

## PARTICIPATION AGREEMENT

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between the Plaintiffs' Steering Committee ("PSC") appointed by the United States District Court for the Eastern District of Missouri in MDL No. 1964 and \_\_\_\_\_ (hereinafter "the Participating Attorneys").

WHEREAS, the United States District Court for the Eastern District of Missouri has appointed Roger C. Denton, Kristine . Kraft, Steven B. Blau, Jason T. Brown, Paul D. Rheingold, Hunter Shkolnik, Alex Alvarez, Greg McEwen, Eric Roberson, Carmen Scott, and Jubil Hamil, and Andrew J. D'Arcy to serve as members of the PSC to facilitate the conduct of pretrial proceedings in the federal actions relating to NuvaRing.

WHEREAS, the PSC in association with other attorneys working for the common benefit of plaintiffs have developed and are in the process of developing work product which will be valuable in the litigation of state court proceedings involving NuvaRing-induced injuries (the "PSC Word Product") and

WHEREAS, the Participating Attorneys are desirous of acquiring the PSC Work Product and establishing an amicable, working relationship with the PSC for the mutual benefit of their clients;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. With respect to each client who they represent in connection with an NuvaRing related claim, whether currently with a filed claim in state or federal court or unfiled or on a tolling agreement, each of the Participating Attorneys shall deposit or cause to be deposited in an MDL Fee and Cost Account established by the District Court in the MDL a percentage

proportion of the gross amount recovered by each such client which is equal to eight percent (5%) of the gross amount of recovery of each such client (5% fees; 3% costs). For purposes of this Agreement, the gross amount of recovery shall include the present value of any fixed and certain payments to be made to the plaintiff or claimant in the future. It is the intention of the parties that such assessment shall be in full and final satisfaction of any present or future obligation on the part of each Plaintiff and/or Participating Attorney to contribute to any fund for the payment or reimbursement of any legal fees, services or expenses incurred by, or due to, the MDL and/or any Common Benefit Attorneys.

2. The Participating Attorneys on behalf of themselves, their affiliated counsel, and their clients, hereby grant and convey to the PSC a lien upon and/or a security interest in any recovery by any client who they represent in connection with any NuvaRing induced injury, to the full extent permitted by law, in order to secure payment in accordance with the provisions of paragraph 1 of this Agreement. The Participating Attorneys will undertake all actions and execute all documents which are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

3. The amounts deposited in the MDL common Benefit Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the benefit of the plaintiffs in MDL 1964 and any coordinated state court litigation pursuant to written authorization from Co-Lead Counsel of the PSC. Such sums shall be distributed only upon an Order of the Court in MDL 1964, which will be issued in accordance with applicable law governing the award of fees and costs in cases involving the creation of a common benefit. Appropriate consideration will be given to the experience, talent and contribution made by all of

those authorized to perform activities for the common benefits, including the Participating Attorneys.

4. As the litigation progresses and work product of the same type and kind continues to be generated, the PSC will provide Participating Attorneys with such work product and will otherwise cooperate with the Participating Attorneys to coordinate the MDL litigation and the state litigation for the benefit of the plaintiffs.

5. No assessment will be paid by the Participating Attorneys on any recovery resulting from a medical malpractice claim against a treating physician.

6. It is understood and agreed that the PSC and Common Benefit Attorneys may also apply to the Court for class action attorneys' fees (including any multiplier) and reimbursement of expenses, if appropriate, and this Agreement is without prejudice to the amount of fees or costs to which the PSC and Common Benefit Attorneys may be entitled in such an event.

7. Upon execution of this Agreement, the PSC will provide to the Participating Attorneys, to the extent developed, the PSC Work Product, including access to the PSC's depository.

8. The Participating Attorneys shall have the following rights:

- a. Full participation in discovery matters and appropriate committee assignments with full recognition of the participation of the Participating Attorneys;
- b. Appropriate participation and consultation in settlement negotiations;
- c. Appropriate participation in trials, class action matters, management, fund administration and allocation of fees and costs.

9. The Participating Attorneys represent that the list appended hereto as Exhibit "A" correctly sets forth the name of each client represented by them who has filed a civil action arising from the use of NuvaRing, together with the Court and docket number of each such case, and that the list attached hereto as Exhibit "B" contains the name and Date of Birth of each client represented by them who has not yet filed a civil action arising from the use, marketing and sales of NuvaRing.

10. The Participating Attorneys shall supplement the lists appended hereto as Exhibit "A" and "B" on a quarterly basis.

11. This Agreement shall apply to each and every claim or action (whether state or federal, filed or unfiled) arising from the use, marketing or sales of NuvaRing in which the Participating Attorneys have a right to a fee recovery beginning the date the MDL was assigned by the MDL Panel to this Court.

PLAINTIFFS' STEERING COMMITTEE

By:  
Roger C. Denton, Esq.  
Plaintiffs' Co-Lead Counsel

AND

By:  
Participating Attorney  
[Firm Name & Address]