the ENHANCE trial

> ENHANCE was a multinational, randomized, double-blind, active comparator trial that used digitized single-frame ultrasound technology for imaging purposes. There were 357 HeFH patients randomized to ezetimibe/simvastatin 10/80 mg and 363 HeFH patients to simvastatin 80 mg. The study collected approximately 30,000 carotid artery and 10,000 femoral artery images from these patients. HeFH is characterized by markedly elevated plasma concentrations of LDL cholesterol; typically well above the 95th percentile for age and sex.
>
> Single-frame ultrasound images were analyzed from the right and left carotid arteries at three sites (the common carotid, the internal carotid and the carotid bulb) and at numerous time points (baseline, 6, 12, 18 and 24 months). Images from the right and left common femoral arteries were analyzed at these same time points as well.

106. On or about January 28, 2008, the New York State Attorney General, Andrew Cuomo, launched an investigation into Merck and Schering-Plough and served the companies with subpoenas as part of a probe into whether the companies "deliberately concealed" negative results from the study, according Mr. Cuomo's office.

107. On or about January 29, 2008, Connecticut's Attorney General, Richard Blumenthal, announced Connecticut was also investigating Merck and Schering-Plough's behavior relating to VYTORIN. "We are investigating whether state funds were spent on false assurances about the safety and effectiveness of these drugs," Mr. Blumenthal said.

108. The January 25, 2008 News Release was able to slow the decrease in Schering-Plough's stock price by downplaying the importance of the ENHANCE trial results. Likewise, on February 12, 2008, Schering-Plough filed its Form 8-K with the SEC (the "February 12, 2008 Form 8-K") announcing its fiscal fourth-quarter and full year 2007 results, which also temporarily stemmed the decrease in the Company stock price. The February 12, 2008 Form 8-K reported that:

> The 2007 full year was significant for many important achievements:

* * *

- Growing cholesterol franchise sales to $5.2 billion in 2007, with U.S. sales up 26 percent and international sales up 70 percent;

- Growing sales by double digits in each major customer segment – Prescription Pharmaceuticals, Consumer Health Care and Animal Health;

- Gaining strength in global markets, with sales in international markets representing more than 60 percent of total GAAP net sales.

109. The February 12, 2008 Form 8-K also included Defendant Hassan's commentary on the fiscal fourth-quarter and full year 2007 results, which assured the public that:

> Schering-Plough delivered another strong performance in both the fourth quarter and full year of 2007.
>
> * * *
>
> Schering-Plough now has four full years of accomplishments . . . . In that time, we also brought a new culture to the company – focused on meeting the needs of our customers and patients, and founded on a commitment to quality, compliance and business integrity.

110. Addressing the ENHANCE trial, Defendant Hassan remarked:

> As we begin 2008, new challenges have emerged, especially the initial reaction to the ENHANCE trial. We and our joint venture partner Merck acted with integrity and good faith with respect to that trial. We stand behind VYTORIN and ZETIA, behind the validity of the science, and behind our commitment to doing what's right for patients and physicians.

111. Schering-Plough did not fully disclose the complete results of the ENHANCE trial until the March 30, 2008 ACC Conference. The response of the medical community was swift, and negative. The *New England Journal of Medicine* (the "*NEJM*"), which published the ENHANCE results on the same day, took an unusual step of printing two editorials which recommended doctors only turn to ZETIA and VYTORIN after they had exhausted all other

options. Additionally, a panel of experts issued a unanimous statement calling on cardiologists to turn back to prescribing statins like Lipitor and ZOCOR.

112. Numerous articles in the press echoed the medical community's concerns published by the *NEJM*. For instance, on March 31, 2008, *MSNBC.com*, in an article entitled "Cholesterol drug study renews questions," reported that:

> Millions of patients taking the drug Vytorin as a hedge against heart disease should consider switching to proven treatments following a failed trial . . . an American Heart Association doctor [Dr. Robert O. Bonow, past president of the AHA and chief of cardiology at Northwestern University] said Monday
>
> * * *
>
> Bonow and other medical experts called for a return to the traditional cholesterol-lowering drugs, known as statins, long shown to be successful at preventing heart disease.
>
> "The statins have been proven over and over again," he said.
>
> Full results of a trial of Vytorin and one of its components, Zetia, stunned the cardiac community by showing that although the drugs lowered cholesterol as expected, they failed to reduce heart disease.
>
> "It is a wrinkle we weren't anticipating," Bonow said.
>
> Early news that the drugs didn't work as anticipated was first released in January, but the full results of the trial, known as Enhance, were presented Sunday at a meeting of the American College of Cardiology conference in Chicago and online in the New England Journal of Medicine.
>
> * * *
>
> Some doctors attending the Chicago conference said they'd been reconsidering their use of Vytorin after being surprised by preliminary results this winter. Dr. Michael Ring, a cardiologist in Spokane, Wash., said initially it made sense to think that lowering LDL cholesterol would prevent heart disease.
>
> "It was very easy to be lulled into that hypothesis," Ring said. "I swallowed it, hook, line and all."

113. *Business Week.com* also reported on the same day, in an article entitled "A Weak Prognosis for Vytorin and Zetia" (the "*Business Week* Article"), that the release of the results of

the ENHANCE trial would decimate the sales of VYTORIN (and, correspondingly, Schering-Plough's profits, given the Company consistently noted in its SEC filings that its "ability to generate profits and operating cash flow depends largely on the continued profitability of Schering-Plough's cholesterol franchise." *See e.g.*, October 22, 2007 Form 8-K; February 12, 2008 Form 8-K.) The *Business Week* Article reported in relevant part that:

> Together, Zetia and Vytorin raked in more than $5 billion in sales last year. But on Mar. 30, Yale University cardiologist Harlan Krumholtz told thousands of doctors at the meeting of the American College of Cardiology, or ACC, in Chicago that the two drugs should not be used as a first or even second-line treatment. Other doctors agreed.
>
> That probably translates into a dramatic drop in sales for the two drugs, analysts and doctors said. "When you get a panel of cardiologists saying don't use this drug, and if you do you are using it at own risk, it's a powerful message," says Dr. John LaRosa, president of the State University of New York Downstate Medical Center in Brooklyn, N.Y., and a cholesterol expert.
>
> Schering-Plough sales representatives were stunned. "It's Over!" writes one on a message board at CafePharma, an online café for drug salespeople. "Now, we are supposed to get doctors to write [a prescription for] those products? On top of that, every patient has seen the story as well. Get used to hearing "No Way!"
>
> * * *
>
> LaRosa is among many doctors who have always believed Zetia should only be used in cases where the more common cholesterol-lowering drugs, known as statins, aren't doing enough – and that there's no reason to take Vytorin at all. But the marketing pushed sales far beyond their known medical utility. And now that's causing a big hit to the companies' bottom lines.
>
> That's why the rise and fall of these drugs is a cautionary tale about money that can be made aggressively promoting unproven medicines – until something bad happens. …
>
> * * *
>
> The [Enhance] study quickly became controversial. The drugmakers delayed announcing the results, prompting scientific outrage and the threat of a congressional investigation. …
>
> * * *

> Since [the release of the preliminary data], the facts haven't changed. What has changed is that the medical community has had more time to digest the results. And the Mar. 31 session on the trial at the ACC meeting was crucial. This was no longer the press raising doubts, but prominent physicians telling their peers not to prescribe the drugs. That's why analysts are rushing to reduce their estimates for the sales of Zetia and Vytorin, and to downgrade the stocks.

114. Upon this news, Schering-Plough's closing stock price plunged from 19.47 on March 28, 2008 to $14.41 on March 31, 2008, the next trading day.

115. *Forbes.com*, in an April 4, 2008 article entitled "How Low Can Vytorin Go?", reiterated financial commentators' fears about the damage to Schering-Plough's reputation due to the public's suspicion of wrongdoing triggered by congressional inquiries into the Company's handling of the ENHANCE trial, the questioning of the effectiveness of the Company's best-selling product (VYTORIN) by the expert panel, as well as the consequent plunge in the sales of VYTORIN in the coming months:

> . . . Shares of Merck and Schering-Plough, makers of Zetia and Vytorin, have dropped 25% and 40% since the report came out in January, including a big drop this week after additional data sparked new worries about sales. Together, the drugs generated $5 billion last year.
>
> The companies won't see that level of revenue anytime soon. …
>
> * * *
>
> . . . If Vytorin sales are counted, it's the second-biggest branded cholesterol drug.
>
> But then came the artery-imaging study in January and a stinging rebuke from an expert panel last Sunday at the American College of Cardiology's (ACC) meeting. Charged with recommending how this small study should change clinical practice, the panel was expected to debate but instead provided a consensus. "The individual comments you'll hear are truly reflective of the group's thinking," said Patrick O'Gara, vice chairman of clinical affairs at Boston's Brigham and Women's Hospital.
>
> That's when Harlan Krumholz of Yale University took the stage, raising the possibility that Zetia might be "an expensive placebo" or even harmful. The panel does not represent the official position of the ACC. But Krumholz's speech drew applause, and accounts

> of it in the media don't do it justice. (See "The Speech That Maimed Schering and Merck"). At a press conference following the presentation, the panelists reiterated that they backed Krumholz's statement.
>
> * * *
>
> Half of Zetia use is without a statin, and 40% of new prescriptions for Vytorin are for people who weren't on a statin previously, according to an analysis of prescription data from IMS Health provided by Merck/Schering-Plough. Cardiologists agree that most of those people should be getting statins, potentially at high doses instead. ***If all that use vanished, it could easily cut sales of Zetia and Vytorin in half, to $2.5 billion.***
>
> * * *
>
> …[T]he companies haven't done themselves any favors. For one thing, the lead investigator of the imaging study says he wanted to have the full results out at least six months, and as much as a year, before they were. Scrutiny of the delay has launched two congressional investigations.
>
> The companies didn't start a big trial testing whether adding Zetia to Zocor prevents heart attacks and strokes until three years after the drug was approved for sale. AstraZeneca's Crestor began a big survival trial three years before, and it just finished early, proving that Vytorin's main rival does prevent heart attacks and strokes. (Emphasis added).

116. Furthermore, in the wake of the March 30, 2008 ACC Conference, questions emerged over Schering-Plough and Merck's internal deliberations regarding release of the ENHANCE trial results and the possibility that Schering-Plough and Merck deliberately concealed the failure of the trial to establish VYTORIN as more effective than statins in combating arterial plaque. For instance, *The Wall Street Journal*, in an April 12, 2008 article entitled "Accuracy of Minutes on Vytorin Meeting Raises Doubt," reported that:

> Merck & Co. and Schering-Plough Corp. created minutes of a crucial meeting about a major study on their cholesterol drug Vytorin after a congressional panel began an investigation…
>
> The Nov. 16, 2007 meeting's minutes were circulated among the participants on Dec. 19, a week after an investigation by a panel of the House Energy and Commerce Committee began. The minutes suggest that the outside consultants had recommended a critical

change in the primary endpoint – the main measure for how the drug would be evaluated. The companies had put out a news release a month earlier saying the same thing.

But in documents released by the committee, one of the consultants took issue with that statement in the minutes. James Stein, a cardiac-imaging expert at the University of Wisconsin, told a company scientist in an email: "We did not vote on this… It was the decision of the company to change the endpoint."

In a letter Friday, Rep. John Dingell (D., Mich.) chairman of the House Energy and Commerce Committee, and Rep. Bart Stupak (D., Mich.), chairman of the Subcommittee for Oversight, asked why minutes of the companies' ad hoc expert panel, which met in mid-November, were "created after the fact" in December.

The release of the documents is the latest development in a controversy about Vytorin and sister drug Zetia that has swept Merck and Schering-Plough into a fire-storm over the drugs' value in fighting heart disease and over drug-industry behavior in the conduct of clinical trials intended to prove the safety and benefits of their products.

The companies reported in January – after a delay of more than a year – that Vyrorin had failed to show a benefit over a cheaper generic against an established marker of heart risk. The results were formally presented at a major cardiology conference last month. The delay led cardiologists and public officials such as Rep. Dingell to ask whether the companies had long known the trial had failed and had deliberately withheld the finding to protect surging sales. Combined sales of the drugs were $5.1 billion last year.

* * *

Questions about the internal deliberations by the two drug makers come as Messrs. Dingell and Stupak are pushing for a wider investigation of Vytorin's effectiveness and of the amount spent on the drugs by the federally funded Medicare and Medicaid plans.

* * *

Changing the plan for evaluating a study after it is completed is generally considered a violation of scientific protocol. The companies eventually decided against changing the endpoint, but the Nov. 19 announcement that they planned to do it on the panel's advice helped ignite the controversy over the conduct of the study.

117. The price of Schering common stock fell from a closing price of $30.52 on October 31, 2007, the day Schering-Plough appears to have considered changing the endpoint of the ENHANCE study, to a closing price of $25.52 on January 14, 2008, the day the preliminary ENHANCE study results were disclosed.

118. Between January 14 and the March 31, 2008 news reports of the ENHANCE study presentation made at the March 30 ACC conference, Schering-Plough's stock dropped to close at $14.41. Two days later, on April 2, 2008, it closed at $13.86.

119. The $16.44 stock price drop between October 31, 2007 and April 2, 2008 equaled a 54.6% drop in Schering-Plough's capitalization, and a corresponding drop in the value of the Schering-Plough shares held in the accounts of the Plans' participants and beneficiaries.

120. During the Class Period, as described herein, Defendants knew or should have known that Schering-Plough stock was an imprudent investment for the Plans due to the following:

(a) The disclosure of the ENHANCE trial results was being delayed by the Company because the results were detrimental to Schering-Plough as they showed that there was no statistically significant difference between patient use of VYTORIN when compared to patients treated with simvastatin alone. As a result of the trial results, Defendants were aware that the medical community would turn to alternative, less expensive statins.

(b) Schering Plough's earnings were dependent on increasing sales of VYTORIN; and

(c) Schering-Plough's performance would be dramatically impacted by competition from other cholesterol management products on the market once it became

known to the medical community and the general public that VYTORIN failed to prove to be superior to the less expensive statins.

121. As a result of these undisclosed facts, Schering-Plough's stock price was artificially inflated, making it an imprudent investment for the Plans during the Class Period.

122. Upon information and belief, Schering-Plough regularly communicated with employees, including the Plans' participants, about the Company's performance, future financial and business prospects and Schering-Plough stock. During the Class Period, upon information and belief, the Company fostered a positive attitude toward Schering-Plough stock as Plan investments, and/or allowed the Plans' participants to follow their natural bias toward remaining invested in the stock of their employer by not disclosing negative material information concerning investment in Schering-Plough stock. As such, the Plans' participants could not appreciate the true risks presented by investments in Schering-Plough stock and therefore could not make informed decisions regarding their investments in the Plans.

ERISA SECTION 404(c) DEFENSE INAPPLICABLE

123. ERISA § 404(c), 29 U.S.C. § 1104(c), is an affirmative defense inapplicable here. ERISA § 404(c) provides a limited exception to fiduciary liability for losses that result from plan participants' exercise of "independent control" over investment decisions. ERISA § 404(c) thus applies only when plan participants in fact exercise "independent control" over investment decisions, and the fiduciaries must otherwise satisfy the numerous procedural and substantive requirements of the statute and the regulations promulgated pursuant thereto.

124. ERISA § 404(c) is inapplicable here for several reasons. First, ERISA § 404(c) does not provide any defense to the Plans' fiduciaries imprudent decision to select and continue offering Schering Stock as investment option in the Plans or to continue matching in Schering-

Plough Stock – both of which are decisions not within the Plans' participants' control. Accordingly, the Plans' participants had no role in making or controlling either decision.

125. Second, even as to participant directed investment in Schering Stock, ERISA § 404(c) does not apply because Defendants failed to ensure effective participant control by neglecting to provide complete and accurate material information to the Plans' participants regarding Schering's business prospects. Due to Defendants' failure in this respect, the Plans' participants did not have informed control over the portion of the Plan's assets that were invested in Schering Stock at their direction, and Defendants remain entirely responsible for losses arising therefrom. Accordingly, ERISA § 404(c) is inapplicable.

CAUSES OF ACTION

COUNT I

Failure Prudently and Loyally to Manage the Plans and Plans' Assets

(Breaches of Fiduciary Duties in Violation of ERISA § 404 by All Defendants)

126. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

127. At all relevant times, as alleged above, Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

128. As alleged above, Defendants were all responsible, in different ways and to differing extents, for management of the Plans or disposition of the assets of the Plans and were, during the Class Period, responsible for ensuring that the Plans' investment options, including the Schering-Plough Stock Fund, made available to participants in the Plans, were prudent.

129. Furthermore, under ERISA, fiduciaries who exercise discretionary authority or control over management of a plan or disposition of a plan's assets are responsible for ensuring that investment options made available to participants under a plan are prudent. Thus, Defendants were responsible for ensuring that all investment in Schering-Plough stock under the Plans was prudent, and are liable for losses incurred as a result of such investments being imprudent.

130. Additionally, pursuant to ERISA, fiduciaries are required to disregard plan documents or directives they know or reasonably should know would lead to an imprudent result or would otherwise harm plan participants or beneficiaries. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Thus, fiduciaries may not blindly follow plan documents or directives that would lead to an imprudent result or would harm plan participants or beneficiaries, nor allow others, including those whom they direct or are directed by the plan, including plan trustees, to do so.

131. Defendants were obligated to discharge their duties with respect to the Plans with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

132. According to the DOL regulations and case law interpreting ERISA § 404, a fiduciary's investment or investment-related course of action is prudent if: a) s/he has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or course of action involved, including the role the investment or course of action

plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties; and b) s/he has acted accordingly.

133. Again, according to DOL regulations, "appropriate consideration" in this context includes, but is not necessarily limited to:

- A determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action; and
- Consideration of the following factors as they relate to such portion of the portfolio:
    - The composition of the portfolio with regard to diversification;
    - The liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and
    - The projected return of the portfolio relative to the funding objectives of the plan.

134. Given the conduct of the Company as described above, Defendants could not possibly have acted prudently when they continued to invest the Plans' assets in Schering-Plough stock because, among other reasons:

- Defendants knew of and/or failed to investigate the delay of the release of ENHANCE trial results and the detrimental impact it would have on the sales of

VYTORIN and the Company's earnings, due to the trial's failure to prove superiority of VYTORIN over less-costly statins;

- The risk associated with the investment in Schering-Plough stock during the Class Period was an extraordinary risk, far above and beyond the normal, acceptable risk associated with investment in company stock;

- This abnormal investment risk could not have been known by the Plans' participants, and Defendants were aware or should have been aware that it was unknown to them (as it was to the market generally), because the fiduciaries never disclosed it; and

- Knowing of this extraordinary risk, and knowing the participants were not aware of it, Defendants had a duty to avoid permitting the Plans or any participant from investing Plans' assets in Schering-Plough stock.

135. Defendants breached their duties to prudently and loyally manage the Plans' assets. During the Class Period, Defendants knew or should have known that Schering-Plough stock was not a suitable and appropriate investment for the Plans as described herein. Nonetheless, during the Class Period, Defendants continued to invest the Plans' assets in Schering-Plough stock, instead of other, more suitable, investments. Moreover, during the Class Period, despite their knowledge of the imprudence of the investment, Defendants failed to take adequate steps to prevent the Plans, and indirectly the Plans' participants and beneficiaries, from suffering losses as a result of the Plans' investment in Schering-Plough stock

136. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiffs and the Plans' other participants and beneficiaries, were damaged.

137. Pursuant to ERISA §§ 409 and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (a)(3), Defendants named in this count, are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

COUNT II

Failure to Provide Complete and Accurate Information to Participants and Beneficiaries

(Breaches of Fiduciary Duties in Violation of ERISA §§ 404 and 405 by All Defendants)

138. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

139. As alleged above, during the Class Period, all Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

140. As alleged above, the scope of the fiduciary responsibilities of all Defendants, to differing extents, included disseminating plan documents and/or plan-related information to participants regarding the Plans and/or assets of the Plans.

141. The duty of loyalty under ERISA requires fiduciaries to speak truthfully to participants, not to mislead them regarding the Plans or the Plans' assets, and to disclose information that participants need in order to exercise their rights and interests under the Plans.

142. This duty to inform participants includes an obligation to provide participants and beneficiaries of the Plans with complete and accurate information, and to refrain from providing inaccurate information, or concealing material information regarding the prudence of

maintaining investment in the Plans, so that participants can make informed decisions with regard to their investment options available under the Plans.

143. This fiduciary duty to honestly communicate with participants is designed not merely to inform participants and beneficiaries of conduct, including potentially illegal conduct, bearing on their retirement savings, but also to forestall such misconduct in the first instance. By failing to discharge their disclosure duties, Defendants facilitated the misconduct in the first instance.

144. Defendants breached their fiduciary duties by failing to provide the Plans' participants with complete and accurate information regarding the results of the ENHANCE trial, and the consequent artificial inflation of the value of Schering-Plough stock, and, generally, by conveying inaccurate information regarding the soundness of the Company's financial health and the prudence of investing retirement contributions in the Company stock.

145. Had Defendants not constantly reinforced the safety, stability and prudence of investment in Schering-Plough stock during the Class Period, the Plans' participants, to the extent permitted, could have divested their holdings of Company stock in the Plans or at least diversified such holdings, thereby mitigating the Plans' losses.

146. Defendants in this Count are also liable as co-fiduciaries because they knowingly participated in and knowingly undertook to conceal the failure of the other fiduciaries to provide complete and accurate information regarding the Schering-Plough stock, despite knowledge of their breaches. Further, they enabled such conduct as a result of their own failure to satisfy their fiduciary duties and as a result of having knowledge of the other fiduciaries' failures to satisfy their duty to provide only complete and accurate information to Plans' participants, yet not making any effort to remedy the breaches.

147. Where a breach of fiduciary duty consists of, or includes, misrepresentations and omissions material to a decision by a reasonable plan participant that results in harm to the participant, the participant is presumed as a matter of law to have relied upon such misrepresentations and omissions to his or her detriment. Here, the above-described statements, acts and omissions of Defendants in this Count constituted misrepresentations and omissions that were fundamentally deceptive concerning the prudence of investing the Plans' assets in Schering-Plough stock, and were material to any reasonable person's decision about whether or not to invest or maintain any part of their retirement assets in the Schering-Plough Stock Fund during the Class Period. Plaintiffs and the other Class members are therefore presumed to have relied to their detriment on the misleading statements, acts, and omissions of Defendants named in this Count.

148. Plaintiffs further contend that the Plans suffered a loss, and Plaintiffs and the other Class members suffered losses, by the above-described conduct of Defendants during the Class Period because that conduct fundamentally deceived Plaintiffs and the other Class members about the prudence of making and maintaining retirement investments in Schering-Plough stock, and that, in making and maintaining investments in Schering-Plough stock, Plaintiffs and the other Class members relied to their detriment upon Defendants' materially deceptive and misleading statements, acts and omissions.

149. As a consequence of Defendants' breaches of fiduciary duty, the Plans suffered tremendous losses. If Defendants had discharged their fiduciary duties to prudently disclose material information, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the

Plans, and indirectly Plaintiffs and the other Plans' participants, lost a significant portion of their retirement savings.

150. Pursuant to ERISA §§ 409 and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (a)(3), Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

COUNT III

Failure to Monitor Fiduciaries

(Breaches of Fiduciary Duties in Violation of ERISA § 404 by Schering-Plough, the Director Defendants, the Oversight Committee Defendants and the Compensation Committee Defendants)

151. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

152. This Count alleges fiduciary breach against the following Defendants: Schering-Plough, the Director Defendants, the Oversight Committee Defendants and the Compensation Committee Defendants (the "Monitoring Defendants").

153. As alleged above, during the Class Period the Monitoring Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

154. As alleged above, the scope of the fiduciary responsibilities of the Monitoring Defendants included the responsibility to appoint, remove, and monitor the performance of other Plan fiduciaries, including the Benefits Committee and Investment Committee Defendants.

155. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and

holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

156. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to plan participants or for deciding whether to retain or remove them.

157. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

158. The Monitoring Defendants breached their fiduciary monitoring duties by, among other things: (a) failing to ensure that the monitored fiduciaries had access to knowledge about the failure of the ENHANCE trial and the consequent threat to Company's earnings, which made Schering-Plough stock an imprudent retirement investment; and/or (b) failing to ensure that the monitored fiduciaries appreciated the huge and unjustified risk of significant investment loss by rank and file employees in their plan accounts.

159. In addition, the Monitoring Defendants, in connection with their monitoring and oversight duties, were required to disclose to those they monitored accurate information about

the financial condition, practices and clinical programs of Schering-Plough. The Monitoring Defendants knew or should have known the monitored fiduciaries needed to make informed fiduciary investment decisions in view of the Company's delay in revealing the ENHANCE trial results, which most, if not all, Monitoring Defendants had direct knowledge of, if not complicity in. By remaining silent and continuing to conceal such information from the other fiduciaries, the Monitoring Defendants breached their fiduciary duties under the Plan and ERISA.

160. The Monitoring Defendants are liable as co-fiduciaries because they knowingly participated in the fiduciary breaches by the monitored Defendants, they enabled the breaches by these Defendants and they had knowledge of these breaches, yet did not make any effort to remedy the breaches.

161. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiffs and the Plans' other participants and beneficiaries, lost a significant portion of their retirement investment.

162. Pursuant to ERISA §§ 409 and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

COUNT IV

Breach of Duty to Avoid Conflicts of Interest
(Breaches of Fiduciary Duties in Violation of ERISA §§ 404 and 405 by All Defendants)

163. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

164. At all relevant times, as alleged above, all Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

165. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), imposes on a plan fiduciary a duty of loyalty, that is, a duty to discharge his/her duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and its beneficiaries.

166. These fiduciary duties under ERISA § 404(a)(l)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence, and are the "highest known to the law." They entail, among other things:

(a) The duty to conduct an independent and thorough investigation into, and continually to monitor, the merits of all the investment alternatives of a plan, including in this instance the Plans, which invested in Schering-Plough Stock, to ensure that each investment is a suitable option for the Plans;

(a) The duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan's sponsor; and

(b) A duty to disclose and inform, which encompasses: (i) a negative duty not to misinform; (ii) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (iii) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

167. Upon information and belief, the Plans' administrators have received Schering-Plough stock pursuant to incentive and nonqualified stock options and restricted share awards.

168. Thus, Defendants had a significant personal financial incentive to maintain a high price for Schering-Plough stock.

169. Defendants had an incentive not to disclose the ENHANCE trial results to the Plans' participants in hopes that such participants would select Schering-Plough stock for their retirement accounts and, therefore, help maintain a high price for Schering-Plough stock.

170. Defendants also had an incentive to maintain Schering-Plough stock as an investment option under the Plans. If Schering-Plough stock were eliminated as an investment option under the Plans, this would have sent a negative signal to Wall Street analysts, which in turn would result in reduced demand for Schering-Plough stock and a drop in the stock price. Since the compensation of certain Defendants included Schering-Plough stock, this sequence of events would reduce their compensation and also reduce their profits from selling Schering-Plough stock.

171. Defendants breached their duty to avoid conflicts of interest and to promptly resolve them when they occurred by (i) failing to engage independent fiduciaries and/or advisors who could make independent judgments concerning the Plans' investment in Schering-Plough stock and the information provided to participants and beneficiaries concerning it, (ii) failing to notify appropriate federal agencies, including the DOL, of the facts and transactions which made Schering-Plough stock an unsuitable investment for the Plans; (iii) failing to take such other steps as were necessary to ensure that participants' interests were loyally and prudently served in order to prevent drawing attention to the Company's delay of releasing results of the ENHANCE trial; and (iv) by otherwise placing the interests of the Company and themselves above the interests of the participants with respect to the Plans' investment in Schering-Plough stock.

172. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiffs and the Plans' other participants and beneficiaries were damaged.

173. Pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants named in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

COUNT V

Co-Fiduciary Liability

(Breaches of Fiduciary Duties in Violation of ERISA §§ 404 and 405 by Schering-Plough and the Director Defendants)

174. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

175. This Count alleges co-fiduciary liability against the following Defendants: Schering-Plough and the Director Defendants (the "Co-Fiduciary Defendants").

176. As alleged above, during the Class Period the Co-Fiduciary Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

177. As alleged above, ERISA § 405(a), 29 U.S.C. § 1105, imposes liability on a fiduciary, in addition to any liability which s/he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if it knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach. The Co-Fiduciary Defendants breached all three provisions.

178. ***Knowledge of a Breach and Failure to Remedy***: ERISA § 405(a)(3), 29 U.S.C. § 1105, imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if it has knowledge of a breach by such other fiduciary, unless it makes reasonable efforts under the circumstances to remedy the breach. Schering-Plough and the Director Defendants knew of the

breaches by the other fiduciaries and made no efforts, much less reasonable ones, to remedy those breaches.

179. Schering-Plough, through its officers and employees, engaged in inappropriate business practices, withheld material information from the market, provided the market with misleading disclosures, and profited from such practices, and, thus, knowledge of such practices is imputed to Schering-Plough as a matter of law.

180. The Director Defendants, by virtue of their positions at Schering-Plough, participated in and/or knew about the Company's highly risky and inappropriate business practices, and their consequences, including the artificial inflation of the value of Schering-Plough stock.

181. Because Schering-Plough and the Director Defendants knew of the Company's improper business practices, they also knew that the Plan Committee Defendants were breaching their duties by continuing to invest the Plans' assets in Schering-Plough stock when it was no longer prudent to do so, and providing incomplete and inaccurate information to the Plans' participants. Yet, Schering-Plough and the Director Defendants failed to undertake any effort to remedy these breaches. Instead, they compounded them by obfuscating the risk that the failure of the ENHANCE trial posed to Schering-Plough, and, thus, to the Plans.

182. ***Knowing Participation in a Breach*:** ERISA § 405(a)(1), 29 U.S.C. § 1105(1), imposes liability on a fiduciary for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach. Schering-Plough knowingly participated in the fiduciary breaches of the Plan Committee Defendants in that it benefited from the sale or contribution of its stock at artificially inflated prices. Schering-

Plough also, as a *de facto* fiduciary, participated in all aspects of the fiduciary breaches of the other Defendants. Likewise, the Director Defendants knowingly participated in the breaches of the Plan Committee Defendants because, as alleged above, they had actual knowledge of the Company's improper and possibly illegal conduct and yet, ignoring their oversight responsibilities (as Directors), permitted the Benefits Committee, the investment Committee, the Oversight Committee and the Compensation Committee (the "Plan Committee Defendants") to breach their duties.

183. ***Enabling a Breach.*** ERISA § 405(a)(2), 29 U.S.C. § 1105(2), imposes liability on a fiduciary for failing to comply with ERISA § 404(a)(1), 29 U.S.C. §1104(a)(1) in the administration of their specific responsibilities that give rise to their status as a fiduciary, and s/he has enabled another fiduciary to commit a breach.

184. Schering-Plough's and the Director Defendants' failure to monitor the Plan Committee Defendants enabled those committees to breach their duties.

185. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiffs and the Plans' other participants and beneficiaries, were damaged.

186. Pursuant to ERISA §§ 409 and 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a) and 1132(a)(2) and (a)(3), the Co-Fiduciary Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

CAUSATION

187. The Plans suffered more than one hundred million dollars in losses because a significant percentage of the Plans' assets were imprudently invested or allowed to be imprudently invested by Defendants in Schering-Plough stock during the Class Period, in breach

of Defendants' fiduciary duties. This loss was reflected in the diminished account balances of the Plans' participants.

188. Defendants are liable for the Plans' losses in this case because Defendants failed to take the necessary and required steps to ensure effective and informed independent participant control over the investment decision-making process, as required by ERISA § 404(c), 29 U.S.C. § 1104(c), and the regulations promulgated thereunder. Defendants withheld material, non-public facts from participants, and provided inaccurate and incomplete information to them regarding the true health and ongoing profitability of Schering-Plough, and its soundness as an investment vehicle. As a consequence, participants did not exercise independent control over their investments in Schering-Plough stock, and Defendants remain liable under ERISA for losses caused by such investment.

189. Defendants are also responsible for all losses in the Plans' benefits caused by the investment of the Plans' company contributions in Schering-Plough stock during the Class Period, as Defendants controlled the investment, and the investment was imprudent.

190. Also, reliance is presumed in an ERISA breach of fiduciary duty case. Nevertheless, to the extent that reliance is an element of the claim, Plaintiffs and the Class relied to their detriment on the misstatements and omissions that Defendants made to the Plans' participants.

191. Defendants' statements, acts, and omissions alleged herein constituted misrepresentations and omissions that were fundamentally deceptive concerning the prudence of investments in Schering-Plough stock and were material to any reasonable person's decision whether or not to invest or maintain any part of the Plans' assets in Schering-Plough stock during

the Class Period. Plaintiffs and the other Class members are therefore presumed to have relied to their detriment on Defendants' deceptive statements, acts, and omissions.

192. Had Defendants properly discharged their fiduciary duties, including the provision of full and accurate disclosure of material facts concerning investment in Schering-Plough stock, eliminating Schering-Plough stock as a primary investment option when it became imprudent, and divesting the Plans of their holdings of Schering-Plough stock when maintaining such an investment became imprudent, the Plans would have avoided a substantial portion of the losses that they suffered through their continued investment in Schering-Plough stock.

REMEDY FOR BREACHES OF FIDUCIARY DUTY

193. Defendants breached their fiduciary duties in that they knew or should have known the facts as alleged above, and therefore knew or should have known that the assets of the Plans should not have been so heavily invested in Schering-Plough equity during the Class Period.

194. As a consequence of Defendants' breaches, the Plans suffered significant losses.

195. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan. …" Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate. …"

196. With respect to calculation of the losses to the Plans, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the Plans would not have made or maintained its investments in the challenged investment and, where alternative investments were available (as they were here), that the investments made or maintained in

Schering-Plough stock would have been made instead in the most profitable alternative investment available. In this way, the remedy restores the Plans' lost value and puts the participants in the position they would have been in if the Plans had been properly administered.

197. Plaintiffs and the Class are therefore entitled to relief from Defendants in the form of: (1) a monetary payment to the Plans to restore the losses resulting from Defendants' breaches of fiduciary duty alleged above in an amount to be proven at trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a); (2) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a) and 502(a)(2) and (3), 29 U.S.C. §§ 1109(a) and 1132(a)(2); (3) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (4) taxable costs and interests on these amounts, as provided by law; and (5) such other legal or equitable relief as may be just and proper.

198. Under ERISA, each Defendant is jointly and severally liable for the losses suffered by the Plans in this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for:

A. A Declaration that Defendants, and each of them, have breached their ERISA fiduciary duties to the participants;

B. A Declaration that Defendants, and each of them, are not entitled to the protection of ERISA § 404(c)(1)(B), 29 U.S.C. § 1104(c)(1)(B);

C. An Order compelling Defendants to make good to the Plans all losses to the Plans resulting from Defendants' breaches of their fiduciary duties, including losses to the Plans resulting from imprudent investment of the Plans' assets, and to restore to the Plans all

profits Defendants made through use of the Plans' assets, and to restore to the Plans all profits which the participants would have made had Defendants fulfilled their fiduciary obligations;

D. Imposition of a Constructive Trust on any amounts by which any Defendant was unjustly enriched at the Plans' expense as a result of a breach of fiduciary duty;

E. An Order enjoining Defendants, and each of them, from any further violations of their ERISA fiduciary obligations;

F. Actual damages in the amount of any losses the Plans suffered, to be allocated among the participants' individual accounts in proportion to each account's loss;

G. An Order that Defendants allocate the Plans' recoveries to the accounts of all participants whose accounts had investments in Schering-Plough stock maintained by the Plans, in proportion to each account's loss attributable to the precipitous decline in the stock;

H. An Order awarding costs pursuant to section 502(g), 29 U.S.C. § 1132(g);

I. An Order awarding attorneys' fees pursuant to section 502(g) and the common fund doctrine; and

J. An Order for equitable restitution and other appropriate equitable and injunctive relief against Defendants, including appropriate modifications to the Plans to ensure against further violations of ERISA.

DATED: October 14, 2008

TRUJILLO RODRIGUEZ & RICHARDS, LLC

By: /s Lisa J. Rodriguez
Lisa J. Rodriguez
8 Kings Highway West
Haddonfield, New Jersey 08033
Telephone: (856) 795-9002
Facsimile: (856) 795-9887
Email: lisa@trrlaw.com

Liaison Counsel

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
Alexander H. Schmidt
Russell S. Miness
270 Madison Avenue
New York, NY 10016
Telephone: 212-545-4723
Facsimile: 212-545-4653
Email: schmidt@whafh.com

HARWOOD FEFFER LLP
Robert I. Harwood
Samuel K. Rosen
488 Madison Avenue
New York, New York 10022
Telephone: (212) 935-7400
Facsimile: (212) 753-3630
Email: rharwood@hfesq.com

Co-Lead Counsel

GAINEY & MCKENNA
Thomas J. McKenna
295 Madison Avenue, 4th Floor
New York, New York 10017
Telephone: (212) 983-1300
Facsimile: (212) 983-0383
Email: tjmckenna@gaineyandmckenna.com
tjmlaw2001@yahoo.com

Executive Committee Counsel

SQUITIERI & FEARON, LLP
Olimpio Lee Squitieri
2600 Kennedy Boulevard, Suite 1K
Jersey City, New Jersey 07306
Telephone: (201) 200-0900
Email: lee@sfclasslaw.com

Attorneys for Plaintiff Maureen Sabatella