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**IN THE  
United States Court Of Appeals  
For The Third Circuit  
Nos. 13-4327 & 13-4253**

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IN RE MERCK & CO., INC. VYTORIN/ZETIA  
SECURITIES LITIGATION

District of New Jersey, C. A. No. 08-2177

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**LEAD PLAINTIFFS'-APPELLEES' MOTION TO DISMISS APPEAL**

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Lead Plaintiffs-Appellees, Stichting Pensioenfonds ABP (“ABP”), International Fund Management, S.A. (Luxemburg), the Jacksonville Police and Fire Retirement System, and the General Retirement System of the City of Detroit (collectively, “Lead Plaintiffs”), respectfully move to dismiss the above-captioned appeal due to the failure of the objector-appellants, Orloff Family Trust DTD 12/13/01 and Dr. Marshall J. Orloff IRA R/O (the “Orloffs”) and Franklin DeJulius (“DeJulius”) (collectively, “Appellants”), to post the bond ordered by the District Court on January 8, 2014 pursuant to Rule 7 of the Federal Rules of Appellate Procedure.

## **I. PRELIMINARY STATEMENT**

The Orloffs and DeJulius are serial objectors and their objections here are without merit. Their appeals will hold up (a term we use advisedly) the distribution of a \$215 million securities class action settlement (“Settlement”) reached in the above-captioned action — among the fifty largest securities class action settlements ever obtained, among the thirty largest securities class action settlements not involving a financial restatement, and the third largest ever against a pharmaceutical company since the passage of the Private Securities Litigation Reform Act of 1995 (the “PSLRA”).

Neither of the Appellants nor their counsel who filed their objections in the District Court appeared at the final approval hearing for the Settlement. The

Orloffs, DeJulius and their counsel (Joseph Darrell Palmer and John Pentz, respectively) are well-known recidivists on the class action objector circuit. If the Appellants and their counsel remain true to form, they will discontinue their appeals if Lead Plaintiffs' counsel agrees to settle with them. Since Appellants' chosen form of leverage is the threat of imposing tens of thousands of dollars in additional, unnecessary expenses on the class by pursuing meritless appeals, Lead Plaintiffs moved for, and the court below granted, an order requiring Appellants to post a single bond in the amount of \$50,000 pursuant to Rule 7 "under which they will be jointly and severally liable." D.N.J. ECF No. 362 (the "Bond Order").<sup>1</sup> The Orloffs not only failed to respond to Lead Plaintiffs' motion for an appeal bond despite ample opportunity, but have also ignored the District Court's Bond Order.<sup>2</sup> DeJulius' opposition to the Bond Order was denied, but he too failed to post the appeal bond. Accordingly, Lead Plaintiffs respectfully request that this Court dismiss the appeals.

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<sup>1</sup> "D.N.J. ECF No. \_\_\_" unless otherwise indicated, refers to documents filed in *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*, No. 2:08-cv-2177 (DMC)(JAD) (D.N.J.). "3d Cir. ECF No. \_\_\_" unless otherwise indicated, refers to documents filed in the above-captioned appeal.

<sup>2</sup> On January 10, 2014, Lead Plaintiffs' counsel informed the Appellants that they would move to dismiss the appeal if the appeal bond was not posted by January 21, 2014. *See* Ex. 1 annexed hereto.

## II. FACTUAL BACKGROUND

Lead Plaintiffs are the court-appointed class representatives in the above-captioned securities fraud class action. After nearly five years of litigation, and just three weeks before trial was scheduled to begin, Lead Plaintiffs and the defendants in the action reached an agreement in principle to settle the action for an all cash settlement of \$215 million. In anticipation of an eventual fee application by Lead Plaintiffs' counsel, by order dated April 19, 2013, the District Court appointed two special masters to, among other things, "prepare and file with the Court a report and recommendation determining any and all issues relating to the amount of attorneys' fees and expenses that should be awarded to the various law firms representing the Class Plaintiffs." D.N.J. ECF No. 327 at ¶ 2.C.

Lead Plaintiffs moved for preliminary approval of the Settlement on June 4, 2013. D.N.J. ECF Nos. 328 through 328-11. On June 6, 2013, the District Court preliminarily approved the \$215 million Settlement and ordered that notice be sent to members of the class. D.N.J. ECF No. 330. Following the extensive court-approved notice program, which included the mailing of more than 725,000 copies of the Settlement notice to potential class members and nominees, the Orloffs and DeJulius filed the only objections to Lead Plaintiffs' counsel's request for attorneys' fees. ECF Nos. 337 & 338. Notably, no public pension fund or other



institutional investor objected to the settlement, the plan of allocation, or counsel's request for an award of attorneys' fees and the reimbursement of expenses.

After extensive briefing, on August 27, 2013, the court-appointed special masters ("Special Masters") issued a detailed 97-page report and recommendation addressing the topics set forth in the District Court's April 19, 2013 order (the "Report"). *See* D.N.J. ECF No. 342. The Report recommended that the court award attorneys' fees in the amount requested — 28% of the settlement fund. *Id.* at 96.

The Special Masters' Report specifically addressed the Orloffs' and DeJulius' objections. The Special Masters found that "the Orloff objection lacks merit and should be rejected." *Id.* at 90. More pointedly, the Report stated that "[t]he basis for the Orloff Objection is hard to understand and harder still to reconcile with well-established Third Circuit law." *Id.* at 54. After determining that the "substance of the Orloff Objection appears to consist entirely of an attack on the lodestar of Plaintiffs' Counsel," the Special Masters' Report considered and rejected the argument:

the main contention in the Orloff Objection is that the fee award should be based on the lodestar method—a position incompatible with well-settled controlling Third Circuit case law, none of which is even mentioned in the Orloff Objection. As Chief Judge Scirica stated in [*In Re Rite Aid Corporation Securities Litigation*, 396 F.3d 294, 306 (3d Cir. 2005)]: "[W]e reiterate that the percentage

of common fund approach is the proper method of awarding attorneys' fees.

*Id.* at 55.

The Special Masters likewise dispatched with the Orloffs' claim that the court must engage in a detailed analysis of Lead Plaintiffs' counsel's billing. The Special Masters found the attorneys' fee award, which amounted to 1.34 times Lead Plaintiffs' counsel's lodestar, to be:

extremely modest given the duration of the action, the complexity and difficulty and the very substantial investment of time and money required from Merck Co-Lead Counsel to shepherd the case to a successful conclusion against a powerful pharmaceutical company with top defense counsel and, perhaps most importantly, the very substantial risk that Plaintiffs' Counsel could come away completely empty-handed.

Report, D.N.J. ECF No. 342 at 84.<sup>3</sup> The Special Masters found (and the District Court agreed) that both the 1.34 lodestar multiplier and the 28% fee award are within the ranges typically awarded by courts in the Third Circuit and therefore concluded that "the Orloff objection lacks merit and should be rejected." *Id.* at 90.

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<sup>3</sup> The work of Lead Plaintiffs' counsel included, among other things: (i) drafting a consolidated class action complaint and successfully opposing defendants' motions to dismiss and defendants' motions for reconsideration; (ii) successfully moving for class certification and opposing defendants' efforts to seek appellate interlocutory review of the District Court's order granting class certification; (iii) engaging in extensive discovery including participating in over fifty depositions and the production and review of more than twelve million pages of documents; (iv) defeating defendants' motions for summary judgment; (v) completing nearly all pre-trial preparations; and (vi) conducting two extensive mock trials and creating numerous trial demonstratives. Indeed, the Settlement was reached just three weeks before trial was scheduled to begin.

The Special Masters likewise rejected DeJulius' three-page objection. In particular, the Special Masters rejected DeJulius' contention that there was no justification for a higher fee in the *Merck* case, noting that "Mr. DeJulius, however, provides no analysis, much less any basis, for his premise that the two cases presented similar risk profiles." Report, D.N.J. ECF No. 342 at 86. As the Special Masters concluded in their Report, "the risk of non-payment, is particularly significant in the Merck Action." *Id.* The Special Masters found that there was "a potentially fatal obstacle" in proving loss causation and damages in the *Merck* case and that proving scienter "was far more difficult in the Merck Action. *Id.* at 69-71.

The Special Masters likewise rejected DeJulius' argument that the "market rate" for the *Merck* fee request is 17%. As the Special Masters noted, "the DeJulius Objection is grounded in precisely on the kind of 'formulaic' adherence to averages the Third Circuit has uniformly rejected." *Id.* at 88 (citing cases). The Special Masters found that a fee award of 28% of the Settlement Fund was "within the broad range of awards" in this Circuit and supported by "the extremely risky nature of the Merck Action combined with the magnitude of the endeavor undertaken by Plaintiffs' counsel in the Merck Action." Report, D.N.J. ECF No. 342 at 75-76.

DeJulius also filed a separate Opposition To Special Masters' Report (D.N.J. ECF No. 344), but his arguments there failed as well. DeJulius argued there that

the “cap” on fees of “no more than 15% of the amount recovered” in the retention letter between one of the Lead Plaintiffs (ABP) and Grant & Eisenhofer P.A. (“G&E”) is “presumptively valid” pursuant to the Third Circuit’s decision in *In re Cendant Corp. Litigation*, 264 F.3d 201 (3d Cir. 2001). However, unlike in *Cendant*, all of the Lead Plaintiffs here supported the Special Masters’ recommendation that counsel be awarded 28% of the Settlement Fund.<sup>4</sup> Each of the Lead Plaintiffs, including ABP, submitted declarations in which they supported an attorneys’ fee award of 28%. *See* D.N.J. ECF No. 334-3 & 347.

On October 1, 2013, the District Court held a hearing to consider the fairness of the settlement and the application for an award of attorneys’ fees and reimbursement of expenses. *See* D.N.J. ECF No. 354. None of the Appellants nor their counsel appeared at that hearing. Following the hearing, the District Court approved the Settlement and plan of allocation, adopted the Special Masters’ Report in its entirety, and awarded attorney’s fees in the amount of 28% of the Settlement fund and the reimbursement of expenses (*see* D.N.J. ECF Nos. 349 & 350).

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<sup>4</sup> In *Cendant*, one of the lead plaintiffs objected to the lead counsel’s motion for an award of attorneys’ fees and the other two *Cendant* lead plaintiffs did not affirmatively support the motion for attorneys’ fees. *Cendant*, 264 F.3d at 229, 272.

On October 25, 2013, DeJulius filed a notice of appeal (D.N.J. ECF No. 355) of the District Court's order awarding attorneys' fees and expenses (D.N.J. ECF No. 352). On October 30, 2013, the Orloffs filed a notice of appeal (D.N.J. ECF No. 356) of (i) the District Court's order approving the plan of allocation (D.N.J. ECF No. 351), (ii) the District Court's order awarding attorneys' fees and expenses (D.N.J. ECF No. 352), and (iii) the judgment approving the Settlement (D.N.J. ECF No. 353).

On November 20, 2013, Lead Plaintiffs filed a motion for an appeal bond. D.N.J. ECF No. 359. The Orloffs had ample time to respond to the motion but failed to do so. DeJulius filed an opposition (D.N.J. ECF No. 364) but that was rejected: on January 9, 2014, the District Court entered the Bond Order. D.N.J. ECF No. 362.

On November 1, 2013, DeJulius, represented by John Pentz, filed a Concise Summary of the Case and a Civil Appeal Information Statement with the Third Circuit, but he did not post the appeal bond. *See* 3d Cir. ECF Nos. 003111450371 & 003111440011. Likewise, on January 2, 2014, without posting the appeal bond, the Orloffs, now represented by Palmer, filed a Concise Summary of the Case and a Civil Appeal Information Statement, among other related documents, with the Third Circuit. *See* 3d Cir. ECF Nos. 003111495168, 003111496988, 003111496991, 003111496994 and 003111496997.

### III. ARGUMENT

#### A. This Is A Meritless Appeal Pursued By Serial Objectors

As discussed below, the Orloffs and DeJulius are serial objectors who are pursuing meritless appeals. Their objections were thoroughly rejected by the Special Masters appointed by the District Court, who went through considerable due diligence in order to determine that the awarded attorneys' fees and expenses were appropriate. *See generally* D.N.J. ECF No. 342. The Special Masters also found that the Settlement was "an outstanding settlement for the Class which was due exclusively to Co-Lead Counsels' [sic] perseverance and skill in prosecuting a very difficult and lengthy case without any assistance from restatements, criminal convictions or companion SEC proceedings" and thus "recommend[ed] the Court GRANT Merck Co-Lead Counsels' [sic] motion for an award of attorneys' fees in the amount of 28% of the Settlement Fund (plus interest)." *Id.* at 95-96.

This Court is no stranger to Palmer and his antics. *See, e.g., Esslinger v. HSBC Bank Nevada, N.A.*, No. 12-4549 (3d Cir. Apr. 16, 2013) (granting Palmer's motion to voluntarily dismiss appeal and ordering that a copy of appellee's motion for sanctions against Palmer and the order dismissing the appeal be sent to the Attorney Discipline System of The State Bar of California for review); *Brody v.*

*Merck & Co. Inc.*, No. 13-2020 (3d Cir. July 24, 2013) (voluntarily dismissing Palmer's appeal).<sup>5</sup>

This Court's sister circuits are familiar with him as well, and with the Orloffs, in whom Palmer has found accomplices willing to enable his sloppy, shotgun approach to filing class action appeals. *See, e.g., In re Bank of Am. Corp. Sec. Derivative & ERISA Litig.*, No. 13-1830 (2d Cir. Sept. 4, 2013) (dismissing Palmer and the Orloffs' appeal and finding the case "in default"); *In re Am. Int'l Grp. Sec. Litig.*, No. 13-1929 (2d Cir. Aug. 9, 2013) (same); *Saltzman v. Pella Corp.*, No. 13-2136 (7th Cir. Oct. 10, 2013) (dismissing Palmer's appeal for failure to timely file docketing statement); *Galluci v. Boiron, Inc.*, No. 12-57074 (9th Cir. June 11, 2013) (dismissing Palmer's appeal for failure to prosecute); *City of Roseville Emps. Ret. Sys. v. Orloff Fam. Trust*, No. 11-35455 (9th Cir. June 2, 2012) (affirming district court's approval of settlement and district court's dismissal of Palmer's and the Orloffs' objection); *In re L.G. Philips LCD Co., Ltd.*

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<sup>5</sup> Various district courts have also found Palmer's conduct "vexatious" and "dishonest." *See, e.g., Dennis v. Kellogg Co.*, No. 09-CV-1786-L-(WMc), 2013 WL 6055326, at \*4 (S.D. Cal. Nov. 14, 2013) (noting that Palmer has been "widely and repeatedly criticized as a serial, professional, or otherwise vexatious objector"); *Heekin v. Anthem, Inc.*, No. 1:05-01909-TWP-TAB, 2013 WL 752637, at \*3 (S.D. Ind. Feb. 27, 2013) (finding "bad faith and vexatious conduct" by Palmer and noting his reputation as a "serial objector"); *see also Gemelas v. Dannon Co.*, No. 08 CV 236, 2010 WL 3703811, at \*1-2 (N.D. Ohio Aug. 31, 2010) (noting that the appeal filed by objector, represented by Palmer, is "frivolous, unreasonable and groundless").

*Sec. Litig.*, No. 11-1518 (2d Cir. Sept. 19, 2011) (voluntarily dismissing Palmer's and the Orloffs' appeal); *In re Tremont Sec. Law*, No. 11-3899 (2d Cir. Mar. 13, 2013) (voluntarily dismissing Palmer's and the Orloffs' appeal).<sup>6</sup>

Indeed, the dismissal of appeals in which Palmer's clients have failed to comply with bond orders are becoming a commonplace occurrence in the federal courts of appeals. *See, e.g., Poindexter v. Cellco P'ship*, No. 12-17778 (9th Cir. Aug. 27, 2013) (granting appellee's unopposed motion to dismiss (filed by Palmer) for want of prosecution for failure to post Rule 7 bond) (Ex. 2 annexed hereto); *Ross v. American Express Co.*, No. 12-2227(L) (2d Cir. Dec. 11, 2012) (dismissing appeal filed by Palmer for failure to post Rule 7 bond) (Ex. 3 annexed hereto); *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, No. 12-2824 (8th Cir. Oct. 31, 2012) (granting appellees' motion to dismiss appeal (filed by Palmer)

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<sup>6</sup> *See also Strohlein v. AT&T Mobility LLC*, No. 11-2522 (7th Cir. Dec. 6, 2011) (voluntarily dismissing Palmer's appeal); *Smokestack Lightening Ltd. v. N. Mexico State Inv. Co.*, No. 10-56435 (9th Cir. Nov. 4, 2010) (voluntarily dismissing Palmer's appeal); *Embry v. Acer Am. Corp.*, No. 12-15555 (9th Cir. Oct. 12, 2012) (voluntarily dismissing Palmer's appeal); *Pederson v. Crayola*, No. 12-35393 (9th Cir. Sept. 26, 2012) (voluntarily dismissing Palmer's appeal); *Kitagawa v. Sweeney*, No. 12-16053 (9th Cir. Aug. 7, 2012) (voluntarily dismissing Palmer's appeal); *In re Midland Nat'l Life Ins. Co. Annuity Sale Practice Litig.*, No. 11-55432 (9th Cir. Jan. 7, 2013) (voluntarily dismissing Palmer's appeal); *Ormond v. Anthem, Inc.*, No. 12-3871 (7th Cir. May 17, 2013) (voluntarily dismissing Palmer's appeal).



for, *inter alia*, appellants' failure to post Rule 7 bond) (Ex. 4 annexed hereto).<sup>7</sup> This Court's sister circuits have refused to countenance Palmer's flouting of appeal bond orders. This Court should join them by swiftly dismissing the Orloffs' (and Palmer's) appeal.

Similarly, counsel for DeJulius – John Pentz – has filed objections in at least fifty-five class actions in addition to this one, and lodged appeals to the denials of those objections, in order to leverage a fee for himself. *See, e.g., Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 575 N.19 (D.M.J. 2010), *rev's and remanded by*, 681 F.3d 170 (3d Cir. 2012) (summarizing cases criticizing Pentz's objections); *In re Wal-mart Wage & Hour Emp't Practices Litig.*, No. 06-cv-00225-PMP-PAL, 2010 WL 786513, at \*1, 2 (D. Nev. Mar. 8, 2010) (Pentz has a “documented history of filing notices of appeal from orders approving other class action settlements, and thereafter dismissing said appeals when [he] and [his] clients were compensated by the settling class or counsel”); *Barnes v. FleetBoston Fin. Corp.*, No. 01-cv-10395-NG, 2006 WL 6916834, at \*1, 2 (D. Mass. Aug. 22, 2006) (Pentz is a “professional objector” who seeks to “make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements”).

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<sup>7</sup> *See also Embry v. ACER Am. Corp.*, No. C 09-01808 JW (N.D. Cal. Aug. 29, 2012) (ECF No. 275) (objector, represented by Palmer, found in contempt of district court's appeal bond order; district court ordered that a copy of the order be sent to the Ninth Circuit where appeal is pending).

As noted above, the Special Masters' Report (which was adopted in its entirety by the District Court) unequivocally rejected the Orloffs' and DeJulius' objections as being wholly inconsistent with this Court's controlling precedents. Thus, even if the Orloffs and/or DeJulius had posted the required bond, their appeals are wholly devoid of merit. Because neither the Orloffs nor DeJulius have complied with the Bond Order, dismissal of their appeals is warranted to spare the plaintiff class from incurring the additional costs and the delay that the continued pendency of these appeals will engender.

**B. The Appeals Should Be Dismissed For Failure To Post A Bond**

Rule 7 states that “[i]n a civil case, the district court may require an appellant to file a bond or provide other securities in any form and amount necessary to ensure payment of costs on appeal.” Pursuant to this discretionary authority, the District Court ordered the Orloffs and DeJulius to post a bond in the amount of \$50,000 to cover the costs associated with defending their appeals. An appellant's failure to post an appeal bond may result in the appeal's dismissal. *See, e.g., Zebrowski v. Hanna*, 973 F.2d 1001, 1006 (1st Cir. 1992) (discussing collected cases and noting that “dismissal of a claim is not an unusual sanction for failure to carry out a lawful court order requiring a party to provide some sort of security”).

“A litigant cannot ignore an order setting an appeal bond without consequences to her appeal.” *In re Cardizem CD Antitrust Litig.*, 391 F.3d 812, 818 (6th Cir. 2004). In *In re Cardizem*, the Sixth Circuit found dismissal of an objector’s appeal appropriate where the objector ignored the district court’s order to post an appeal bond and made no effort to justify her failure to post the bond. *Id.* The Sixth Circuit determined that, by pursuing the objection, the appellant prejudiced the parties by increasing costs and delaying disbursement of funds. *Id.* See also *In re Alexander*, 242 F.3d 373 (8th Cir. 2000) (dismissing appeal after appellant refused to post appeal bond ordered by district court under Rule 7).

The requirement that the Orloffs and DeJulius post a bond is particularly important, as their appeals will hold up the distribution of a \$215 million Settlement to the Class. While Appellants’ objections below were confined to the award of attorneys’ fees, the Orloffs filed a notice of appeal of not only the fee award, but also of the order approving the plan of allocation (D.N.J. ECF No. 351) and the judgment approving the Settlement (D.N.J. No. 353).

As the Tenth Circuit Court of Appeals recently recognized when it dismissed an appeal because the appellants failed to post an appeal bond, “some class members ‘may use an appeal as a means of leveraging compensation for themselves or their counsel’ to the ‘detriment to class members.’” *Hershey v. ExxonMobil Oil Corp.*, Nos. 12-3309, 13-3029, 2013 WL 6571674, at \*3 (10th Cir.

Dec. 16, 2013) (citing *In re Cardizem*, 391 F.3d at 818). The same considerations apply here and should result in the dismissal of the Orloff's and DeJulius' appeals. *See also Sckolnick v. Harlow*, 820 F.2d 13, 15 (1st Cir. 1987) (noting that if plaintiff failed to comply with district court order by failing to post the appeal bond, the appeal would be dismissed).

Despite the District Court's Bond Order, which explicitly instructed the Orloffs and DeJulius to post an appeal bond, they have failed to do so. And despite their failure to comply with the Bond Order, the Orloffs and DeJulius have continued to pursue their appeals by filing case summary information and other appeal-related documents.<sup>8</sup> This is improper. Neither the Orloffs nor DeJulius should be permitted to violate the District Court's Bond Order without consequence. Accordingly, this Court should dismiss their appeals.

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<sup>8</sup> *See* 3d Cir. ECF Nos. 003111450371, 003111440011, 003111495168, 00311496988, 003111496994, 003111496991 & 003111496997

#### IV. CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that this Court dismiss the Orloffs' and DeJulius' appeals due to their failures to post the appeal bond ordered by the District Court on January 8, 2014.

Dated: March 31, 2014

Respectfully submitted,

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(973) 994-1700

*Liaison Counsel for Lead Plaintiffs-  
Appellees and the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that, on March 31, 2014 Lead Plaintiffs'-Appellees' Motion to Dismiss Appeal was filed electronically through the Third Circuit's CM/ECF system and served via CM/ECF system to all registered CM/ECF participants.

BY: /s/ Daniel L. Berger  
Daniel L. Berger

# **Exhibit 1**



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WRITER'S DIRECT DIAL NUMBER

646-722-8522  
E-mail: dberger@gelaw.com

January 10, 2014

**By Overnight Delivery**

Vincent S. Verdiramo, Esquire  
Verdiramo & Verdiramo, P.A.  
3163 Kenney Boulevard  
Jersey City, NJ 07306

Forrest S. Turkish, Esquire  
Law Office of Forrest S. Turkish  
595 Broadway  
Bayonne, NJ 07002

Re: *In re Merck & Co Inc. Vytorn/Zetia Securities Litigation*  
Case No. 08-2177 (D.N.J.) and No. 13-4353 (3d Cir.)

Counsel:

This firm and Bernstein Litowitz Berger & Grossmann LLP have been appointed by the Court as Class Counsel in the above-referenced action pursuant to Fed. R. Civ. P. 23(g).

On January 8, 2014 the District Court entered an Order granting the Class Representatives' motion for an appeal bond, which requires Objectors Franklin DeJulius, Dr. Marshall J. Orloff IRA R/O and the Orloff Family Trust DTD 12/13/01 to post a bond pursuant to Fed. R. App. P. 7 in the amount of \$50,000. A copy of that Order is enclosed. If the bond is not filed by January 21, 2014, we will move to dismiss DeJulius and Orloffs' appeals.

Very truly yours,

A handwritten signature in cursive script that reads "Daniel L. Berger".

Daniel L. Berger

Enclosure

cc: Salvatore J. Graziano, Esq.





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Lindsey H. Taylor  
CARELLA, BYRNE, CECCHI  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC.  
VYTORIN/ZETIA SECURITIES  
LITIGATION

Civil Action No. 08-2177 (DMC) (JAD)

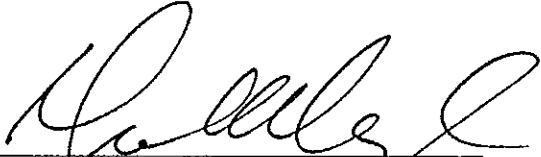
ORDER

THIS MATTER having been opened to the Court by Co-Lead Counsel for Lead Plaintiffs and the Class, in the presence of all parties of record and counsel for objectors Franklin DeJulius, Dr. Marshall J. Orloff IRA R/O and Orloff Family Trust DTD 12/13/01 ("Appealing Objectors"), and the Court having read the parties papers and good cause appearing,

IT IS THIS 5 day of <sup>JAN, 2014</sup> ~~December, 2013~~

ORDERED that the motion to require the Appealing Objectors to post bonds pursuant to Fed.R.App.P. 7 is granted; and it is further

ORDERED that Appealing Objectors are jointly and severally responsible for the posting of a single bond in the amount of \$50,000 pursuant to Fed.R.App.P. 7, under which they will be jointly and severally liable.



---

DENNIS M. CAVANAUGH, U.S.D.J.

# **Exhibit 2**

FILED

UNITED STATES COURT OF APPEALS

AUG 27 2013

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

<p>JOSEPH RUWE; et al.,</p> <p style="padding-left: 40px;">Plaintiffs - Appellees,</p> <p style="text-align: center;">v.</p> <p>JAMES J. POINDEXTER; et al.,</p> <p style="padding-left: 40px;">Objectors - Appellants,</p> <p style="text-align: center;">V.</p> <p>CELLCO PARTNERSHIP, DBA Verizon Wireless,</p> <p style="padding-left: 40px;">Defendant - Appellee.</p>
---

No. 12-17778

D.C. No. 3:07-cv-03679-JSW  
Northern District of California,  
San Francisco

ORDER

Before: SCHROEDER, LEAVY and, Circuit Judges

Appellee’s unopposed motion to dismiss this appeal for want of prosecution for failure to post the bond is granted. *Azizian v. Federated Dep’t Stores, Inc.*, 499 F 3d 950, 961 (9<sup>th</sup> Cir. 2007) (Court may dismiss appeal for lack of prosecution when appellant fails to post bond in part or challenge order that required posting of bond).

# **Exhibit 3**

**UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT**

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At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of December, two thousand and twelve.

---

Robert Ross, on behalf of himself and all others similarly situated, Randal Wachsmuth, on behalf of himself and all others similarly situated,

Plaintiffs-Appellees,

American Express Company, American Express Travel Related Services, Inc., American Express Centurion Bank,

Defendants-Appellees,

v.

Richard Melton Construction, Inc.,

Appellant,

Kirk A. Kennedy, Dirk F. Sutro, David Ramirez, Victor A. Serafino,

Objectors-Appellants.

---



**ORDER**

Docket Nos. 12-2227(L)  
12-2237(Con)  
12-2303(Con)

In the order dated November 7, 2012, the appellants were directed to post the appeal bond by December 7, 2012. Appellants having failed to comply with the order of November 7, 2012, IT IS ORDERED that this appeal is hereby dismissed.

For the Court:

Catherine O'Hagan Wolfe,  
Clerk of Court

# **Exhibit 4**

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 12-2824

---

In re: Uponor, Inc., F1807 Plumbing Fittings Products Liability Litigation

-----  
Paul Palmer; Jeffrey Palmer

Objectors - Appellants

John McGregor; Helen McGregor; Charles Perrone; Jay Livermont; Mary Livermont; Steve Spina; Kim Spina; Carl Fielstra, III; Krystal Fielstra; Paul Roth; Lynn Roth, on behalf of themselves and all others similarly situated

Plaintiffs - Appellees

v.

Uponor, Inc.; Radiant Technology, Inc.

Defendants - Appellees

---

Appeal from U.S. District Court for the District of Minnesota - Minneapolis  
(0:11-md-02247-ADM)

---

**JUDGMENT**

Appellees' motion to dismiss this appeal is granted, and the appeal is hereby dismissed.

The court's mandate will issue in due course.

October 31, 2012

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans



**United States Court of Appeals**

***For The Eighth Circuit***

Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24.329

**St. Louis, Missouri 63102**

**Michael E. Gans**  
*Clerk of Court*

**VOICE (314) 244-2400**  
**FAX (314) 244-2780**  
[www.ca8.uscourts.gov](http://www.ca8.uscourts.gov)

October 31, 2012

Mr. Joseph Darrell Palmer  
Suite A  
603 N. Highway 101  
Solana Beach, CA 92075

RE: 12-2824 Paul Palmer, et al v. Uponor, Inc., et al

Dear Counsel:

Enclosed is a copy of the dispositive order in the referenced appeal. Please note that FRAP 40 of the Federal Rules of Appellate Procedure requires any petition for rehearing to be filed within 14 days after entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. This court strictly enforces the 14 day period. **No grace period for mailing is granted** for pro-se-filed petitions. A petition for rehearing or a motion for an extension of time must be filed with the Clerk's office within the 14 day period.

Michael E. Gans  
Clerk of Court

LMT

Enclosure(s)

cc: Mr. David Birka-White  
Mr. David L. Black  
Mr. Christopher L. Coffin  
Ms. Lindsay E. Dansdill  
Mr. Bradley David Fisher  
Mr. Charles J. LaDuca  
Mr. Howard L. Lieber  
Mr. Jeffrey Palmer  
Mr. Paul Palmer  
Mr. Shawn Michael Raiter  
Mr. John Gordon Rudd Jr.  
Mr. John R. Schleiter  
Mr. Robert K. Shelquist  
Mr. Richard Sletten

District Court/Agency Case Number(s): 0:11-md-02247-ADM