

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE:

FOSAMAX PRODUCTS LIABILITY  
LITIGATION

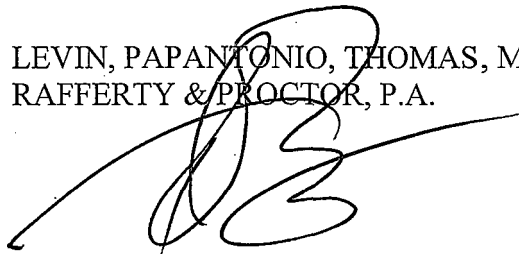
MASTER FILE  
No. 1:06-md-01789-JFK-JCF

**NOTICE OF FILING DECLARATION OF TIMOTHY M. O'BRIEN  
IN SUPPORT OF PLAINTIFF'S STEERING COMMITTEE'S  
CONSENT MOTION FOR DISTRIBUTION OF COMMON BENEFIT FUNDS**

PLEASE TAKE NOTICE THAT the Plaintiffs' Steering Committee files the attached Declaration of Timothy M. O'Brien in support of the Plaintiffs' Steering Committee's Consent Motion for Distribution of Common Benefit Funds.

This 13<sup>th</sup> day of November, 2015.

LEVIN, PAPANTONIO, THOMAS, MITCHELL,  
RAFFERTY & PROCTOR, P.A.



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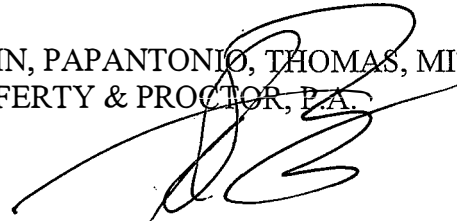
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Lead Counsel for the Plaintiffs' Steering Committee

**CERTIFICATE OF SERVICE**

I hereby certify that on November 13<sup>th</sup>, 2015, I caused to be served by electronic means via the Court's CM/ECF System a copy of the Notice of Filing Declaration of Timothy M. O'Brien in Support of Plaintiffs' Steering Committee's Consent Motion for Distribution of Common Benefit Funds on all counsel registered to receive electronic notices.

LEVIN, PAPANTONIO, THOMAS, MITCHELL,  
RAFFERTY & PROCTOR, P.A.



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Lead Counsel for the Plaintiffs Steering Committee

**ATTACHMENT "A"**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: \_

FOSAMAX PRODUCTS LIABILITY  
LITIGATION

MASTER FILE  
No. 1:06-md-01789-JFK-JCF

DECLARATION OF TIMOTHY M. O'BRIEN

TIMOTHY M. O'BRIEN declares as follows:

1. I am an attorney admitted to practice *pro hac vice* before this Court and a partner at Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., and am Lead Counsel for the Plaintiffs Steering Committee ("PSC") in MDL No. 1789, *In re Fosamax Prods. Liab. Litig.* I am familiar with the facts herein. I make this declaration based on my own personal knowledge and review of the file materials of the Fosamax PSC.

2. I make this declaration in support of *Plaintiffs' Steering Committee's Memorandum in Support of its Consent Motion for Distribution of Common Benefit Funds.*

3. In this MDL, the PSC was solely responsible for initiating, coordinating, and conducting all of the pretrial common benefit discovery in this MDL. To that end, the PSC created a document depository used to store and organize millions of pages of documents produced by the Defendant Merck Sharp & Dohme Corp. ("Merck"), the United States Food & Drug Administration, and numerous third parties in this litigation. Further, the PSC took twenty-eight video depositions of current or former Merck employees. Portions of many these depositions were utilized during each

of the bellwether trials which took place in this litigation, as well as cases which were tried in state court jurisdictions. Countless fact witness depositions were also taken on behalf of plaintiffs as part of the bellwether process. The PSC actively was involved in providing assistance and documents to counsel responsible for defending and taking those depositions. The PSC also completed extensive written discovery for the common benefit.

4. Additionally, this MDL necessitated the PSC's active management of extensive expert discovery. The PSC hired and prepared a pool of qualified litigation experts, most of whom testified at various MDL bellwether trials. These common benefit experts faced extensive *Daubert* challenges and the PSC worked diligently to ensure that these experts met the sound methodology and bases requirements of *Daubert*. Without the testimony of these common benefit experts, this litigation could not have proceeded successfully. The PSC also was tasked with very demanding discovery of Merck's considerable stable of retained experts, which required the expenditure of great financial and time resources.

5. Over the several year course of the MDL, the PSC prepared and filed hundreds of legal memoranda on behalf of the common benefit and in opposition to motions filed by Merck. The PSC handled the oral arguments on scores of contested legal positions before this Court.

6. The PSC's pretrial common benefit work was completed so that cases could be tried in this MDL and, in the event of a remand of the cases in this MDL, cases could be tried in transferor courts upon remand. This Court presided over six lengthy trials in five bellwether cases. The *Boles* case was tried two times, after the first trial ended in a mistrial. The *Boles* and *Scheinberg* cases ultimately resulted in verdicts for the Plaintiffs, and the *Maley*, *Graves* and *Secrest* trials resulted in verdicts for the Defendant. The PSC was responsible for coordinating efforts for those trials and

members of the PSC served as trial counsel during each of the cases that proceeded to trial. Each trial lasted approximately one month and required extensive time and out-of-pocket costs to expended by the PSC, and its member firms. All told, the PSC devoted more than 40,000 combined attorney hours to ensure that this litigation was handled thoroughly and properly.

6. On March 24, 2014, the PSC entered into a Master Settlement Agreement with Defendant Merck, which definitely resolved claims brought by more than 1,100 plaintiffs for the gross summ of \$27,327,500.00. This settlement was secured after nearly eight years of hard-fought complex litigation by members of the PSC. Following the execution of the Master Settlement Agreement, the PSC continued to work diligently to ensure that the settlement clamiants received their settlement funds expeditiously.

7. Pursuant to Amended CMO 17, KCC Class Action Services, LLC (hereinafter “Escrow Agent”) is the escrow agent appointed by this Court to hold and distribute the settlement funds, including the common benefit funds, for this litigation. I have spoken with the Escrow Agent and confirmed the following: of the more than 1,100 claims processed by the Fosamax claims facility, only 277 remain to be processed.

8. I have confirmed with the Escrow Agent that \$1,77,865.60 has been deposited into the common benefit fund account and, once all claims have been distributed from the Escrow Account, the Escrow Agent will have deposited into the common benefit fund account the amount of \$2,077,066..

9. I have confirmed the total amount of litigation fund contributions, loans to the PSC by PSC member firms, and allowable common benefit held costs total \$2,426,126.46.

10. Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A. and Ashcraft & Gerel, LLP have provided loans to the PSC. For each of the loans to the PSC, no interest has been charged and the loans were conferred for expense items that were obligations of the PSC to pay and in lieu of a further litigation fund contribution call. No such loans were made by non-PSC firms.

11. All of the held costs have been reviewed by the PSC and are costs which are for the common benefit and are not case-specific costs. All case-specific costs applicable to PSC firms have been paid for by the clients in those specific cases or, if written off, paid for by the PSC law firms.

12. No legal fees are being paid from the common benefit fund.

13. Because the total amount of the PSC litigation fund contributions, loans to the PSC by PSC member firms, and common benefit held costs exceed the total amount of the common benefit fund, all PSC member firms have agreed to resolve the liabilities of the PSC in full by paying back 100% of the litigation fund contributions and retiring all loans to the PSC by PSC member firms at 100%, and then paying the held costs back on a pro rata basis, based upon the amount of money left in the common benefit fund after the liabilities of the PSC are paid in full. Thus, for example, if a firm has 12% of the held costs, that firm will be reimbursed 12% from the remaining funds available for distribution after the PSC's liabilities are paid in full.

14. Based upon the current projections of the remaining funds available for distribution after the PSC's liabilities are paid in full, it is expected that approximately 39.3% of each firms approved and held costs for common benefit work will be reimbursed by the common benefit fund which would then zero out the common benefit fund.

11. The schedule of contributions, loans, and held costs for common benefit work in this MDL are as follows:

## LITIGATION FUND CONTRIBUTIONS

LAW FIRM	AMOUNT
Andrus Wagstaff	\$115,000.00
Ashcraft & Gerel, LLP	\$140,000.00
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.	\$140,000.00
Beatie & Osborn, LLP	\$50,000.00
Estate of Russell Beatie	\$50,000.00
Cory Watson Attorneys	\$140,000.00
F. Dulin Kelly, Esq.	\$25,000.00
Goforth Easterling LLP f/k/a Goforth Sanford & Lewis	\$50,000.00
Irpino Law Firm	\$100,000.00
Krupnick Campbell Firm	\$50,000.00
Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.	\$165,000.00
Murray Law Firm	\$100,000.00
Pittman, Germany, Roberts & Welsh, LLP	\$75,000.00
Seeger Weiss LLP	\$140,000.00
Shelly A. Sanford, PLLC	\$50,000.00
LITIGATION FUND CONTRIBUTION TOTAL	\$1,390,000.00

## LOANS TO THE PSC BY PSC MEMBER FIRMS

LAW FIRM	AMOUNT
Ashcraft & Gerel, LLP	\$16,452.37
Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.	\$432,128.77
LOANS TO THE PSC BY MEMBER FIRMS TOTAL	\$448,581.14

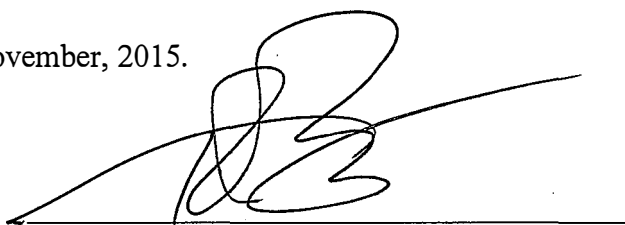


ALLOWABLE HELD COSTS FOR COMMON BENEFIT WORK

LAW FIRM	AMOUNT
Andrus Wagstaff	\$5,048.03
Ashcraft & Gerel, LLP	\$65,308.13
Cory Watson Attorneys	\$57,910.89
Fleming Nolen & Jez, LLP	\$1,241.58
Irpino Law Firm	\$5,398.88
Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.	\$452,637.81
HELD COSTS FOR COMMON BENEFIT WORK TOTAL	\$587,545.32

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED on this 13<sup>th</sup> day of November, 2015.



TIMOTHY M. O'BRIEN