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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: OPTICAL DISK DRIVE
ANTITRUST LITIGATION

Case No. 3:10-md-2143-RS
MDL No. 2143

This Document Relates to:

ALL DIRECT PURCHASER CLASS
ACTIONS

**DECLARATION OF DAVID P.
GERMAINE IN SUPPORT OF MOTION
FOR ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES, AND
INCENTIVE AWARDS**

I, David P. Germaine, declare and state as follows:

1. I am a partner at the law firm of Vanek, Vickers & Masini PC. I submit this declaration in support of Direct Purchaser Plaintiffs’ (“DPP’s”) joint application for an award of attorneys’ fees in connection with the services rendered in this litigation. I make this Declaration based on my own personal knowledge, and if called as a witness, I could and would competently testify to the matters stated herein.

2. My firm has served as counsel to Meijer, Inc. and as counsel for the Direct Purchaser Class (“Class”) throughout the course of this litigation. The background and experience of the Vanek, Vickers & Masini, P.C. Attorneys who were principally responsible for this matter are summarized in the *curriculum vitae* attached hereto as Exhibit 1.

3. Vanek, Vickers & Masini has prosecuted this litigation solely on a contingent-fee basis, and has been at risk that it would not receive any compensation for prosecuting claims against the Defendants. While Vanek, Vickers & Masini devoted its time and resources to this matter, it has foregone other legal work for which it would have been compensated.

4. During the pendency of the litigation, Vanek, Vickers & Masini performed the following work:

- Drafting of the amended complaint and other pleadings

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- Drafting and responding to discovery requests
- Collecting, review, and preparation of document productions
- Deposition preparation and defense, including the preparation and presentation of a corporate designee for Meijer

5. Attached hereto as Exhibit 2 is my firm’s total hours and lodestar, computed at historical rates, for the period of May 7, 2010 through December 31, 2014. This period reflects the time spent after the appointment of the Chairman of the Executive Committee for the DPPs (the “Chairman”) in this litigation. The total number of hours spent by Vanek, Vickers & Masini during this period of time was **361.7** with a corresponding lodestar of **\$171,862.00**. This summary was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. The lodestar amount reflected in Exhibit 2 is for work assigned by the Chairman, and was performed by professional staff at my law firm for the benefit of the Class.

6. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 2 are the usual and customary hourly rates charged by Vanek, Vickers & Masini.

7. My firm has expended a total of **\$4,344.30** in unreimbursed costs and expenses in connection with the prosecution of this litigation. These costs and expenses are broken down in the chart attached hereto as Exhibit 3. They were incurred on behalf of Direct Purchaser Plaintiffs by my firm on a contingent basis, and have not been reimbursed. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

EXHIBIT 1

EXHIBIT 1

In re: Optical Disk Drive (ODD) Antitrust Litigation
VANEK, VICKERS & MASINI PC
Principal Attorney Biographies

JOSEPH M. VANEK

Mr. Vanek has practiced in the field of commercial litigation for more than 25 years, with a particular focus in the fields of intellectual property and antitrust. In the antitrust arena, Mr. Vanek focuses on opt-out litigation by representing large corporate clients who have over paid for products or services as a result of an antitrust violation. Significant antitrust cases that Mr. Vanek has been involved with include:

- *In re American Express Anti-Steering Rules Litigation*, which relates to a challenge by individual merchants against American Express challenging contractual restraints imposed on them related to a merchants ability to steer customers to less expensive forms of payment.
- *In re Processed Eggs Antitrust Litigation*, which relates to a claim by individual merchants against egg producers for allegedly adopting and implementing a supply restriction agreement.
- *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, which was claim by individual merchants against Visa and MasterCard challenging contractual restraints imposed on them related to merchants ability to steer customers to less expensive forms of payment.
- *In re Scouring Pad Litigation*, which related to horizontal price fixing conspiracy between the manufacturers of the SOS and Brillo branded products.
- *In re Brand Name Prescription Drug Litigation*, which related to the manner prescription drug prices are set by pharmaceutical manufacturers.
- *In re High Fructose Corn Syrup Litigation*, which concerned the pricing of a commonly used sweetener by ADM.
- *In re Ovcon Litigation*, which concerned efforts by a pharmaceutical company to prevent the entry of a generic competitor.
- *In re Remeron Litigation*, which concerned efforts by a pharmaceutical company to extend its patent monopoly and prevent the entry of generic competition in violation of the Sherman Act.
- *In re Tricor Litigation*, which concerned efforts by a pharmaceutical company to extend its patent monopoly and prevent the entry of generic competition in violation of the Sherman Act.
- *In re Children's Ibuprofen Litigation*, which related to controlling the supply of generic children's ibuprofen.
- *In re Relafen Litigation*, which concerned efforts by a pharmaceutical company to extend its patent monopoly and prevent the entry of generic competition in violation of the Sherman Act.
- *In re Transparent Tape Litigation*, which related to efforts by a manufacturer of transparent tape to control the private label market.
- *In re Vitamin Litigation*, which related to a market wide price fixing conspiracy on basic vitamins used in the manufacture of food for human consumption.

Some of the clients that Mr. Vanek has represented within the area of intellectual property include:

- Nissim Corp., who owns a patent portfolio central to the functions of DVD technology.
- MedIdea, LLC who owns a patent portfolio related to orthopedic surgical tools and implants.
- Hawaii Air Board, LLC who owns a patent related to the stand up inflatable paddle boards.
- Allen Video, LLC who owns a patent portfolio related to the control of contrast in video projection systems.
- Orbsak Corp., who owns a patent portfolio central to the function of digital television.
- Global Gaming Technology, LLC, who owns a portfolio central to the digital control of reel type slot machines.
- Premier International, LLC, who owns a patent portfolio used in the digital music industry, and
- Rodesch Development, who developed a unique copyrighted video game that was infringed by many third parties.

Mr. Vanek also has considerable experience in the area of trademark law. In this regard, he has represented numerous clients in the domestic and worldwide clearance, selection and registration of trademarks. Mr. Vanek's trademark clients range from internationally renowned branding companies, entrepreneurial startups, and Fortune 100 companies, including the work related to the renaming of Philip Morris to Altria.

In the area of general commercial litigation, the following cases are representative of the matters Mr. Vanek has handled:

- *In re Detroit Transportation Corp.*, relating to the city's effort to recover damages caused to the Detroit People Mover as a result of the controlled implosion of a building adjacent to its tracks.
- *In re PPG Litigation*, relating to PPG's attempt to secure insurance coverage for the cost of remediating pollution that had accumulated for decades at PPG facilities throughout the world.
- *In Re Carpet Cleaning Litigation*, relating to false advertising claims made by a large commercial cleaning service as to the need for additional stain resistant treatment of carpet products.

EDUCATION

Mr. Vanek earned his Juris Doctor degree from Boston College Law School in May, 1987 where he graduated with honors. Mr. Vanek received his Bachelor of Arts degree, Magna Cum Laude, from Creighton University in 1984.

BAR AND COURT ADMISSIONS

Upon graduating from law school, Mr. Vanek became a member of the bar in the State of Illinois and the Commonwealth of Massachusetts. Mr. Vanek is also admitted to practice before the Supreme Court of the United States, as well as the United States Court of Appeals for the Third, Fifth, Ninth, Federal Circuit and District of Columbia circuits; as well as the United States District Court for the Northern and Central Districts of Illinois, the Eastern District of Texas, the Eastern District of Wisconsin, the District of Columbia, and the Western District of Michigan. Mr. Vanek has also practiced in numerous other courts on a pro hac vice basis throughout the country.

DAVID P. GERMAINE

David Germaine concentrates his practice on complex commercial litigation and antitrust litigation, as well as intellectual property issues including trademark, patent, and copyright matters.

Mr. Germaine has successfully represented individual plaintiffs in a vast array of antitrust disputes in various industries, including pharmaceuticals, payment cards, electronics, and Capper-Volstead matters. He regularly manages complex commercial litigation matters on behalf of opt-out/individual plaintiffs and counsels clients on price fixing, tying, monopolization, and market allocations schemes. He represented several large retailers as part of *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, the largest antitrust case in U.S. history.

In his intellectual property practice, Mr. Germaine works with clients—both domestically and internationally—to protect, evaluate, license, and litigate their intellectual property rights. He has conducted and analyzed thousands of potential trademarks and copyrights and has registered and maintained trademarks, copyrights, design marks, and domain names.

REPRESENTATIVE EXPERIENCE

In re American Express Anti-Steering Rules Antitrust Litigation: Currently representing several large retailer plaintiffs who are challenging defendant American Express's merchant restraints as anti-competitive

In re Optical Disk Drive Products Antitrust Litigation: Currently representing a large retailer plaintiff in a case alleging that Defendants agreed to control the price and supply of optical disk drives by exchanging information about prices and production plans

In re Mushroom Antitrust Litigation: Currently representing a large retailer plaintiff in a case challenging Defendant mushroom growers for conspiring to remove certain farmland from mushroom production and agreeing to fix prices

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation: Represented several large retailers who challenged defendants Visa and MasterCard for restraining trade through a series of anticompetitive merchant rules. Currently represents various plaintiffs who have opted out of that settlement in their individual actions against Visa and MasterCard.

In re Cathode Ray (CRT) Antitrust Litigation: Represented a large retailer plaintiff against several major consumer electronics companies for price fixing cathode ray tubes

·*In re TFT-LCD (Flat Panel) Antitrust Litigation*: Represented a direct purchaser of liquid crystal display panels in its challenge against several electronics manufacturers who sought to control supply and fix prices

·*Meijer, Inc., et al. v. Abbott Laboratories*: Represented a large retailer plaintiff in its case against Abbott Laboratories for unlawful monopolization of the market for boosted protease inhibitors used in the treatment of HIV

·*In re Vitamins Antitrust Litigation*: Represented several large retailer plaintiffs in a case alleging a market-wide price fixing conspiracy on basic vitamins used for and in the manufacture of food for human consumption

·*In re Visa Check/MasterMoney Antitrust Litigation*: Represented large retailer plaintiffs challenging Visa and MasterCard for tying credit and debit card products under the “Honor All Cards Rule”

·*In re Transparent Tape Litigation*: Represented a large retailer plaintiff in a case alleging that a manufacturer of transparent tape attempted to control the private label market through bundled discounts

·*In re Children’s Ibuprofen Oral Suspension Antitrust Litigation*: Represented a large retailer plaintiff in its challenge against various manufacturers of children’s ibuprofen for agreeing not to compete

·*In re Ovcon Litigation*: Represented a large retailer plaintiff in challenging a pharmaceutical company that prevented the entry of a generic competitor

·*In re Remeron Litigation*: Represented a large retailer plaintiff in challenging efforts by a pharmaceutical company to extend its patent monopoly and prevent the entry of generic competition

·*In re Tricor Litigation*: Represented a large retailer plaintiff alleging that a pharmaceutical company had extended its patent monopoly and prevented the entry of generic competition in violation of Sections 1 and 2 of the Sherman Act

ADMISSIONS

- Bar of Illinois
- United States Court of Appeals for the Federal Circuit
- United States District Court for the Northern District of Illinois

EDUCATION

· J.D., DePaul University College of Law, 2001

· B.A., John Carroll University, 1997

EXHIBIT 2

EXHIBIT 3

EXHIBIT 3

In re Optical Disk Drive Antitrust Litigation, Case No. 3:10-md-2143-RS
Vanek, Vickers & Masini PC
 Reported Unreimbursed Expenses Incurred on Behalf of Direct Purchaser Class
 May 7, 2010 through December 31, 2014

EXPENSE REPORT

CATEGORY	AMOUNT INCURRED
Court Fees (filing, etc.)	\$915.00
Experts/Consultants	0.00
Federal Express	23.87
Transcripts (Hearing, Deposition, etc.)	435.35
Computer Research	154.86
Messenger Delivery	25.26
Photocopies – In House	229.60
Photocopies – Outside	1,915.24
Postage	0.00
Service of Process	0.00
Telephone/Telecopier	0.00
Travel (Airfare, Ground Travel, Meals, Lodging, etc.)	645.12
TOTAL:	\$4,344.30