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15
 16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA
 18 WESTERN DIVISION

19 In re QUESTCOR
 PHARMACEUTICALS, INC.
 20 SECURITIES LITIGATION

No. 8:12-cv-01623-DMG(JPRx)

CLASS ACTION

21 This Document Relates To:
 22 ALL ACTIONS.
 23

DECLARATION OF ANDREW J.
 BROWN IN SUPPORT OF
 PLAINTIFFS' MOTION FOR FINAL
 APPROVAL OF CLASS ACTION
 SETTLEMENT AND PLAN OF
 ALLOCATION AND LEAD
 COUNSEL'S MOTION FOR AN
 AWARD OF ATTORNEYS' FEES
 AND EXPENSES

DATE: September 18, 2015

TIME: 10:00 a.m.

CTRM: The Honorable Dolly M. Gee

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1 I, ANDREW J. BROWN, declare as follows:

2 1. I am an attorney duly licensed to practice before all courts of the State of
3 California. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP
4 (“Robbins Geller” or “Lead Counsel”), counsel for Lead Plaintiffs West Virginia
5 Investment Management Board and Plumbers & Pipefitters National Pension Fund,
6 named plaintiff Steven Glucksberg (collectively, “Plaintiffs”), and the Class. I have
7 been actively involved in the prosecution of this action and am familiar with its
8 proceedings. I have personal knowledge of the majority of the matters set forth herein
9 based upon my active supervision and participation in all material aspects of this
10 Litigation. As to the remaining matters, I have reviewed our litigation files and
11 consulted with other attorneys who worked on this case, as well as our support staff. I
12 could and would testify competently to the matters set forth herein if called upon to do
13 so.

14 2. I submit this Declaration in support of Plaintiffs’ application, pursuant to
15 Rule 23 of the Federal Rules of Civil Procedure, for approval of: (a) the Stipulation of
16 Settlement dated April 8, 2015 (the “Stipulation”)¹; (b) the proposed Plan of
17 Allocation; and (c) Lead Counsel’s application for attorneys’ fees and expenses.

18 **I. PRELIMINARY STATEMENT**

19 3. This case has been zealously litigated from its commencement in
20 September 2012 through settlement, the basic terms of which were not finalized until
21 after the Litigation had proceeded past the close of fact discovery. At every stage of
22 the Litigation, Defendants aggressively litigated the matter and asserted that they had
23 comprehensive defenses.

24 4. Plaintiffs and Lead Counsel clearly understood the strengths and
25 weaknesses of Plaintiffs’ claims as a result of their prosecution of the Litigation over
26 the course of nearly three years. Indeed, the settlement was achieved only after

27 ¹ Capitalized terms not otherwise defined in this Declaration have the same
28 meanings set forth in the Stipulation.

1 Plaintiffs and Lead Counsel had, *inter alia*: (a) conducted an extensive factual
2 investigation, including overseeing detailed investigative interviews of several former
3 employees of Questcor Pharmaceuticals, Inc. (“Questcor” or the “Company”); (b)
4 filed a consolidated complaint; (c) opposed Defendants’ comprehensive motions to
5 dismiss, defeating them in part; (d) obtained class certification; (e) conducted
6 extensive discovery, including the review and analysis of many of the over 1.6 million
7 pages of documents produced by Defendants and numerous third parties; (f) took or
8 defended the depositions of 32 fact witnesses; (g) responded to discovery propounded
9 by Defendants, including document requests, interrogatories and requests for
10 admission; (h) filed or defended complex discovery motions, most of which were
11 decided by this Court after being fully briefed; (i) commenced expert discovery
12 involving experts in the areas of market efficiency, loss causation, damages and the
13 pharmaceutical industry; and (j) engaged in protracted settlement negotiations,
14 including sessions with an experienced mediator.

15 5. This settlement is the product of hard-fought litigation and takes into
16 consideration the significant risks specific to the case. The settlement was
17 accomplished through arm’s-length settlement negotiations facilitated by former U.S.
18 District Judge Layn R. Phillips, a nationally recognized mediator. Judge Phillips
19 conducted a full-day, in-person mediation session on September 8, 2014. In advance
20 of the mediation session, Plaintiffs and Defendants prepared and submitted
21 comprehensive mediation statements for Judge Phillips’ review. A representative of
22 Plumbers & Pipefitters National Pension Fund attended the mediation session and
23 representatives for the other Plaintiffs were fully briefed and kept apprised of the
24 developments and subsequent discussions. Although the in-person mediation session
25 initially failed to resolve the Litigation, after numerous emails and phone conferences,
26 and thoughtful evaluation of the strengths and weaknesses of the claims and defenses
27 over the course of several months, Judge Phillips made a mediator’s proposal to settle
28 the Litigation for \$38,000,000. On March 5, 2015, the parties each separately

1 accepted Judge Phillips' proposal and thereafter initiated extensive negotiations of a
2 settlement term sheet and related settlement documents.

3 6. As set forth in greater detail below, Plaintiffs believe that this settlement
4 represents an excellent result for the Class. The substantial discovery and motion
5 practice outlined herein informed Plaintiffs that, while their case had strengths, it also
6 had weaknesses and risks, which had to be, and were, conscientiously evaluated in
7 determining what course of action was in the best interest of the Class. Despite
8 Plaintiffs' belief that their action is meritorious and the fact that certain of Plaintiffs'
9 allegations had received support from the documentary evidence as well as deposition
10 testimony, the specific circumstances involved here presented many uncertainties with
11 respect to Plaintiffs' ability to ultimately prevail in the Litigation. Indeed, Plaintiffs
12 recognized the very real risk that their allegations may not have survived summary
13 judgment and trial, and that based on recent authority in this Circuit, damages may
14 have been significantly reduced. Were Plaintiffs to overcome these obstacles, they
15 would still need to expend significant time and incur the expense of continued
16 discovery in order to litigate the action through trial and likely appeal, which would
17 have taken years. The \$38 million settlement enables damaged Class Members, who
18 have already endured years of litigation, to receive a recovery in the near future.

19 **II. FACTUAL SUMMARY OF PLAINTIFFS' CLAIMS AGAINST** 20 **DEFENDANTS**

21 7. The gravamen of Plaintiffs' Consolidated Class Action Complaint for
22 Violation of the Federal Securities Laws (the "Consolidated Complaint") is that, in
23 violation of §§10(b), 20(a) and 20A of the Securities Exchange Act of 1934
24 ("Exchange Act") (15 U.S.C. §§78j(b), 15 U.S.C. §78t-1 and 78t(a)) and Rule 10b-5
25 (17 C.F.R. §240.10b-5) promulgated thereunder by the U.S. Securities and Exchange
26 Commission ("SEC"), Defendants disseminated false and misleading statements to the
27 investing public about the effectiveness of Questcor's primary product, H.P. Acthar
28 Gel ("Acthar"), as a treatment for indications other than infantile spasms ("IS"),

1 making it impossible for shareholders to gain a meaningful or realistic understanding
2 of the drug's prospects and marketing success. Plaintiffs allege that the true facts,
3 which were known by Defendants but concealed from the investing public during the
4 Class Period, were as follows: (i) Questcor lacked clinical evidence to support the use
5 of Acthar for indications other than IS; (ii) Questcor had engaged in questionable
6 tactics to promote the sale and use of Acthar in the treatment of multiple sclerosis
7 ("MS") and nephrotic syndrome ("NS"); and (iii) Questcor lacked a reasonable basis
8 to make positive statements about the Company's prospects or its outlook, including
9 statements about the effectiveness of and potential market growth for Acthar.

10 8. Plaintiffs allege that, as a result of Defendants' false statements,
11 Questcor's stock traded at artificially inflated prices, reaching a Class Period high of
12 \$57.64 per share on July 9, 2012. According to Plaintiffs, Questcor insiders then
13 seized the opportunity to capitalize on the inflated price of Questcor's stock created by
14 their fraud by dumping unprecedented amounts of their own Questcor shares for illicit
15 profits of over \$100 million during the Class Period. When the truth about Questcor's
16 business practices finally reached the market through a series of disclosures,
17 Questcor's stock price plummeted, ultimately closing at \$19.08 per share on
18 September 24, 2012.

19 **III. RELEVANT PROCEDURAL HISTORY**

20 **A. Commencement of the Litigation**

21 9. On September 26, 2012, plaintiff John K. Norton, through his counsel
22 Robbins Geller Rudman & Dowd LLP, filed a class action complaint in this District
23 against Questcor and several of its executives: Don M. Bailey, Michael H. Mulroy,
24 Stephen L. Cartt and David Young (collectively, the "Individual Defendants").²
25 Norton brought claims under §§10(b) and 20(a) of the Exchange Act and Rule 10b-5.
26

27 ² The action was styled *Norton v. Questcor Pharmaceuticals, Inc., et al.*, No. 12-cv-
28 1623 (C.D. Cal.).

1 10. Thereafter, a number of similar, related, class action complaints were
2 filed in this District. In all, a total of six actions involving similar claims were filed:

CASE NAME	CASE NUMBER	DATE FILED
<i>Norton v. Questcor Pharmaceuticals, Inc., et al.</i>	12-cv-1623	September 26, 2012
<i>Heng v. Questcor Pharmaceuticals, Inc., et al.</i>	12-cv-1707	October 3, 2012
<i>White v. Questcor Pharmaceuticals, Inc., et al.</i> ³	12-cv-1708	October 3, 2012
<i>Danon v. Questcor Pharmaceuticals, Inc., et al.</i>	12-cv-1717	October 4, 2012
<i>Ho v. Questcor Pharmaceuticals, Inc., et al.</i>	12-cv-1814	October 17, 2012
<i>Glucksberg v. Questcor Pharmaceuticals, Inc., et al.</i>	12-cv-1975	November 13, 2012

13
14 11. On November 26, 2012, West Virginia Investment Management Board
15 and Plumbers & Pipefitters National Pension Fund moved for their appointment as
16 lead plaintiffs and for approval of their selection of Robbins Geller as lead counsel.
17 Dkt. No. 30. Six competing motions for appointment as lead plaintiff and approval of
18 selection of counsel were ultimately filed with the Court. *See* Dkt. Nos. 24, 28, 33,
19 38, 43, 46. On December 14, 2012, West Virginia Investment Management Board
20 and Plumbers & Pipefitters National Pension Fund filed a memorandum in opposition
21 to those motions. Dkt. No. 73. Due to the substantial financial interest in the
22 litigation possessed by West Virginia Investment Management Board and Plumbers &
23 Pipefitters National Pension Fund, each movant withdrew its motion or filed a notice
24 of non-opposition to the appointment of these funds as lead plaintiffs. *See* Dkt. Nos.
25 37, 48, 50, 54, 69, 72.

26
27
28 ³ The *White* action was voluntarily dismissed without prejudice.

1 12. On November 30, 2012, the Court directed that all parties in the pending
2 related class actions, as well as those in the related shareholder derivative actions also
3 before the Court,⁴ file a joint report addressing whether the class actions and
4 derivative actions should be consolidated into a single action for some or all purposes.
5 Dkt. No. 49. On December 21, 2102, the parties to the related class actions and
6 derivative actions filed their Joint Report Re Consolidation of Derivative Actions and
7 Class Actions in which they argued that the class actions should be consolidated with
8 each other, the derivative actions should be consolidated with each other, but the class
9 actions and derivative actions should not be consolidated together. Dkt. No. 80.

10 13. On January 4, 2013, the Court consolidated the pending class actions
11 under the caption *In re Questcor Securities Litigation*, 12-cv-1623, appointed West
12 Virginia Investment Management Board and Plumbers & Pipefitters National Pension
13 Fund as Lead Plaintiffs, and approved their choice of Robbins Geller as Lead Counsel.
14 Dkt. No. 81.

15 **B. Lead Plaintiffs' Investigation and the Preparation of the**
16 **Consolidated Complaint**

17 14. Prior to and after the Court appointed West Virginia Investment
18 Management Board and Plumbers & Pipefitters National Pension Fund as Lead
19 Plaintiffs, Plaintiffs and Lead Counsel conducted an extensive investigation to
20 thoroughly understand: (a) the pharmaceutical industry and regulatory framework in
21 which Questcor operated; (b) Questcor's business; (c) factors impacting its operation;
22 (d) the Company's financial results prior to, during and after the Class Period; (e) the
23 price of the Company's stock before, during and after the Class Period; (f) how the
24 price of the Company's stock performed relative to its peer group and the general
25 market; (g) Questcor's acquisition, development, marketing and sale of Acthar before,

26 ⁴ The related shareholder derivative actions were *Easton v. Bailey, et al.*, No. 8:12-
27 cv-01716, *Johnson v. Bailey, et al.*, No. 8:12-cv-01718, *Goswami v. Bailey, et al.*, No.
28 8:12-cv-01753, *Richards v. Bailey, et al.*, No. 8:12-cv-01754, and *Tripoli v. Bailey, et*
al., No. 8:12-cv-01759.

1 during and after the Class Period, and the impact of those factors on the Company's
2 stock price; and (h) the compensation and stock sales of Questcor's executives,
3 directors, and largest shareholders before and during the Class Period.

4 15. In order to prepare a complaint that satisfied the stringent pleading
5 requirement of the PSLRA, Plaintiffs' investigations encompassed, among other
6 things, the following:

- 7 • Researching Defendants' public statements, including statements made
8 in conference calls, documents filed with the SEC, press releases and
9 analyst reports;
- 10 • Reviewing analyst reports concerning Questcor and the pharmaceutical
11 industry in general;
- 12 • Reviewing media reports concerning Questcor;
- 13 • Researching various insiders' compensation, stock trading practices and
14 job responsibilities prior to, during and after the Class Period;
- 15 • Analyzing the price of Questcor stock, the stock of Questcor's peers and
16 the changes in the NASDAQ and other stock markets;
- 17 • Interviewing former Questcor employees and other potential witnesses;
18 and
- 19 • Preparing preliminary estimates of damages.

20 16. On March 5, 2013, Lead Plaintiffs and Named Plaintiff, filed the 65-page
21 Consolidated Complaint, which included claims for violations of §§10(b), 20(a) and
22 20A of the Exchange Act and Rule 10b-5 promulgated thereunder. The Consolidated
23 Complaint added two additional defendants, naming as defendants Questcor
24 Pharmaceuticals, Inc., Don M. Bailey, Michael H. Mulroy, Stephen L. Cartt, David
25 Young, David J. Medeiros and Mitchell J. Blutt.⁵ Dkt. No. 83. The Consolidated
26 Complaint was purportedly brought on behalf of all persons who purchased Questcor

27 _____
28 ⁵ Medeiros and Blutt were later dismissed from the Litigation.

1 common stock between April 4, 2011 and September 21, 2012, inclusive (the “Class
2 Period”). *Id.*

3 **C. Defendants’ Motions to Dismiss**

4 17. On May 6, 2013, Questcor and the Individual Defendants plus Medeiros
5 and Blutt filed two separate motions to dismiss the Consolidated Complaint. Dkt.
6 Nos. 88, 92. Combined, Defendants’ complex motions totaled 55 pages of briefing.
7 In connection with their motions to dismiss, Defendants also sought judicial notice of
8 59 exhibits representing 130 total documents which they claimed supported their
9 motion to dismiss. Dkt. Nos. 89, 94.

10 18. With respect to Plaintiffs’ §10(b) and Rule 10b-5 claims, Questcor
11 argued that Plaintiffs: (a) failed to allege with particularity a material
12 misrepresentation or omission concerning statements about reimbursement; (b) failed
13 to allege with particularity a material misrepresentation or omission concerning
14 statements about scientific support for Acthar; (c) failed to allege with particularity a
15 material misrepresentation or omission concerning statements about compliance with
16 regulations; (d) failed to allege with particularity a material misrepresentation or
17 omission concerning statements about earnings; (e) failed to plead scienter with
18 particularity as to any Defendant; and (f) failed to allege any causal link between the
19 purported fraudulent practices and the resulting economic loss. Dkt. No. 92.

20 19. The Individual Defendants, along with Medeiros and Blutt, joined in
21 Questcor’s motion to dismiss and additionally argued that Plaintiffs’ §§20(a) and 20A
22 claims should be dismissed because Plaintiffs failed to allege a predicate Exchange
23 Act violation. Dkt. No. 88.

24 20. On July 3, 2013, Plaintiffs filed a consolidated opposition to Defendants’
25 motions to dismiss. Dkt. No. 105. In their 40-page opposition, Plaintiffs addressed
26 each of Defendants’ arguments in turn, demonstrating that Defendants’ motions to
27 dismiss lacked merit. Specifically, Plaintiffs argued, *inter alia*, that: (a) they had
28 adequately alleged false and misleading statements by Defendants concerning the

1 scientific basis for Acthar, compliance with regulatory standards and industry
2 practices, insurance coverage for Acthar, and financial results and forecasts;
3 (b) Defendants made those statements with the requisite state of mind; (c) they had
4 met their burden to provide some indication of loss causation as the price of
5 Questcor's securities fell precipitously upon disclosures to the market revealing the
6 truth concerning Defendants' false and misleading statements; (d) defendants Bailey,
7 Cartt, Young, Medeiros and Blutt are separately liable for trading on inside
8 information; (e) they had properly alleged a §20(a) control person claim; and (f) they
9 had properly alleged a §20A claim against defendants Bailey and Blutt due to their
10 contemporaneous trades with named plaintiff Glucksberg.

11 21. Plaintiffs cited more than 70 cases and made forceful and unique
12 arguments in response to the specific arguments raised by Defendants. Dkt. No. 105.
13 Lead Counsel spent significant time and resources analyzing Defendants' motions to
14 dismiss, distinguishing the cases they relied upon, and performing the legal research
15 necessary to draft an effective opposition demonstrating that the allegations in the
16 Consolidated Complaint satisfy the strict pleading burden imposed by the PSLRA. *Id.*

17 22. In connection with their consolidated opposition to Defendants' motions
18 to dismiss, Plaintiffs also opposed Defendants' requests for judicial notice as to 31
19 exhibits (Dkt. No. 104) and filed a motion to strike the declaration, exhibits and all
20 references thereto submitted in support of the Individual Defendants' motion to
21 dismiss. Dkt. Nos. 106-107. Combined, Plaintiffs' briefing covered 23 total pages
22 and included a 61-page spreadsheet Plaintiffs created in an attempt to decipher the
23 Individual Defendants' exhibits while providing the basis for Plaintiffs' objections.
24 Dkt. Nos. 104, 106-107.

25 23. On August 2, 2013, Questcor and the Individual Defendants plus
26 Medeiros and Blutt filed reply briefs in support of their motions to dismiss the
27 Consolidated Complaint (Dkt. Nos. 108, 110) and in support of their requests for
28 judicial notice. Dkt. Nos. 109, 111.

1 24. On August 23, 2013, the Individual Defendants plus Medeiros and Blutt
2 opposed Plaintiffs’ motion to strike the declaration, exhibits and all references thereto
3 submitted in support of the Individual Defendants’ motion to dismiss. Dkt. No. 112.
4 Plaintiffs filed their reply in support of their motion to strike on August 30, 2013.
5 Dkt. No. 113.

6 25. On September 13, 2013, the Court heard oral argument on the pending
7 motions and, on October 1, 2013, entered an order granting in part and denying in part
8 Defendants’ motions to dismiss and denying Plaintiffs’ motion to strike. Dkt. Nos.
9 114, 116. Specifically, the Court denied Defendants’ motions to dismiss the §10(b)
10 and Rule 10b-5 claims as to all Defendants except Medeiros and Blutt and as to all
11 alleged misstatements except those concerning Questcor’s compliance with
12 regulations and industry standards. Dkt. No. 116. The Court also denied Defendants’
13 motions to dismiss the §20(a) claims as to Defendants Bailey, Mulroy, Cartt and
14 Young, but dismissed the §20(a) claim against Medeiros for lack of a predicate
15 Exchange Act violation against him. *Id.* Finally, with respect to the §20A claims, the
16 Court found Plaintiffs had adequately pleaded a §20A claim against Defendant Bailey,
17 but dismissed the claim against Blutt again for lack of a predicate Exchange Act
18 violation. *Id.*

19 26. On October 29, 2013, Questcor and the Individual Defendants filed their
20 Answers to the Consolidated Complaint. Dkt. Nos. 118, 119.

21 **D. Plaintiffs’ Motion to Certify a Class and Subclass**

22 27. On August 4, 2014, Plaintiffs filed a motion for class certification,
23 seeking to certify a class and subclass defined as follows:

24 The term “the Class” is defined and consists of all persons or entities
25 who, between April 4, 2011 and September 21, 2012, inclusive (the
26 “Class Period”), purchased or otherwise acquired the common stock of
27 Questcor and were damaged thereby; and the term “the Subclass” is
28 defined and consists of all persons or entities who, during the Class

1 Period, purchased or otherwise acquired the common stock of Questcor
2 contemporaneously with defendant Bailey's sales of Questcor common
3 stock during the Class Period and were damaged thereby.

4 Dkt. Nos. 152, 152-1. Plaintiffs also sought the appointment of Lead Plaintiffs West
5 Virginia Investment Management Board and Plumbers & Pipefitters National Pension
6 Fund to represent the class, the appointment of named plaintiff Steven Glucksberg to
7 represent the subclass, and the appointment of Robbins Geller as class counsel for
8 both the class and subclass. *Id.*

9 28. In support of their motion for class certification, Plaintiffs retained
10 Professor Steven P. Feinstein, Ph.D., CFA, to conduct an event study and compile a
11 report opining on the efficiency of the market for Questcor common stock during the
12 Class Period, April 4, 2011 to September 21, 2012. Dkt. No. 152-7. Based on his
13 findings, Dr. Feinstein concluded that Questcor common stock traded in an efficient
14 market over the course of the Class Period. *Id.* Lead Counsel spent substantial time
15 consulting with Dr. Feinstein on his report and meeting with him to prepare him for
16 his full-day deposition.

17 29. In preparation for potentially opposing Plaintiffs' motion for class
18 certification, Defendants sought documents from Plaintiffs' expert and investment
19 advisors and took the depositions of Plaintiffs, their advisors, and their expert. In
20 association with class certification, Lead Counsel was required to defend and/or
21 participate in the following depositions:

Deponent	Date	Location
Craig Slaughter	10/14/14	Charleston, WV
Steven Glucksberg	10/15/14	Washington, DC
William Sweeney	10/17/14	Washington, DC
Dr. Steven P. Feinstein	10/23/14	Boston, MA
Kevin Phelan	10/30/14	Chicago, IL

1	Brian Wenzinger	12/9/14	Philadelphia, PA
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2
3 30. On November 3, 2014, Defendants filed a response and statement of non-
4 opposition to Plaintiffs' motion for class certification. Dkt. No. 173.

5 31. On November 12, 2014, the Court granted Plaintiffs' motion for class
6 certification. Dkt. No. 180.

7 **E. Fact Discovery**

8 32. Under the mandatory discovery stay set forth in the PSLRA, all formal
9 discovery was stayed while Defendants' motions to dismiss were pending.
10 Accordingly, following the October 1, 2013 order denying in part Defendants'
11 motions to dismiss, discovery commenced.

12 33. Following conferences among the parties on January 7, 2014 and
13 February 5, 2014, on February 7, 2014, the parties filed a joint report and discovery
14 plan pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and Local Rule
15 26-1. Dkt. No. 125.

16 34. On February 21, 2014, the Court held a scheduling conference and
17 entered a scheduling and case management order setting a pre-trial and discovery
18 schedule. Dkt. Nos. 126-127.

19 **1. Written Discovery to Defendants**

20 35. On February 13, 2014, Lead Plaintiffs propounded their First Set of
21 Requests for Production of Documents to Questcor and their First Set of Requests for
22 Production of Documents to the Individual Defendants, each consisting of 58 discrete
23 requests. Additional document requests were served to Questcor on April 16, 2014.

24 36. On October 17, 2014, Lead Plaintiffs served their First Set of
25 Interrogatories to Questcor and their First Set of Interrogatories to the Individual
26 Defendants. Lead Plaintiffs propounded additional interrogatories on Questcor and
27 the Individual Defendants on December 10, 2014.
28

1 37. On October 17, 2014, Lead Plaintiffs also served Questcor with their
2 First Set of Requests for Admission.

3 38. Lead Counsel engaged in numerous meet-and-confer discussions with
4 counsel for Defendants to discuss their objections to the document requests,
5 interrogatories, and requests for admission, to negotiate the scope of the discovery and
6 to arrange for the production of documents. Given the scope of discovery sought and
7 disputes about relevancy, burden and privilege, among other objections, this required
8 extensive coordinated efforts and expenditures of substantial time and resources by
9 Lead Counsel. Further, as discussed in Section III.5, *infra*, in many instances the
10 parties were unable to resolve their discovery disputes, which resulted in motion
11 practice with the Court.

12 39. Prior to producing the requested discovery, the parties engaged in
13 substantial negotiations over the terms of a confidentiality agreement to govern the
14 treatment of confidential documents. On May 12, 2014, the parties filed a stipulated
15 confidentiality order (Dkt. No. 138) and, on May 15, 2014, Magistrate Judge Jean P.
16 Rosenbluth approved the order. Dkt. No. 139.

17 **2. Depositions**

18 40. In preparation for trial, Lead Plaintiffs took the deposition of 19 current
19 and former Questcor employees and Fed. R. Civ. P. 30(b)(6) witnesses in various
20 locations throughout California and the United States. Those depositions are set forth
21 as follows:

Deponent	Date	Location
Patrice Becker	10/24/14	Los Angeles, CA
Nicole Mutschler-Longwell	11/4/14	Boston, MA
Rule 30(b)(6) Topics 11-12 (Mulroy)	11/7/14	Costa Mesa, CA
Rule 30(b)(6) Topics 3-4 (Foster)	11/7/14	San Francisco, CA

1	Eldon Mayer	11/12/14	San Francisco, CA
2	Jason Zielonka	11/21/14	Indianapolis, IN
3	Jason Camp	12/4/14	San Francisco, CA
4	Gary Hogge	12/5/14	San Francisco, CA
5	Fran Olson	12/16/14	Costa Mesa, CA
6	Rule 30(b)(6) Topic 7 (Hogge)	12/17/14	San Francisco, CA
7			
8	Heather Beaudoin	12/18/14	San Francisco, CA
9	Alfreda Burnett	12/22/14	Oakland, CA
10	Avis Hains	12/23/14	Palo Alto, CA
11	David Young	1/6/15	Washington, DC
12	David Medeiros	1/9/15	Pleasanton, CA
13	Kristi Engelke	1/13/15	Costa Mesa, CA
14	Michael Mulroy	1/16/15	Costa Mesa, CA
15	Don Bailey	1/20/15	Costa Mesa, CA
16	Steven Cartt	1/23/15	Menlo Park, CA

17 41. These depositions were critical in developing evidence concerning the
 18 lack of support for Acthar as a treatment for indications beyond IS, the questionable
 19 tactics used by Questcor to promote the sale and use of Acthar, and the establishment
 20 of Defendants’ knowledge of the fraud. The depositions were also critical in
 21 establishing the admissibility of documentary evidence.

22 **3. Third-Party Discovery**

23 42. Beginning on February 19, 2014, Plaintiffs began issuing subpoenas for
 24 documents to dozens of relevant third parties, including Acthar-prescribing
 25 physicians, Questcor’s outside auditors, health insurance companies and market
 26

27
 28

1 analysts.⁶ A list of the third parties subpoenaed by Plaintiffs in this action is set forth
 2 below:

Person/Entity	Subpoena Date
Aetna, Inc.	2/19/14
BDO USA, LLP	2/19/14
Blue Cross/Blue Shield of Michigan	2/19/14
Caris & Company	2/19/14
Humana, Inc.	2/19/14
Jefferies & Company, Inc.	2/19/14
Ladenburg Thalmann & Co., Inc.	2/19/14
Lazard Capital Markets	2/19/14
Leerink Swann & Company	2/19/14
Maxim Group LLC	2/19/14
Oppenheimer & Co. Inc.	2/19/14
OUM & Co. LLP	2/19/14
Piper Jaffray Companies	2/19/14
Radford	2/19/14
Roth Capital Partners LLC	2/19/14
SunTrust Robinson	2/19/14
ThinkEquity LLC	2/19/14
UnitedHealth Group Inc.	2/19/14
WellPoint, Inc.	2/19/14
WJB Capital Group, Inc.	2/19/14
Dr. Andrew Bomback	2/20/14

26 _____
 27 ⁶ Plaintiffs additionally sought documents from the U.S. Food & Drug
 28 Administration (“FDA”), the DOJ and the SEC pursuant to requests made under the
 Freedom of Information Act, 5. U.S.C. §552 (“FOIA”), on February 5-6, 2014.

1	Dr. Barry Arnason	2/20/14
2	Benjamin Frishberg, M.D.	2/20/14
3	Charles Smith, M.D.	2/20/14
4	Chronic Disease Fund	2/20/14
5	Citron Research	2/20/14
6	Consonance Capital	2/20/14
7	Dr. Daniel Kantor	2/20/14
8	Dr. Gerald Appel	2/20/14
9	Gerald Stephanz, M.D.	2/20/14
10	Guidepoint Global	2/20/14
11	Dr. Harold Gutstein	2/20/14
12	Dr. Laurence Beck	2/20/14
13	Dr. Rujun Gong	2/20/14
14	Staley A. Brod	2/20/14
15	Dr. Sungchun Lee	2/20/14
16	James A. Silverman	2/20/14
17	TheStreetSweeper.org	2/20/14
18	Jeffrey E. Dunn, M.D.	3/10/14
19	Blue Stream Laboratories, Inc.	4/16/14
20	Mallinckrodt plc	4/16/14
21	Mallinckrodt LLC	4/18/14
22	Dr. William Shaffer	8/12/14
23	Jerry Meng	8/12/14
24	Sean C. Orr	8/12/14
25	Dr. Regina R. Berkovich	8/12/14
26	National Organization for Rare Disorders	8/21/14
27	Gavin Awerbuch	8/27/14
28		

1	CuraScript, Inc.	8/27/14
2	Dan Desmarais	9/12/14
3	MedVal Scientific	12/8/14
4	James Tumlin, M.D.	12/12/14
5	PricewaterhouseCoopers LLP	1/5/15

6
7 43. Lead Counsel met-and-conferred with most of the subpoenaed third
8 parties to discuss their objections to the subpoenas, to negotiate the scope of the
9 subpoenas and to arrange for the production of responsive documents. This required
10 extensive coordinated efforts and expenditures of significant time and resources by
11 Lead Counsel.

12 44. Lead Plaintiffs also took the deposition of seven third-party fact
13 witnesses, including Acthar-prescribing physicians and a market analyst who covered
14 the Company during the Class Period. Those depositions, conducted throughout the
15 United States, are set forth as follows:

16	Deponent	Date	Location
17	Dr. Staley Brod	10/30/14	Houston, TX
18	Dr. Andrew Bomback	11/10/14	New York, NY
19	Dr. Sean Orr	11/19/14	Jacksonville, FL
20	Dr. William Shaffer	12/3/14	Greeley, CO
21	Joshua Schimmer	12/12/14	New York, NY
22	Dan Desmarais	1/7/15	Lake Mary, FL
23	Dr. James Tumlin	1/20/15	Chattanooga, TN

24 45. As with the Questcor depositions, these depositions were critical in
25 developing evidence regarding Defendants' alleged fraud. This was particularly
26 important because each third-party witness resided outside of this District and could
27 not be compelled to testify at trial.
28

1 **4. Defendants' Discovery Requests to Plaintiffs**

2 46. On March 6, 2014, Defendant Questcor served its First Set of
3 Interrogatories and First Request for the Production of Documents to Plaintiffs. On
4 August 12, 2014, Questcor served its Second Set of Interrogatories to Plaintiffs.
5 Questcor propounded additional interrogatories to Plaintiffs on December 11, 2014
6 and December 23, 2014. Questcor also served its First Set of Requests for Admission
7 on Plaintiffs on December 23, 2014.

8 47. On October 25, 2014, the Individual Defendants served their First Set of
9 Interrogatories on Plaintiffs.

10 48. Lead Counsel expended a significant amount of time reviewing and
11 analyzing Defendants' document requests, interrogatories and requests for admission,
12 as well as drafting responses and objections to them. Plaintiffs were also required to
13 supplement certain interrogatory responses based on the documents produced and the
14 testimony elicited during discovery. Accordingly, Plaintiffs spent a substantial
15 amount of time reviewing documents and deposition testimony and supplementing
16 their discovery responses in order to provide thorough and complete answers to
17 Defendants' written discovery.

18 49. Additionally, Plaintiffs collectively produced over 185,000 pages of
19 documents in response to Defendants' document requests. In connection with
20 Plaintiffs' production, Lead Counsel expended a substantial amount of time reviewing
21 Plaintiffs' documents for responsiveness and conducting a privilege review to ensure
22 no documents protected by the attorney-client privilege or work product doctrine were
23 inadvertently produced. On December 18, 2014, Plaintiffs provided Defendants with
24 privilege and redaction logs pertaining to Plaintiffs' document productions.

25 **5. Discovery Disputes**

26 50. The parties litigated numerous complex discovery disputes during the
27 Litigation. Prior to filing or responding to motions to compel and other motions, the
28 details of which are outlined below, Lead Counsel spent several thousand hours

1 analyzing the documents produced by Defendants in an effort to narrow the scope of
2 potential discovery disputes while still aggressively pursuing the discovery rights of
3 the Class. Lead Counsel also spent many hours preparing for meet-and-confer
4 conferences with counsel for Defendants and third parties, conducting those
5 conferences and preparing correspondence memorializing those conversations.

6 51. Due to the complexity of the disputes regarding documents and
7 depositions, the parties filed numerous motions related to discovery. On multiple
8 occasions, Magistrate Judge Rosenbluth's ruling on a particular discovery dispute
9 resulted in Plaintiffs moving to vacate the order. In pursuing and opposing discovery
10 motions, Lead Counsel spent a significant amount of time researching the applicable
11 case law, drafting persuasive briefs, and advocating Plaintiffs' position.

12 52. In addition to the issues culminating in motion practice, the parties
13 engaged in countless discovery disputes that were resolved without formal motion
14 practice or Court intervention. However, the following provides poignant insight into
15 the complexity of the discovery disputes between the parties in this action, how hard
16 fought the disputes were, and the lengths Plaintiffs and Lead Counsel were compelled
17 to go in order to obtain sufficient discovery and protect their interests.

18 **a. Discovery Disputes with Defendants**

19 53. On March 19, 2014, Questcor moved for a protective order regarding
20 seven of Lead Plaintiffs' third-party document subpoenas, arguing in its portion of the
21 Joint Stipulation that the subpoenas were irrelevant to the theories remaining in the
22 case. Dkt. No. 130. In opposition, Lead Plaintiffs argued that the information sought
23 through the subpoenas was relevant to allegations upheld by the Court and that
24 Questcor had no standing to challenge the relevancy of document requests
25 propounded on non-parties. On April 10, 2014, Questcor and Lead Plaintiffs each
26 filed supplemental memorandums in support of their respective positions. Dkt. Nos.
27 131-132. On May 1, 2014, Magistrate Judge Rosenbluth denied Questcor's motion as
28 to three of Lead Plaintiffs' subpoenas, granted the motion as to two of the subpoenas,

1 and granted it in part as to the remaining two subpoenas, limiting Lead Plaintiffs to
2 certain categories of responsive documents (the “May 1, 2014 Opinion”). Dkt. No.
3 136.

4 54. On May 15, 2014, Lead Plaintiffs filed objections to the May 1, 2014
5 Opinion, asking the Court for an order vacating the portion of Magistrate Judge
6 Rosenbluth’s opinion granting Questcor’s motion for protective order pertaining to
7 one of Lead Plaintiffs’ third-party subpoenas. Dkt. Nos. 140-142. On May 23, 2014,
8 Questcor filed an opposition to Plaintiffs’ motion to vacate in which it argued Lead
9 Plaintiffs had failed to overcome their burden to show that the Magistrate Judge had
10 clearly erred in holding that the documents requested through the subpoena were not
11 relevant to Plaintiffs’ remaining claims. Dkt. No. 143. On May 30, 2014, Lead
12 Plaintiffs filed a reply in further support of their motion to vacate. Dkt. No. 144. On
13 July 21, 2014, the Court denied Lead Plaintiffs’ motion. Dkt. No. 151.

14 55. On August 6, 2014, Questcor moved the Court to compel Plaintiffs to
15 provide further responses to Questcor’s First Set of Interrogatories, and to produce
16 documents pursuant to Questcor’s First Request for the Production of Documents.
17 Dkt. No. 154. Despite numerous meet and confers and Plaintiffs’ attempt to reach an
18 agreement with Questcor concerning Plaintiffs’ responses, Questcor sought Court
19 intervention related to two of Plaintiffs’ interrogatory responses and a large number of
20 Plaintiffs’ document request responses. In their portion of the Joint Stipulation,
21 Plaintiffs principally argued that Questcor’s motion was premature, sought to compel
22 work product, and sought material that was wholly irrelevant to any aspect of the
23 litigation. On August 14, 2014, Questcor and Plaintiffs each filed supplemental
24 memorandums in support of their respective positions. Dkt. Nos. 156-157. On
25 September 3, 2014, Magistrate Judge Rosenbluth granted in part Questcor’s motion,
26 directing Plaintiffs to provide a supplemental response to one of Questcor’s
27 interrogatories and respond, supplement and/or produce documents in response to a
28 number of Questcor’s document requests. Dkt. No. 159.

1 56. On October 30, 2014, Questcor moved the Court to compel Plaintiffs to
2 provide further responses to Questcor’s Second Set of Interrogatories, contesting the
3 adequacy of Plaintiffs’ responses to three contention interrogatories. Dkt. No. 172. In
4 their portion of the Joint Stipulation, Plaintiffs contended, among other things, that
5 they had sufficiently responded to one interrogatory and that, in light of Questcor’s
6 ongoing document production, Questcor’s remaining two interrogatories were
7 premature. On November 6, 2014, Questcor and Plaintiffs each filed supplemental
8 memorandums in support of their respective positions. Dkt. Nos. 176-177. On
9 November 18, 2014, Magistrate Judge Rosenbluth granted in part Questcor’s motion,
10 directing Plaintiffs to provide supplemental responses within ten days (the “November
11 18, 2014 Order”). Dkt. No. 181.

12 57. On December 1, 2014, Plaintiffs filed an objection to the November 18,
13 2014 Order, arguing that the Court should vacate Magistrate Judge Rosenbluth’s order
14 requiring that Plaintiffs provide immediate supplemental responses to Questcor’s three
15 contention interrogatories. Dkt. No. 182. On December 19, 2014, Questcor filed an
16 opposition to Plaintiffs’ motion to vacate, arguing that Plaintiffs had failed to
17 overcome their burden of demonstrating that Magistrate Judge Rosenbluth had clearly
18 erred in compelling the supplemental responses. Dkt. No. 187. On December 26,
19 2014, Plaintiffs filed a reply in further support of their motion to vacate. Dkt. No.
20 193. On January 9, 2015, the Court denied Plaintiffs’ motion. Dkt. No. 213.

21 58. On December 2, 2014, Questcor filed a notice of non-compliance,
22 contending that Plaintiffs failed to timely serve their supplemental responses to
23 Questcor’s Second Set of Interrogatories as required by the November 18, 2014 Order.
24 Dkt. No. 183. Plaintiffs served supplemental responses on Questcor that same day,
25 and on December 3, 2014, filed with the Court a response to Questcor’s notice. Dkt.
26 No. 184. On January 16, 2015, Plaintiffs served additional supplemental responses to
27 Questcor’s Second Set of Interrogatories.

28

1 59. On December 24, 2014, Questcor moved for a protective order regarding
2 Plaintiffs' notices of deposition on Questcor's Chief Compliance Officer and former
3 Director of Sales Training, arguing that the notices are irrelevant to the claims at issue
4 in the action. Dkt. No. 191. In response, Plaintiffs withdrew their notice of deposition
5 as to the former Director of Sales Training but argued that the deposition of the Chief
6 Compliance Officer should go forward. On December 31, 2014 and January 1, 2015,
7 respectively, Questcor and Lead Plaintiffs each filed supplemental memorandums in
8 support of their respective positions. Dkt. Nos. 200, 203. On January 15, 2015 and
9 January 16, 2015, Magistrate Judge Rosenbluth granted Questcor's motion. Dkt. Nos.
10 219-220.

11 60. On December 30, 2014, the Individual Defendants moved the Court to
12 compel Plaintiffs to provide further responses to their First Set of Interrogatories.
13 Dkt. No. 196-198. Despite several meet and confers and Plaintiffs' attempt to reach
14 an agreement with the Individual Defendants concerning Plaintiffs' responses, the
15 parties reached an impasse and the Individual Defendants sought Court intervention.
16 In their portion of the Joint Stipulation, Plaintiffs principally argued that the
17 Individual Defendants' motion was tardy and that their contention interrogatories were
18 premature due to in part to the fact that Plaintiffs had yet to depose a single Individual
19 Defendant. On January 8, 2015, the Individual Defendants and Plaintiffs each filed
20 supplemental memorandums in support of their respective positions. Dkt. Nos. 207-
21 209. On January 21, 2015, Magistrate Judge Rosenbluth granted the Individual
22 Defendants' motion, directing Plaintiffs to provide supplemental responses to many of
23 the Individual Defendants' interrogatories. Dkt. No. 223.

24 61. On December 31, 2014, Questcor filed a motion for evidentiary sanctions
25 on Lead Plaintiffs based on Lead Plaintiffs' purported failure to fulfill their discovery
26 obligations (primarily as they relate to Questcor's Interrogatory No. 7) in good faith.
27 Dkt. No. 199. In their portion of the Joint Stipulation, Lead Plaintiffs principally
28 argued that their conduct was not unreasonable, and certainly not sanctionable, as they

1 diligently participated in the discovery process, attempted to comply with every Court
2 order in good faith, and made no misrepresentations to the Court. On January 16,
3 2015, Questcor and Lead Plaintiffs each filed supplemental memorandums in support
4 of their respective positions. Dkt. Nos. 221-222. On February 24, 2015, Magistrate
5 Judge Rosenbluth submitted to Judge Gee a Report and Recommendation in which
6 she recommended that the Court deny Questcor's motion for evidentiary sanctions but
7 instead proposed that the Court impose monetary sanctions on Plaintiffs. Dkt. No.
8 227. On March 10, 2015, Plaintiffs objected to the Report and Recommendation of
9 Magistrate Judge Rosenbluth. Dkt. No. 228. On April 1, 2015, Questcor withdrew its
10 pending motion for evidentiary sanctions. Dkt. No. 230.

11 **b. Discovery Disputes with Third Parties**

12 62. In addition to disputes with Defendants, nearly every third party served
13 with a subpoena by Lead Plaintiffs objected, requiring Lead Counsel to devote many
14 hours to negotiating the scope of those productions. With each third party, Lead
15 Plaintiffs were able to successfully resolve issues concerning the scope of the
16 documents produced and depositions to be given in this matter, if any, without Court
17 intervention.

18 **6. Expert Witness Discovery**

19 63. To assist Lead Counsel in investigating and proving Defendants'
20 fraudulent scheme, as well as demonstrating the elements of Plaintiffs' §10(b) and
21 Rule 10b-5 claims, including loss causation and damages, Plaintiffs retained the
22 services of two expert witnesses.

23 64. Plaintiffs designated Professor Steven P. Feinstein, Ph.D., CFA, as a loss
24 causation and damages expert to test the efficiency of the market for Questcor's stock,
25 to conduct an event study of Questcor's stock, to determine whether investors who
26 purchased Questcor common stock during the Class Period suffered losses as a result
27 of the Defendants' alleged misrepresentations and omissions described in the
28 Consolidated Complaint, and to quantify damages sustained, if any, on a per share

1 basis. In addition to his event study and report filed in support of Plaintiffs' motion
2 for class certification in which Dr. Feinstein concluded that Questcor common stock
3 traded in an efficient market over the course of the Class Period, *see supra* ¶28,
4 Dr. Feinstein submitted a 42-page expert report opining: (a) that the alleged
5 misrepresentations and omissions caused the price of Questcor's common stock to be
6 artificially inflated over the course of the Class Period, and (b) that corrective
7 disclosures near and at the end of the Class Period dissipated the artificial inflation
8 which, in turn, caused the stock price to decline, thereby causing investor losses.
9 Dr. Feinstein and his staff also spent significant time assisting Lead Counsel in
10 analyzing Defendants' asserted defenses.

11 65. In addition, Plaintiffs designated Joel W. Hay, Ph.D., as an industry
12 expert to opine on whether Questcor's business practices complied with
13 pharmaceutical industry standards. Dr. Hay submitted a detailed, 105-page expert
14 report in which he discussed the history and background of Acthar, the standards of
15 evidence for medical decision-making, and the ethics of pharmaceutical promotion
16 and communication and concluded that (a) Questcor's business practices, including
17 sponsoring research and sales and marketing practices, did not comply with industry
18 standards for fair, balanced and accurate presentation of the modern scientific
19 evidence on Acthar's clinical value; (b) the medical evidence available was of low
20 quality and did not support the value of Acthar for any label indications; and (c) as a
21 result, Questcor's ability to obtain reimbursement for Acthar prescriptions for MS and
22 NS was extremely tenuous and subject to insurer rejection. In connection with
23 rendering his opinion and preparing his expert report, Dr. Hay and his staff spent
24 significant time reviewing deposition transcripts and Defendants' documents and SEC
25 filings as well as news, regulatory and academic articles. Dr. Hay and his staff also
26 spent significant time reviewing expert reports submitted by Defendants and advising
27 Lead Counsel how to rebut the conclusions drawn by those experts.

28

1 **7. The Fruits of Plaintiffs' Discovery Efforts**

2 66. As a direct result of Plaintiffs' hard-fought discovery efforts, Plaintiffs
3 obtained over 1.6 million pages of documents from Defendants and third parties.
4 Careful examination and analysis of so many documents required a massive effort by
5 a team of attorneys which analyzed and organized the documents, selected the
6 documents that proved or could undermine Plaintiffs' allegations, identified relevant
7 witnesses and established procedures to identify additional documents and
8 information that had not been produced. Throughout the document review process,
9 Plaintiffs had to understand what information the documents conveyed, determine
10 how they were relevant to the alleged fraud and the elements Plaintiffs were required
11 to prove to prevail on their claims, and apply that understanding to other documents
12 that had been produced. In total, Plaintiffs' review, analysis and organization of the
13 document productions in this case was conducted over the course of 13 months and
14 involved those attorneys who entered appearances in this action plus four additional
15 full-time staff attorneys.

16 67. Moreover, in the Questcor and third party depositions, Plaintiffs took
17 approximately 130 hours of deposition testimony. Combined, the parties marked
18 roughly 840 exhibits. Of the exhibits marked by Plaintiffs, most were culled from
19 documents obtained from Defendants and third parties.

20 68. The evidence developed by Lead Counsel during discovery supported
21 Plaintiffs' allegations that Defendants' public statements concerning the scientific
22 basis for Acthar, insurance coverage for Acthar, and Questcor's financial results and
23 forecasts were materially false and misleading when made. The evidence also helped
24 demonstrate Defendants' scienter and establish loss causation. The documentary and
25 testimonial evidence Plaintiffs developed during discovery would have been critical
26 had Plaintiffs been required to prove at summary judgment or at trial that Defendants
27 violated §§10(b), 20(a), 20A and Rule 10b-5.

28

1 **IV. MEDIATION**

2 69. On September 8, 2014, the parties attended a full-day, in-person
3 mediation session before former U.S. District Judge Layn R. Phillips, a nationally
4 recognized mediator. In advance of the mediation session, Plaintiffs prepared and
5 submitted a comprehensive mediation statement addressing, *inter alia*, the relative
6 strengths and weaknesses of the parties' respective claims and defenses, including
7 issues of scienter, loss causation, and damages. Plaintiffs expended significant time
8 and effort drafting the mediation statement and preparing for the in-person mediation
9 session. Although the in-person mediation session initially failed to resolve the
10 Litigation, negotiations between the parties and Judge Phillips continued. After
11 numerous communications with the parties, and continued thoughtful evaluation of
12 the strengths and weaknesses of the claims and defenses over the course of several
13 months, Judge Phillips made a mediator's proposal to settle the Litigation for
14 \$38,000,000.

15 **V. RISKS FACED BY PLAINTIFFS IN THE LITIGATION**

16 70. Although Plaintiffs believe that their case is meritorious and that the
17 Class would ultimately prevail in establishing both liability and damages, they also
18 understand that their case has weaknesses and that a number of factors made the
19 outcome of a motion for summary judgment, trial and subsequent appeals uncertain.
20 For instance, while Plaintiffs believe that the documentary and testimonial evidence
21 they could offer at trial would establish the Class' claims, there is no way of
22 predicting which interpretations, inferences or testimony a jury would accept. Further,
23 Defendants have adamantly denied any culpability throughout the Litigation and were
24 prepared to present counter evidence and mount aggressive defenses that could
25 potentially bar a Class recovery. If the jury sided with Defendants on even one of
26 their defenses, the Class could recover nothing.

27 71. For example, at summary judgment and trial, Defendants would have
28 been prepared to argue and present supporting evidence that, among other things, the

1 challenged statements were not false or misleading. Although Plaintiffs believed they
2 had sufficient documentary and testimonial evidence to demonstrate that the alleged
3 misrepresentations were false or misleading, Defendants could reasonably contend
4 that such documents were, in fact, never seen by the Individual Defendants or that the
5 reports actually received by the Individual Defendants demonstrated that the alleged
6 misrepresentations were truthful and thus their representations could not have been
7 made with scienter.

8 72. Even if Plaintiffs were successful in establishing liability, they still faced
9 substantial risks in proving loss causation and damages. There is no question that
10 Defendants would vigorously contest loss causation if litigation continued as they did
11 in their motions to dismiss and during settlement negotiations. Defendants would
12 have been able to argue and provide supporting evidence at summary judgment and
13 trial that there were no “corrective” disclosures directly related to any of the alleged
14 misstatements or omissions during the Class Period. This is of particular concern
15 here, where several months before the settlement, the Ninth Circuit issued an opinion
16 holding that “any decline in a corporation’s share price following the announcement
17 of an investigation can only be attributed to market speculation about whether fraud
18 has occurred. This type of speculation cannot form the basis of a viable loss causation
19 theory.” *Loos v. Immersion Corp.*, 762 F.3d 880, 890 (9th Cir. 2014). This decision,
20 as well as Defendants’ likely truth-on-the-market defense, would have made
21 Plaintiffs’ burden of proving loss causation and ultimately damages much more
22 difficult. Even if Plaintiffs could demonstrate loss causation, Defendants would likely
23 still offer evidence that the Company’s stock price declines were primarily caused by
24 factors other than the alleged fraud, undercutting Plaintiffs’ damages estimates. While
25 Plaintiffs disagreed with and had evidence to refute all of Defendants’ contentions
26 concerning loss causation, there was a significant risk of recovering limited or no
27 damages if the Court or jury agreed with any of Defendants’ arguments.

28

1 73. Because the determination of loss causation and damages is a
2 complicated process requiring expert testimony, compounding the above factors was a
3 risk that the Court could grant a motion by Defendants to exclude the opinion and
4 testimony of Plaintiffs' loss causation and damages expert at trial. Even assuming
5 Plaintiffs' expert survived such a motion, the damages assessments of Plaintiffs' and
6 Defendants' experts were sure to vary substantially, reducing this crucial element to a
7 "battle of experts." The reaction of a jury to battling expert testimony is highly
8 unpredictable and in such a battle, Lead Counsel recognizes the possibility that a jury
9 could be swayed by convincing experts for the Defendants, and find that there were no
10 damages or only a fraction of the amount of damages Plaintiffs contended.

11 74. Finally, even if Plaintiffs survived summary judgment and prevailed and
12 obtained a substantial judgment after trial, there is little doubt that Defendants would
13 have appealed. The appeals process would have likely spanned several years, during
14 which the Class would have received no distribution on any damage award. And, an
15 appeal of any verdict would carry the risk of reversal, in which case the Class would
16 receive no recovery after having prevailed on the claims at trial.

17 **VI. SETTLEMENT NEGOTIATIONS AND TERMS**

18 75. Following the parties' March 5, 2015 acceptance of Judge Phillips'
19 mediator's proposal, the parties worked diligently to document the settlement and
20 prepare preliminary approval papers, negotiating the details of a complex stipulation
21 of settlement. On April 13, 2015, the parties presented the Stipulation of Settlement
22 and preliminary approval papers to the Court. Dkt. Nos. 231-234.

23 76. On May 15, 2015, the Court held a preliminary approval hearing and
24 granted preliminary approval of the settlement as well as the form and manner of
25 notice of the settlement to the Class. Dkt. Nos. 237, 240.

26 77. The settlement agreement resolved the claims of the Class against all
27 Defendants and settles this Litigation for \$38,000,000 in cash.

28

1 78. The settlement is a result of vigorous arm's-length negotiations. In Lead
2 Counsel's judgment, the compromise embodied in the Stipulation of Settlement
3 represents an extremely successful resolution of a complex class action.

4 **VII. THE SETTLEMENT IS IN THE BEST INTERESTS OF THE**
5 **CLASS AND WARRANTS APPROVAL**

6 79. Plaintiffs believe they would have prevailed on the merits at summary
7 judgment, trial and/or appeal. Defendants were just as adamant that Plaintiffs would
8 not have. There was a very real risk that Plaintiffs would not have convinced a jury
9 that Defendants acted with scienter, that the alleged misrepresentations and omissions
10 were materially false or misleading when made, or that the Company's stock price
11 declines were caused by the alleged fraud.

12 80. Having considered the foregoing, and evaluating Defendants' defenses, it
13 is the informed judgment of Lead Counsel, based upon all proceedings to date and
14 their extensive experience in litigating class actions under the federal securities laws,
15 that the proposed settlement of this matter before this Court is fair, reasonable and
16 adequate, and in the best interest of the Class.

17 **VIII. THE PLAN OF ALLOCATION**

18 81. The Net Settlement Fund will be distributed to Class Members who, in
19 accordance with the terms of the Stipulation, are entitled to a distribution from the Net
20 Settlement Fund and who submit a valid and timely Proof of Claim and Release form
21 ("Authorized Claimant") under the Plan of Allocation (set forth in the Notice sent to
22 Class Members informing them of the settlement). The Plan of Allocation provides
23 that a Class Member will be eligible to participate in the distribution of the Net
24 Settlement Fund only if the Class Member has an overall net loss on all of his, her or
25 its transactions in Questcor common stock during the Class Period.

26 82. For purposes of determining the amount an Authorized Claimant may
27 recover under the Plan of Allocation, Lead Counsel conferred with its damages
28

1 consultant and the Plan of Allocation reflects a fair and reasonable method to allocate
2 the settlement proceeds among Authorized Claimants.

3 **IX. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES
AND EXPENSES IS REASONABLE**

4 **A. A Reasonable Percentage of the Fund Recovered Is the
5 Appropriate Method to Use in Awarding Attorneys' Fees in
6 Common Fund Cases**

7 83. For its extensive efforts on behalf of the Class, Lead Counsel is applying
8 for compensation from the Settlement Fund on a percentage basis. Courts recognize
9 that the percentage method is the appropriate method of fee recovery because, among
10 other things, it aligns the lawyers' interest in being paid a fair fee with the interest of
11 the class in achieving the maximum recovery.

12 **B. Consideration of Relevant Factors Justify an Award of a
13 22% Fee in This Case**

14 84. Lead Counsel seeks a fee award of 22% of the Settlement Fund, which it
15 created, and submits that such an award is reasonable and appropriate under the
16 circumstances. Numerous factors are present here that justify this Court's award of
17 this fee.

18 **1. The Support of the Lead Plaintiffs**

19 85. As discussed above, Lead Plaintiffs actively monitored the Litigation and
20 consulted with Lead Counsel during the course of settlement negotiations. Lead
21 Plaintiffs spent considerable time and effort fulfilling their duties and responsibilities
22 in this case, including reviewing various pleadings and other documents in the case,
23 collecting materials produced in discovery, providing deposition testimony to ensure
24 that a Class was certified, traveling across the country to attend mediation and
25 hearings, participating in discussions with Lead Counsel regarding significant
26 developments in the Litigation, and keeping informed about the progress of settlement
27 negotiations. As a result, both West Virginia Investment Management Board and
28 Plumbers & Pipefitters National Pension Fund support Lead Counsel's request for a

1 fee of 22% of the Settlement Fund and expenses not to exceed \$675,000, which favors
2 granting the requested fee and expense award.

3 **2. The Excellent Settlement Achieved**

4 86. Courts have also consistently recognized that the result achieved is a
5 major factor to be considered in making a fee award. *See Hensley v. Eckerhart*, 461
6 U.S. 424, 436 (1983) (“most critical factor is the degree of success obtained”); *Brown*
7 *v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988) (“the amount involved
8 and the results obtained” are factors for the court to consider); *Behrens v. Wometco*
9 *Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988) (“The quality of work
10 performed in a case that settles before trial is best measured by the benefit obtained.”),
11 *aff’d without op.*, 899 F.2d 21 (11th Cir. 1990). Here, the \$38 million settlement is a
12 very good result, particularly when considered in view of the substantial risks and
13 obstacles to recovery if the Litigation was to continue to summary judgment and trial,
14 including likely post-trial motions and appeals.

15 87. This favorable settlement was achieved as a result of very extensive and
16 creative prosecutorial and investigative efforts, contentious and complicated motions
17 practice, vast discovery, and arduous settlement negotiations. As a result of this
18 settlement, Class Members will benefit and receive significant compensation for their
19 losses and avoid the very substantial risk of no recovery in the absence of a settlement.

20 **3. The Risk of Contingent Class Action Litigation**

21 88. This Declaration and the memoranda in support of the settlement and the
22 fee request describe the substantial risks of the Litigation. Those same difficulties
23 also constituted risks that Lead Counsel might never be paid for its efforts.

24 89. Numerous cases have recognized that risk is an important factor in
25 determining an appropriate fee award. *E.g., Lindy Bros. Builders v. Am. Radiator &*
26 *Standard Sanitary Corp.*, 540 F.2d 102, 117 (3d Cir. 1976); *Camden I Condo. Ass’n v.*
27 *Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991); *Detroit v. Grinnell Corp.*, 495 F.2d 448,
28 470 (2d Cir. 1974). There are numerous cases where class counsel in contingent fee

1 cases such as this, after devoting thousands of hours and significant expenditures,
2 have received no compensation whatsoever. Class counsel who litigate cases in good
3 faith and receive no fees are often the most diligent members of the plaintiffs' bar.
4 The fact that defendants and their counsel know that the leading members of the
5 plaintiffs' bar are actually able to, and will, go to trial even in high-risk cases gives
6 rise to meaningful settlements in actions such as this. The losses suffered by class
7 counsel in other actions where insubstantial settlement offers are rejected, and class
8 counsel ultimately receives little or no fee, should not be ignored. Lead Counsel
9 knows from personal experience that despite the most vigorous and competent of
10 efforts, attorneys' success in contingent litigation, such as this, is never assured.

11 90. Because the fee to be awarded in this matter is entirely contingent, the
12 only certainty from the outset was that there would be no fee without a successful
13 result, and that such a result would be realized only after a lengthy and difficult effort.

14 91. As discussed in greater detail above, this case was fraught with
15 significant risk factors concerning liability and damages. Plaintiffs' success was by
16 no means assured. Defendants disputed whether Plaintiffs could even establish
17 liability and would no doubt contend, as the case proceeded to trial, that even if
18 liability existed, the amount of damages was substantially lower than Plaintiffs
19 alleged. Plaintiffs turned down lesser settlement offers during the course of the
20 Litigation and continued to litigate until they reached a settlement that was significant
21 and in the best interest of the Class. Were this settlement not achieved, and even if
22 Plaintiffs prevailed at summary judgment and trial, Plaintiffs faced potentially years of
23 costly and risky appellate litigation against Defendants, with ultimate success far from
24 certain and the prospect of no recovery likely. It is also possible that a jury could have
25 found no liability or no damages. Lead Counsel therefore believes that based upon the
26 substantial risk factors present that an award of attorneys' fees of 22% of the
27 Settlement Fund is reasonable.

28

1 **4. The Diligent Prosecution of This Case**

2 92. The fee is also warranted in light of the extensive efforts on the part of
3 Plaintiffs' counsel, as outlined above, that were required to produce this result.
4 Plaintiffs' counsel and their in-house professionals collectively spent 14,304.09 hours
5 of time on the case, including conducting formal and informal discovery, reviewing
6 and analyzing many of the more than 1.6 million pages of documents produced in
7 discovery, taking and defending depositions, mastering the relevant facts and
8 dynamics of Questcor's business, drafting complaints and comprehensive memoranda
9 of law concerning difficult and novel issues in connection with motions to dismiss,
10 motion for class certification, discovery motions, attending Court hearings, and
11 formulating strategy, all in order to prepare for trial, make effective arguments on the
12 merits and to conduct meaningful settlement discussions. The resulting lodestar is
13 \$7,390,228.35.

14 **5. The Complexity of This Action's Factual and Legal**
15 **Questions**

16 93. Numerous cases have recognized that risk as well as the novelty and
17 difficulty of the issues presented are important factors in determining a fee award.
18 *E.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002); *In re Wash.*
19 *Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299-1301 (9th Cir. 1994); *Johnson*
20 *v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

21 94. There is no question that from the outset the Litigation presented a
22 number of sharply contested issues of both fact and law and that Plaintiffs faced
23 formidable defenses to liability and damages. The substantial risks and uncertainties
24 in this case made it far from certain that any recovery, let alone \$38 million, would
25 ultimately be obtained. From the outset, this action was an especially difficult and
26 highly uncertain securities case, with no assurance whatsoever that the Litigation
27 would survive Defendants' attacks on the pleadings, motions for summary judgment,
28 trial, and appeal.

1 95. Although the majority of Plaintiffs' claims ultimately survived the
2 pleading stage, very difficult issues of proof remained at summary judgment and trial
3 as to key elements of the remaining claims for securities violations. The parties
4 strongly disagreed about liability and damages, especially loss causation, which was a
5 very real threat that could have substantially reduced the total damages recoverable for
6 the Class if Defendants' arguments were accepted by the jury at trial.

7 **X. CONCLUSION**

8 96. In light of the significant recovery to the Class and the very substantial
9 risks associated with this Litigation, as described above and in the accompanying
10 Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Final
11 Approval of Class Action Settlement and Plan of Allocation, Lead Counsel
12 respectfully submits that the Settlement should be approved as fair, reasonable and
13 adequate and that the proposed Plan of Allocation should be approved as fair and
14 reasonable. In addition to the significant recovery in the face of substantial risks, due
15 to the efforts of Lead Counsel, the novel issues faced, the quality of work performed,
16 the contingent nature of the fee, the complexity of the case and the standing and
17 experience of Lead Counsel, as described above and in the accompanying
18 Memorandum of Points and Authorities in Support of Lead Counsel's Motion for an
19 Award of Attorneys' Fees and Expenses, Lead Counsel respectfully submits that the
20 Court should award a fee in the amount of 22% of the Settlement Amount plus
21 \$627,594.92 in expenses, plus the interest earned thereon at the same rate and for the
22 same period as that earned on the Settlement Amount until paid.

23 I declare under penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct. Executed this 7th day of August, 2015,
25 at San Diego, California.

26
27
28 s/ Andrew J. Brown
ANDREW J. BROWN

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 7, 2015.

s/ Andrew J. Brown

ANDREW J. BROWN

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Mailing Information for a Case 8:12-cv-01623-DMG-JPR In re Questcor Securities Litigation

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Manual Notice List

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- (No manual recipients)

Responses, Replies and Other Motion Related Documents

[8:12-cv-01623-DMG-JPR In re Questcor Securities Litigation](#)

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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

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The following transaction was entered by Brown, Andrew on 8/7/2015 at 5:43 PM PDT and filed on 8/7/2015

Case Name: In re Questcor Securities Litigation
Case Number: [8:12-cv-01623-DMG-JPR](#)
Filer: Steven Glucksberg
Plumbers and Pipefitters National Pension Fund
West Virginia Investment Management Board

Document Number: [245](#)

Docket Text:

DECLARATION of Andrew J. Brown in Support of NOTICE OF MOTION AND MOTION for Attorney Fees and Expenses[243], NOTICE OF MOTION AND MOTION for Settlement Approval of Class Action and Plan of Allocation [241] filed by Consol Plaintiffs Steven Glucksberg, Plumbers and Pipefitters National Pension Fund, West Virginia Investment Management Board. (Brown, Andrew)

8:12-cv-01623-DMG-JPR Notice has been electronically mailed to:

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