Exhibit 1 to Plaintiffs' Memorandum in Support of the Joint Motion for Preliminary Approval of the Class Action Settlement

Brown v. Medicis Pharmaceutical Corp., No. 1:13-cv-01345

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Bonnie Brown, Leslie Baginski, Lisa Cummings-Gallina, Laurie Introp, Lisa Levine, Bridget Oliveto, and Lindsay Pihaly on behalf of themselves and all others similarly situated, Plaintiffs, v. Medicis Pharmaceutical Corporation, Defendant.	NO. _____ CLASS ACTION

DECLARATION OF CYRUS MEHRI IN SUPPORT OF PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT

Pursuant to 28 U.S.C. § 1746, I, Cyrus Mehri, hereby declare and state, as follows:

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein, and am competent to testify thereto.

2. I am a founding partner of Mehri & Skalet, PLLC ("M&S"), and proposed co-lead class counsel (along with Ellen Eardley of M&S and Sara Wyn Kane of Valli Kane & Vagnini LLP) for the Plaintiffs in the above-referenced action. We are assisted by a number of skilled lawyers in our firms who have helped obtain an excellent result for the Class in this case.

3. I am making this declaration in connection with the parties' joint motion for preliminary approval of the proposed class settlement.

Qualifications of Proposed Co-Lead Class Counsel

4. My firm, M&S, represents plaintiffs in class actions, particularly employment discrimination class actions. During the past 20 years, I have represented plaintiffs in dozens of class actions in a variety of fields, including consumer fraud and antitrust. Most significantly,

over the past 20 years, I have had the privilege of representing women and people of color in employment discrimination and other civil rights class actions. Prior to private practice, I clerked for the Honorable John T. Nixon, Chief Judge of the Middle District of Tennessee. I graduated from Cornell Law School in 1988.

5. I currently serve or have previously served as co-lead class counsel for certified plaintiff classes in *Roberts v. Texaco Inc*., 94 Civ. 2015 (CLB) (S.D.N.Y. Mar. 21, 1997) (settled for $176 million and broad programmatic relief on behalf of African-American employees); *Ingram v. Coca-Cola Company*, No. 1:98-CV-3679, 200 F.R.D. 685 (N.D. Ga. 2000) (settled for $192 million and broad programmatic relief on behalf of salaried African-American employees); *Robinson v. Ford Motor Co.*, No. 1:04-CV-00844, 2005 U.S. Dist. LEXIS 11673 (S.D. Ohio June 15, 2005) (settled for $10 million and creation of over 270 apprenticeship positions for African Americans); *Augst-Johnson v. Morgan Stanley & Co.*, No. 1:06-CV-01142 (D.D.C. Oct. 26, 2007) (Roberts, J.) ($46 million settlement and programmatic relief on behalf of female financial advisors); *Amochaev v. Citigroup Global Markets d/b/a Smith Barney*, No. 3:05-cv-01298-PJH (N.D. Cal. Aug. 13, 2008) ($33 million settlement and similar injunctive relief); *Norflet v. John Hancock Life Insurance*, 3:04CV1099 (JBA) (D. Conn. Aug. 21, 2009) ($24.4 million settlement of behalf of African Americans denied equal opportunity in the sale of life insurance); *Carter v. Wells Fargo Advisors, LLC*, No. 1:09-CV-01752-CKK (D.D.C. June 9, 2011) (Kollar- Kotelly, J.) ($32 million settlement and similar injunctive relief).

6. My proposed co-lead counsel, Ellen Eardley, has served as class counsel in a number of the significant civil rights class actions listed in paragraph 5 during various stages of litigation, including settlement negotiations, claims administration, and monitoring of defendants' compliance with robust programmatic relief. She is also class counsel in *White v.*

Holder, EEOC No. 510-20 12-00077X, a sexual harassment class action currently pending before the Equal Employment Opportunity Commission. Ms. Eardley has extensive experience representing groups of employees and individuals in gender discrimination matters. She has an M.A. in Women's Studies and was formerly an Equal Justice Works Fellow and Counsel at the National Women's Law Center. She currently teaches the course "Sex-Based Discrimination" at the American University Washington College of Law.

7. My proposed co-lead counsel, Sara Wyn Kane, is a founding partner of the firm Valli Kane & Vagnini, and has primarily devoted her practice to employment discrimination and civil rights. She has represented thousands of employees in mass, group, and class actions in labor and employment cases before the EEOC as well as confidentially with the assistance of well-respected mediators in the field. I have personally worked with Ms. Kane on investigating and pursuing other class cases in confidential mediation processes, as well as with the EEOC. She appeared recently, with her co-lead counsel, at the fairness hearing regarding the settlement in *Gambino v. Harvard Protection Services, LLC*, 10-cv-0983 (S.D.N.Y.) (Fair Labor Standards Act collective action), and is co-lead counsel in *Kudo v. Panda Restaurant Group, Inc., et al.*, 7:09-cv-00712 (S.D.N.Y.), which has been conditionally certified under the FLSA. Ms. Kane has also participated with her firm in numerous other class actions in which she is actively engaged in the various stages of litigation as well as settlement negotiations and claims administration.

8. Ms. Eardley and Ms. Kane join me in full support of this proposed settlement. All of the Named Plaintiffs support the settlement as well.

History of the Case and Settlement Negotiations

9. At the end of 2008, Ms. Kane's firm was contacted by Named Plaintiff Laurie

Introp, a female field sales employee, regarding a potential gender discrimination claim against Medicis Pharmaceutical Corporation. Ms. Introp and other female field sales employees believed that they and others were afforded inferior opportunities in employment with regard to compensation, promotion and termination and that women had to endure a sexually hostile work environment. They believed the sex discrimination they experienced at the company was similar to the experiences of other female Medicis sales employees throughout the country. Ms. Kane and her colleagues at Valli Kane & Vagnini, and, soon thereafter, my firm began conducting an investigation of the widespread nature of these claims.

10. This investigation included speaking with many witnesses, both women raising the same or similar claims, as well as men who confirmed the women's allegations. Additionally, the investigation included reviewing documentation provided by our clients and other individuals, conducting independent research of the company, and its male management team, locating and reading individual lawsuits that had been filed in different states, which strongly supported the allegation that other women suffered similar experiences at the Company.

11. In 2010, Valli Kane & Vagnini began consulting with Mehri & Skalet about the case, and soon thereafter, we joined in the investigation. Together our firms are referred to as "Class Counsel" herein.

12. Our investigation involved speaking with dozens of current and former Medicis employees, including a number of field sales employees. The investigation included: distribution of accounts/sales territories and sample products to employees; the assignment and modification of sales goals; the opportunities to earn incentive compensation; the impact of leaves of absence on compensation; the hiring and promotion of women into successively higher field sales roles; the availability of career development and training opportunities; the termination and/or

constructive discharge of women and offensive, harassing, and stereotypical comments and actions regarding sex, gender, pregnancy, and caregiver status. We gathered anecdotal evidence on all of these subjects as well as other subjects reflecting their terms and conditions of employment.

13. Without disclosing the names of the witnesses, we provided the fruits of our investigation to the Company originally in a detailed letter on September 1, 2011. We connected our extensive factual investigation to analyses of the relevant case law, including a serious and detailed analysis of the emerging class action employment discrimination challenges that followed the Supreme Court's opinion in *Wal-Mart Stores Inc. v. Dukes*, 131 S. Ct. 2541 (2011). The Company retained outside counsel, Goodwin Procter LLP, agreed to enter into a tolling agreement, and agreed to enter into good faith confidential settlement negotiations and mediation.

14. After some back and forth, the parties agreed to esteemed mediator Hunter Hughes of Rogers & Hardin LLP in Atlanta as the mediator for this case. Mr. Hughes has successfully mediated more complex equal opportunity class actions than any mediator in the country. I had personal experience with him as a mediator in cases involving The Coca-Cola Company, Morgan Stanley, and Smith Barney, and I knew first-hand that he is a dedicated mediator who is creative and fair to both sides.

15. Potential class-wide negotiations began in approximately September 2011. The parties signed an agreement to toll the running of the statute of limitations on the claims of Named Plaintiffs Brown, Baginski, Cummings-Galina, Introp, Oliveto, and Pihaly.

16. Throughout the negotiations, my co-counsel and I worked with the Named Plaintiffs to identify the claims in the case and to develop a written statement of the issues we

believed should be resolved by a settlement on behalf of a nationwide class.

17. Early in the negotiations, the Company was only willing to discuss more limited relief than the relief we sought. Progress toward a comprehensive settlement that included programmatic relief and class-wide monetary relief was slow to develop and hard fought.

18. As settlement negotiations progressed, we continued our investigation of gender discrimination claims, including interviews of witnesses. We conducted approximately 45 interviews of individuals from 16 states. During these interviews, several women expressed interest in participating in the case in a more substantial way. Ultimately, Lisa Levine joined the group of Named Plaintiffs. All seven Named Plaintiffs have typical claims and are suitable to serve as class representatives. The lead Named Plaintiff, Bonnie Brown, has executed a declaration in support of the settlement agreement.

19. The settlement negotiations included over a dozen lengthy in-person meetings and telephone conferences with the parties and Mr. Hughes. The negotiations were conducted at arm's length, and faced several potential impasses. The material terms of the settlement were subject to intense negotiation, and the parties called upon Mr. Hughes frequently to assist in resolving highly contested points.

20. The Named Plaintiffs participated in mediation sessions in person and via teleconference. Additionally, Class Counsel kept the Named Plaintiffs informed of the progress of negotiations and had them review and provide input regarding communications to the Company, presentations, EEOC charges and rebuttals, programmatic relief, and the Settlement Agreement at various stages.

21. During settlement negotiations, Class Counsel sought, and the Company produced, voluminous data and other information concerning its workforce and work practices

relevant to the claims asserted and damages. At various junctures, Mr. Hughes resolved disputes over the scope of discovery produced in the mediation. If the parties had chosen to litigate, this type of candid and fruitful exchange may not have been possible. This exchange was, in many ways, equivalent to class discovery, and enabled Class Counsel to accurately assess the litigation risks.

22. Class Counsel reviewed data and hundreds of documents that totaled thousands of pages of personnel policies and information that pertained to the compensation, promotion, termination, career development, performance assessment, and training of Medicis field sales employees. Class Counsel evaluated these policies and identified practices that were most detrimental to female employees. Consultation with the Named Plaintiffs and other witnesses was critical in understanding and evaluating the human resource policy documents and the actual practices of Medicis.

23. Class Counsel retained Alexander Vekker, Ph.D., an experienced labor economist who teaches at the University of Pennsylvania, to conduct statistical analyses of the detailed personnel data produced by Medicis. Dr. Vekker worked with Class Counsel, including Mehri & Skalet attorney Michael Lieder, to review and analyze the data, ensure it was complete, and request supplemental data. Dr. Vekker also conducted studies similar to those that they would have conducted in preparation for trial of this matter. While the statistical analyses were debated on multiple occasions, the parties devoted one full in-person mediation session exclusively to presentations by the experts and debate regarding statistical analyses. The statistical and labor economics issues were highly complex and hotly disputed where both sides had reasoned, even if contrary, positions.

24. Because of the exchange of information as well as presentations regarding

statistical analyses and factual investigations, the parties are well-positioned to evaluate their respective positions with respect to liability and damages, as well as the costs and risks of litigation.

25. On December 11, 2012, Medicis was acquired by Valeant Pharmaceuticals International, Inc. The parties continued their negotiations after the acquisition. Shortly thereafter Class Counsel learned that CEO Jonah Shacknai, whom the Named Plaintiffs alleged led the discriminatory work environment, was no longer employed by Medicis. Because Valeant's employment practices were outside the scope of Class Counsel's investigation, the parties agreed that the class period for settlement purposes would end the day before Valeant acquired Medicis. The acquisition by Valeant and the departure of Medicis CEO Shacknai were highly significant developments for the mediation, especially since Plaintiffs' case had targeted the conduct of the Medicis CEO. These developments limited the time period of the settlement class and the releases to the day before the acquisition (December 10, 2012) and narrowed the scope of appropriate programmatic relief. Plaintiffs pressed on despite this unexpected business development and achieved an outstanding result for the women who worked at Medicis in the relevant jobs and time period.

26. The parties executed a memorandum of understanding in March 2013. Subsequently, the details of the Settlement Agreement continued to be contested and multiple drafts of the settlement papers were discussed, with the assistance of Mr. Hughes. On September 4, 2013, counsel for the parties fully executed a Settlement Agreement resolving all claims in the case, subject to court approval.

Benefits of the Settlement for the Class

27. The Settlement Agreement and the Plaintiffs' Memorandum in Support of the

Motion for Preliminary Approval set forth the specific details of the $7.15 million settlement fund as well as the programmatic relief, which is aimed at expanding opportunities and improving the workplace for female field sales employees at Medicis. The programmatic relief is binding on Medicis and its successor, Valeant.

28. In the judgment of Class Counsel, the terms of this settlement are enormously beneficial to the Class and easily meet the legal standard of "fair, reasonable, and adequate" for approving a class action settlement. Because Class Counsel completed an extensive investigation and engaged in frequent and intensive settlement negotiations, we identified relevant legal issues and understood the strengths and weaknesses of the Named Plaintiffs' class case. Our judgment also was informed by our extensive experience bringing class action gender discrimination cases, *see supra* ¶¶ 5-7, as well as our knowledge of recent case law such as *Wal-mart Stores Inc. v. Dukes*, 131 S. Ct. 2541 (2011) and *DL v. District of Columbia*, 713 F.2d 120 (D.C. Cir. 2013), as well as the class action legal landscape, *see, e.g.*, Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. Rev. 286, 314-22 (2013). Based on our experience and knowledge of this case, we believe that this Settlement creates an outstanding result without the long delays and substantial risks of protracted litigation.

29. It is entirely possible that, even if the Plaintiffs had litigated for years, the Class had been certified, and the Plaintiffs had survived an almost inevitable appellate challenge to certification, prevailed in a trial on the merits, and won a likely appeal, the class would not have achieved anywhere near the relief that is provided in this Settlement. Of course, there is also the genuine risk of achieving no relief for the Class.

30. Stewart J. Schwab, Dean of Cornell Law School, and his colleague Professor

Kevin M. Clermont analyzed the success rates of employment discrimination cases in federal court, using official data from the Administrative Office of the United States Courts. Kevin M. Clermont and Stewart J. Schwab, *Employment Discrimination Plaintiffs in Federal Court: From Bad to Worse?*, 3 Harv. L. Pol'y Rev. 103, 127-29 (2009). These scholars found that plaintiffs have a more difficult time in employment discrimination cases than in virtually any other category of cases. Employment discrimination plaintiffs win only 28.47% of trials, compared to 44.94% percent for plaintiffs across all case categories. *Id*. Even when employment discrimination plaintiffs win at trial, the judgment is more likely to be reversed on appeal (41.10% of the time) than in almost any other category of cases. In contrast, trial judgments for defendants in these cases are much less likely to be reversed (8.72% of the time) – a five to one disparity in favor of employers. *Id*. The obstacles facing civil rights litigants are daunting, and class cases face the added hurdle of satisfying the requirements of Rule 23 of the Federal Rules of Civil Procedure.

31. The benefits provided in the programmatic relief portion of the Settlement direct Medicis to improve personnel practices and enhance the fairness of the settlement. To ensure proper implementation of the programmatic relief, Medicis will periodically report to Class Counsel and Mr. Hughes regarding its progress in implementing such improvements.

32. The common fund created by the settlement is $7.15 million for a class of 225 individuals, but the total value of the settlement is significantly more. First, Medicis must pay its share of the payroll taxes on the awards to Claimants from the fund. Second, Medicis agreed to pay up to an additional $100,000 towards Claims Administration. Based on my previous experience, I expect claims administration costs for a class of 225 individuals to be less than $100,000.

33. When compared with a recent sex discrimination settlement in the pharmaceutical industry, the settlement fund here is more than adequate. In *Bellifemine v. Sanofi-Aventis*, 07 civ 2207 (JGK), 2010 U.S. Dist. LEXIS 79679 (S.D.N.Y. Aug. 6, 2010), which was settled *before* the *Wal-Mart v. Dukes* decision, a court approved a sex discrimination settlement that created a $15.6 million common fund as well as some salary adjustments for a class of over 5,200 employees – which is more than 20 times as many class members as the 225 current and former Medicis employees who comprise this class. The $7.15 million common fund in this case is well within the range of employment discrimination settlements in recent years – or above the range, and is a rare result post-*Dukes*.

34. While every class member will have an opportunity to submit a claim form, based on past experience, we estimate that approximately 25% to 40% of the class will submit claim forms. Though the actual awards will vary based on each individual's tenure with Medicis and information submitted on the claim forms, rough estimations can illustrate the benefits that this settlement fund will provide. For example, if we assume a 40% claims rate, then the estimated average award to each claimant from the settlement fund will be over $40,000. The estimated average award to each claimant is still outstanding — over $20,000 — in the unlikely event that 80% of the class submits claims.

35. We thus expect the average class member award in this case to be in the tens of thousands of dollars, which is far more than the estimated average of $2,070 per person in the *Sanofi-Aventis* case, which in many ways is a comparable case.[1] The average class member awards in this case are expected to be similar to the awards in settlements approved by this court, such as *Augst-Johnson v. Morgan Stanley & Co.*, No. 1:06-CV-01142-RWR (D.D.C. Oct. 26,

[1] These estimates are based on the common fund minus requested attorneys' fees and costs.

2007) and *Carter v. Wells Fargo Advisors, LLC*, No. 1:09-CV-01752-CKK (D.D.C. June 9, 2011)). It is important to note that *Augst-Johnson* and *Carter* were resolved before the *Wal-Mart v. Dukes* decision. The Medicis Plaintiffs and Class, who began negotiations after *Dukes*, faced far more litigation risk. The result achieved in this case is particularly remarkable considering the legal developments over the last few years.

36. Each class member who completes a Claim Form and Release will have an opportunity to receive a monetary payment without being required to prove in court that she experienced any actual injury. This is an enormous benefit that compares favorably with other employment discrimination and harassment settlements, particularly those agreements where class members have been required to prosecute and succeed at individual mini-trials in order to recover a monetary award. If this case were handled in a similar fashion, it is possible that some of the Claimants could not successfully prosecute their individual damages in a mini-trial. This could result in some Claimants receiving nothing, a situation that will not occur here.

37. The allocation of monetary awards to class members from the Settlement Fund will be based on a scoring system developed by the Claims Administrator and Class Counsel using the factors set forth in the Settlement Agreement. These factors include: (i) length of tenure (*e.g.*, weeks worked) at Medicis; (ii) facts provided on the Claim Form supporting individual claims of sex-based discrimination; (iii) contributions to the investigation and prosecution of this matter; and (iv) the extent of claims released in the Settlement.

38. The Claims Administrator will develop a point system to use in scoring the Claim Forms. Each factor identified in the Settlement Agreement and each category on the Claim Form will be assigned points. Class Counsel will seek the Court's approval of the point system or formula before distributing monetary awards to eligible claimants.

39. The Claims Administrator agreed to by the parties is Thomas ("Tommy") Warren of Settlement Services Inc. ("SSI"). Mr. Warren has over 30 years of experience in class action and civil rights law and over 15 years of experience in settlement administration. He also served as the claims administrator in three gender discrimination cases in the financial services industry, all of which involved a similar claim form review process. *See, e.g.*, *Carter v. Wells Fargo Advisors, LLC*, No. 1:09-CV-01752, ECF No. 53 (D.D.C. Sept. 17, 2012) (conducting a searching review of SSI's claims administration process and finding it fair, reasonable, and adequate). Class Counsel are confident that Mr. Warren will fulfill his duties as Claims Administrator with distinction.

Calculation of Class Counsel's Lodestar Attorneys' Fees and Expenses Through July 15, 2013 and Description of Future Work and Expenses

40. As of August 31, 2013, Class Counsel had devoted approximately 3,250 hours to the representation of the Plaintiffs and proposed Plaintiff settlement class. At their respective regular hourly billing rates, Class Counsel's aggregate lodestar as of August 31, 2013, was approximately $1.4 million.

41. As of August 31, 2013, Class Counsel have advanced case expenses of more than $104,000.00 in connection with their representation of Plaintiffs and the proposed Plaintiff Class. The vast majority of the case expenses are for the services of consulting experts and the private mediator. In my opinion, these expenses were reasonably necessary to adequately represent the Class in this case.

42. I anticipate that Class Counsel will perform substantial additional legal work in connection with the settlement – most notably, preparing for and participating in the final approval hearing, providing assistance to class members in completing the claim form, working with a claims administer to develop and propose a class member distribution formula for the

Court's consideration, and responding to class member inquiries. The majority of this work will take place within the first 12 to 18 months following preliminary approval.

43. I further anticipate that Class Counsel will perform additional work monitoring the implementation of and enforcing compliance with the settlement throughout the three-year term of the settlement agreement. I anticipate that this work will include reviewing reports, investigating and responding to complaints of non-compliance by class members, and participating in various meetings and conference calls with co-counsel and, when necessary, defense counsel.

44. I anticipate that Class Counsel will advance additional expenses in connection with the settlement. These expenses will include costs related to the fairness hearing, class member communications, and claims administration, as well as monitoring the settlement over a three-year period.

45. Class Counsel will provide further detail regarding their aggregate lodestar and expenses prior in their motion for fees and expenses that will be filed prior to a final fairness hearing.

Recommendation for Preliminary Approval and Notice to the Class

46. Ms. Kane, Ms. Eardley, and I carefully considered and discussed whether to recommend that the Class accept the settlement, based on the following: our knowledge of the strengths and weaknesses of the factual case we developed through informal discovery; our knowledge of the strengths and weaknesses regarding class certification; the class claims on the merits under prevailing law; our knowledge and experience of the serious risks of litigating employment discrimination class actions; and the inevitable years of delay in obtaining a recovery, if any, at trial and after appeal. We also consulted with each of the Named Plaintiffs

and learned that all of them support the settlement.

47. Based on this knowledge and experience, we determined that even if the Class were certified and proceeded to trial, and was successful, it would be unlikely that the Class would obtain better monetary recovery and programmatic relief. We believe that agreeing to this settlement, which would provide relief far more quickly than litigation, is undoubtedly in the best interests of the Class. My co-counsel are all in strong agreement with this assessment.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of September 2013 in Washington, D.C.

Cyrus Mehri