SECURITIES & EXCHANGE COMMISSION EDGAR FILING

MEDICINES CO /DE

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE TO

(Rule 14d-100)

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

(Amendment No. 4)

TARGANTA THERAPEUTICS CORPORATION

(Name of Subject Company (Issuer))

THE MEDICINES COMPANY
BOXFORD SUBSIDIARY CORPORATION

(Names of Filing Persons (Offerors))

Common Stock, par value $0.0001
(Title of Class of Securities)

87612C100
(CUSIP Number of Class of Securities)

Paul M. Antinori
General Counsel & Senior Vice President
The Medicines Company
8 Sylvan Way
Parsippany, New Jersey 07054
(973) 290-6000
(Name, Address and Telephone Number of Person Authorized to Receive
Notices and Communications on Behalf of Filing Persons)

with copies to:

David E. Redlick
Hal J. Leibowitz
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
(617) 526-6000

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee**
$164,578,333	$6,468

* Estimated for purposes of calculating the amount of the filing fee only, in accordance with Rule 0-11(d) under the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"). The transaction valuation was calculated by multiplying (a) the sum of (i) the closing cash payment of $2.00 per share plus (ii) the maximum amount payable with respect to the contingent payment rights per share ($4.55) by (b) the number of shares of common stock, par value $0.0001 per share ("Shares"), of Targanta Therapeutics Corporation ("Targanta") outstanding on a fully diluted basis as of January 9, 2009 as represented by Targanta in the Agreement and Plan of Merger, dated as of January 12, 2009, among The Medicines Company ("MDCO"), Boxford Subsidiary Corporation (the "Offeror") and Targanta, consisting of (x) 20,991,316 Shares issued and outstanding, (y) 3,390,538 Shares issuable upon exercise of outstanding options and (z) 744,609 Shares issuable upon exercise of outstanding warrants.

** The amount of the filing fee was calculated in accordance with Rule 0-11(d) of the Exchange Act by multiplying the transaction valuation by 0.0000393.

☑ Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid:	$6,468	Filing Party:	The Medicines Company and Boxford Subsidiary Corporation
Form or Registration No.:	Schedule TO	Date Filed:	January 27, 2009

o Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

☑ third-party tender offer subject to Rule 14d-1.
o issuer tender offer subject to Rule 13e-4.
o going-private transaction subject to Rule 13e-3.
o amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offero

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

o Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
o Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

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This Amendment No. 4 ("Amendment No. 4") amends and supplements the Tender Offer Statement on Schedule TO originally filed with the U.S. Securities and Exchange Commission ("SEC") on January 27, 2009, as amended and supplemented by Amendment No. 1 filed with the SEC on February 4, 2009 ("Amendment No. 1"), Amendment No. 2 filed with the SEC on February 11, 2009 ("Amendment No. 2"), and Amendment No. 3 filed with the SEC on February 13, 2009 ("Amendment No. 3"), by The Medicines Company, a Delaware corporation ("MDCO"), and Boxford Subsidiary Corporation, a Delaware corporation and a wholly owned subsidiary of MDCO ("Offeror"), relating to the offer by Offeror to purchase all of the outstanding shares of common stock, par value $0.0001 per share (the "Shares"), of Targanta Therapeutics Corporation, a Delaware corporation ("Targanta"), for consideration of (1) $2.00 per Share, net to the seller in cash (such amount or any greater amount per Share paid at closing pursuant to the Offer, the "Closing Consideration"), plus (2) the contractual right to receive up to an additional $4.55 per Share in contingent cash payments if specified regulatory and commercial milestones are achieved within agreed upon time periods (the rights to such amount or to any greater contingent cash payments per Share that are offered pursuant to the Offer, the "Contingent Payment Rights"), upon the terms and subject to the conditions set forth in the Offer to Purchase dated January 27, 2009 (the "Offer to Purchase"), as amended and supplemented by the Supplement dated February 13, 2009 (the "Supplement"), and in the related Letter of Transmittal, which, together with any amendments or supplements to the Offer to Purchase and the Letter of Transmittal, collectively constitute the "Offer". The Closing Consideration and any amounts paid with respect to Contingent Payment Rights will be subject to any required withholding of taxes, and no interest will be paid thereon. The Offer is made pursuant to the Agreement and Plan of Merger, dated as of January 12, 2009 (the "Merger Agreement"), among MDCO, Offeror and Targanta. Copies of the Offer to Purchase, the related Letter of Transmittal and the Supplement are filed as Exhibits (a)(1)(A), (a)(1)(B) and (a)(1)(G), respectively, to the Schedule TO.

This Amendment No. 4 is filed solely for the following purposes: to describe a memorandum of understanding relating to the settlement of a lawsuit and to file additional exhibits to the Tender Offer Statement on Schedule TO relating to the settlement of the lawsuit.

All references to the Schedule TO mean the Schedule TO, as amended by Amendment No. 1, Amendment No. 2 and Amendment No. 3. All capitalized terms used in this Amendment No. 4 without definition have the meanings ascribed to them in the Schedule TO or the Offer to Purchase.

The information in the Offer to Purchase, as amended and supplemented by the Supplement, and the related Letter of Transmittal is incorporated in this Amendment No. 4 by reference to all of the applicable items in the Schedule TO, except that such information is amended and supplemented to the extent specifically provided in this Amendment No. 4.

Item 11. Additional Information.

Item 11 of the Schedule TO is hereby amended and supplemented by replacing the two paragraphs added to that Item in Amendment No. 1 with the following text:

"As disclosed in the Tender Offer Statement on Schedule TO originally filed with the SEC on January 27, 2009, Martin Albright and Vito Caruso filed a lawsuit in the Business Session of the Superior Court for Suffolk County, Massachusetts (Civ. Action No 09-0269-BLS) on January 21, 2009 against Targanta and each member of Targanta's Board of Directors including its President and Chief Executive Officer, MDCO and Offeror. A copy of the Complaint is filed as Exhibit (a)(5)(G) to the Tender Offer Statement on Schedule TO.

On February 2, 2009, the plaintiffs filed an Amended Complaint in the Business Session of the Superior Court for Suffolk County, Massachusetts. The Amended Complaint alleges that (1) the defendants breached their fiduciary duties, and/or aided and abetted the breach of fiduciary duties, owed to Targanta stockholders in connection with the Offer, (2) Targanta failed to disclose certain information to its stockholders in connection with the Offer and (3) the consideration being offered pursuant to the Offer is inadequate. The Amended Complaint seeks to be certified as a class action on behalf of the public stockholders of Targanta and seeks injunctive relief enjoining the Offer, or, in the event the Offer has been consummated prior to the court's entry of final judgment, rescinding the Offer or awarding rescissory damages. The Amended Complaint also seeks an accounting for all damages and an award of costs, including a reasonable allowance for attorneys' and experts' fees and expenses. A copy of the Amended Complaint is filed as Exhibit (a)(5)(H) to the Tender Offer Statement on Schedule TO.

On February 17, 2009, the plaintiffs filed a Notice of Motion and Motion for Preliminary Injunction, a Memorandum in Support of Motion for Preliminary Injunction and affidavits in support of the motion from Juan E. Monteverde and Matthew Morris. Copies of these documents are filed as Exhibit (a)(5)(J) to the Tender Offer Statement on Schedule TO.

While the defendants believe that the lawsuit is entirely without merit and that they have valid defenses to all claims, in an effort to minimize the cost and expense of any litigation, on February 19, 2009, the defendants entered into a memorandum of understanding ("MOU") with the parties to the lawsuit providing for the settlement of the lawsuit. Subject to court approval and further definitive documentation, the MOU resolves the allegations by the plaintiffs against the defendants in connection with the Merger Agreement and the transactions contemplated by the Merger Agreement, including without limitation the Offer and the Merger, and provides a release and settlement by the purported class of Targanta's stockholders of all claims against the defendants and their affiliates and agents in connection with the Merger Agreement and the transactions contemplated by the Merger Agreement, including without limitation the Offer and the Merger. In exchange for such release and settlement, pursuant to the terms of the MOU, the parties agreed, after arm's length discussions between and among the parties, that Targanta would provide additional supplemental disclosures to its Schedule 14D-9 previously filed with the SEC. The defendants have also agreed not to oppose any fee application by plaintiffs' counsel that does not exceed $250,000. The settlement, including the payment by Targanta or any successor thereto of any such attorneys' fees, is also contingent upon, among other things, the Merger becoming effective under Delaware law. In the event that the settlement is not approved and such conditions are not satisfied, the defendants will continue to vigorously defend the lawsuit. A copy of the MOU is filed as Exhibit (d)(5) to the Tender Offer Statement on Schedule TO.

The foregoing description of the lawsuit and the MOU does not purport to be complete and is qualified in its entirety by reference to the documents filed as Exhibits (a)(5)(G)-(a)(5)(J) and Exhibit (d)(5) to the Tender Offer Statement on Schedule TO and which are incorporated herein by reference.

MDCO and Offeror have denied, and continue to deny, that either of them has committed or aided and abetted in the commission of any violation of law of any kind or engaged in any of the wrongful acts alleged in the above-referenced lawsuit. MDCO and Offeror each expressly maintains that it has diligently and scrupulously complied with its legal duties, and has executed the MOU solely to eliminate the burden and expense of further litigation.

On February 20, 2009, Targanta issued a press release announcing the settlement of the lawsuit described above. The full text of the press release is attached hereto as Exhibit (a)(5)(K) and is incorporated herein by reference."

Item 12. Exhibits.

Item 12 of the Tender Offer Statement on Schedule TO is hereby amended and supplemented by adding the following exhibits:

"(a)(5)(J)	Notice of Motion and Motion for Preliminary Injunction and Memorandum in Support of Motion for Preliminary Injunction filed on February 17, 2009, in the Superior Court for Suffolk County, Massachusetts; Affidavits of Juan E. Monteverde and Matthew Morris, filed on February 17, 2009, in the Superior Court for Suffolk County, Massachusetts."
"(a)(5)(K)	Press Release issued by Targanta dated February 20, 2009, announcing the settlement of the shareholder litigation relating to the Offer."
"(d)(5)	Memorandum of Understanding, dated February 19, 2009, by and among (i) Levi & Korsinsky, L.L.P., Lead Counsel for Plaintiffs Martin Albright and Vito Caruso and the Class, (ii) Ropes & Gray LLP, Counsel for Defendants Targanta Therapeutics Corporation, Mark Leuchtenberger, Stéphane Bancel, Garen Bohlin, Jeffrey Courtney, Rosemary Crane, William Crouse, Eric Gordon, Ph.D. and Dilip Mehta, M.D., Ph.D. and (iii) Wilmer Cutler Pickering Hale and Dorr LLP, Counsel for Defendants The Medicines Company and Boxford Subsidiary Corporation."

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: February 20, 2009

THE MEDICINES COMPANY

By: /s/ Glenn P. Sblendorio
Name: Glenn P. Sblendorio
Title: Chief Financial Officer and Executive Vice President

BOXFORD SUBSIDIARY CORPORATION

By: /s/ Glenn P. Sblendorio
Name: Glenn P. Sblendorio
Title: Treasurer

EXHIBIT INDEX

Exhibit No.	
*(a)(1)(A)	Offer to Purchase, dated January 27, 2009.
*(a)(1)(B)	Form of Letter of Transmittal.
*(a)(1)(C)	Form of Notice of Guaranteed Delivery.
*(a)(1)(D)	Form of Letter from Georgeson Inc. to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
*(a)(1)(E)	Form of Letter from Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees to Clients.
*(a)(1)(F)	Form of Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.
*(a)(1)(G)	Supplement dated February 13, 2009 to Offer to Purchase dated January 27, 2009.
*(a)(5)(A)	Press Release issued by MDCO, dated January 12, 2009, announcing the execution of the Agreement and Plan of Merger among MDCO, Offeror and Targanta (incorporated in this Schedule TO by reference to the Schedule TO-C filed by MDCO on January 13, 2009).
*(a)(5)(B)	Fact Sheet issued by MDCO dated January 12, 2009, regarding announcement of the Agreement and Plan of Merger among MDCO, Offeror and Targanta (incorporated in this Schedule TO by reference to the Schedule TO-C filed by MDCO on January 13, 2009).
*(a)(5)(C)	Transcript of the conference call on January 13, 2009 regarding announcement of the Agreement and Plan of Merger among MDCO, Offeror and Targanta (incorporated in this Schedule TO by reference to the Schedule TO-C filed by MDCO on January 14, 2009).
*(a)(5)(D)	Notice dated January 26, 2009 from Targanta to Holders of Stock Options under the Targanta 2005 Stock Option Plan (incorporated in this Schedule TO by reference to the Schedule TO-C filed by MDCO on January 27, 2009).
*(a)(5)(E)	Form of Summary Advertisement published in the *New York Times* on January 27, 2009.
*(a)(5)(F)	Press Release issued by MDCO, dated January 27, 2009, announcing the commencement of the Offer.
*(a)(5)(G)	Complaint filed on January 21, 2009 in the Superior Court for Suffolk County, Massachusetts.
*(a)(5)(H)	Amended Complaint filed on February 2, 2009 in the Superior Court for Suffolk County, Massachusetts.
*(a)(5)(I)	Notice dated February 11, 2009 from Targanta to Holders of Targanta Warrants.
(a)(5)(J)	Notice of Motion and Motion for Preliminary Injunction and Memorandum in Support of Motion for Preliminary Injunction filed on February 17, 2009, in the Superior Court for Suffolk County, Massachusetts; Affidavits of Juan E. Monteverde and Matthew Morris, filed on February 17, 2009, in the Superior Court for Suffolk County, Massachusetts.
(a)(5)(K)	Press Release issued by Targanta dated February 20, 2009, announcing the settlement of the shareholder litigation relating to the Offer.
*(d)(1)	Agreement and Plan of Merger, dated as of January 12, 2009, among MDCO, Offeror and Targanta (incorporated in this Schedule TO by reference to the Current Report on Form 8-K filed by MDCO on January 14, 2009).
*(d)(2)	Confidentiality Agreement, dated as of October 6, 2008, between MDCO and Targanta.

Exhibit No.	
*(d)(3)	Form of Contingent Payment Rights Agreement, to be entered into between The Medicines Company and American Stock Transfer & Trust Company (incorporated in this Schedule TO by reference to the Current Report on Form 8-K filed by MDCO on January 14, 2009).
*(d)(4)	Form of Stockholders' Agreement, dated as of January 12, 2009, entered into between MDCO and each of Caduceus Private Investments III LP, OrbiMed Associates III, LP, Radius Venture Partners II, LP, Radius Venture Partners III QP, LP, Radius Venture Partners III, LP, Radius Venture Partners III (OH), LP, Seaflower Health Ventures III, L.P., Seaflower Health Ventures III Companion Fund, L.P., J&L Sherblom Family LLC, Skyline Venture Partners Qualified Purchaser Fund IV, L.P., Skyline Venture Partners Qualified Purchaser Fund III, L.P., Skyline Venture Partners III, L.P., VenGrowth Advanced Life Sciences Fund Inc. and VenGrowth III Investment Fund Inc. (incorporated in this Schedule TO by reference to the Current Report on Form 8-K filed by MDCO on January 14, 2009).
(d)(5)	Memorandum of Understanding, dated February 19, 2009, by and among (i) Levi & Korsinsky, L.L.P., Lead Counsel for Plaintiffs Martin Albright and Vito Caruso and the Class, (ii) Ropes & Gray LLP, Counsel for Defendants Targanta Therapeutics Corporation, Mark Leuchtenberger, Stéphane Bancel, Garen Bohlin, Jeffrey Courtney, Rosemary Crane, William Crouse, Eric Gordon, Ph.D. and Dilip Mehta, M.D., Ph.D. and (iii) Wilmer Cutler Pickering Hale and Dorr LLP, Counsel for Defendants The Medicines Company and Boxford Subsidiary Corporation.

* Previously filed.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
Civ. Action No. 09-0269-BLS

MARTIN ALBRIGHT AND VITO CARUSO, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
v.	)
MARK LEUCHTENBERGER, STÉPHANE BANCEL, M.D., GAREN BOHLIN, JEFFREY COURTNEY, ROSEMARY A. CRANE, WILLIAM W. CROUSE, ERIC M. GORDON, PH.D., DILIP MEHTA, M.D., PH.D, TARGANTA THERAPEUTICS CORPORATION, THE MEDICINES COMPANY, AND BOXFORD SUBSIDIARY CORPORATION,	)
Defendants.	)

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

TO THIS HONORABLE COURT AND TO ALL PARTIES AND ATTORENYS OF RECORD:

Plaintiffs, by and through their attorneys of record, hereby move this Court for an order preliminarily enjoining Defendants, their agents, employees, and anyone acting on their behalf from facilitating, effectuating, enforcing, or taking steps to facilitate, effectuate, enforce or consummate the Proposed Transaction until such time as curative disclosures described in Plaintiffs' memorandum in support of their motion for preliminary injunction are made. The

motion is scheduled to be heard on February 23, 2009 at 10:00 a.m. Submitted herewith is Plaintiffs' memorandum in support of their motion and the declarations of Juan E. Monteverde and Matthew Morris, CFA, in support of Plaintiffs' motion.

February 16, 2009

Respectfully submitted,

BERMAN DEVALERIO

/s/ Kristin J. Moody
Norman Berman (BBO# 040460)
Jeffrey C. Block (BBO# 600747)
Kristin Moody (BBO# 661792)
One Liberty Square
Boston, MA 02109
Telephone: (617) 542-8300
Facsimile: (617) 542-1194

LEVI & KORSINSKY, LLP
Joseph Levi (to be admitted *pro hac vice*)
Juan E. Monteverde (*pro hac vice* admission pending)
39 Broadway, Suite 1601
New York, NY 10006
Telephone: (212) 363-7500
Facsimile: (212) 363-7171

CERTIFICATE OF SERVICE

I, Kristin J. Moody, hereby certify that a true and correct copy of the above document was served on counsel for the defendants via U.S. mail and electronic mail.

February 17, 2009

/s/ Kristin J. Moody
Kristin J. Moody

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
Civ. Action No. 09-0269-BLS

MARTIN ALBRIGHT AND VITO CARUSO, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
MARK LEUCHTENBERGER, STÉPHANE BANCEL, M.D., GAREN BOHLIN, JEFFREY COURTNEY, ROSEMARY A. CRANE, WILLIAM W. CROUSE, ERIC M. GORDON, PH.D., DILIP MEHTA, M.D., PH.D, TARGANTA THERAPEUTICS CORPORATION, THE MEDICINES COMPANY, AND BOXFORD SUBSIDIARY CORPORATION,	)
Defendants.	)

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I. PRELIMINARY STATEMENT

Plaintiffs, by their attorneys, respectfully request this Court to enforce, by preliminary injunction, their right to receive information necessary to make a fully informed decision whether to tender their shares in connection with the proposed acquisition in which Defendants The Medicines Company Inc. ("Medicines") and Boxford Subsidiary Corporation ("Boxford" or "Merger Sub") plan to acquire all the outstanding shares of Targanta Therapeutics Corporation ("Targanta" or the "Company") through a cash tender offer that is set to expire on **February 24, 2009** (the "Proposed Transaction").

On January 27, 2009, the Company filed a Recommendation Statement on Form 14D-9 ("14D-9") with the Securities and Exchange Commission ("SEC") that failed to disclose certain material information. (The 14D-9 is attached hereto as Exhibit A.) Plaintiffs have conducted expedited discovery and have confirmed that the 14D-9 is materially deficient.

An order enjoining the Proposed Transaction until Defendants make corrective disclosures is necessary to prevent Targanta's public shareholders from being irreparably harmed. Without such an order, Targanta's public shareholders will be forced to make a decision concerning their equity interests in the Company based on inadequate information — a decision that cannot be undone. Therefore, Plaintiffs respectfully request that this Court temporarily enjoin the Proposed Transaction **until Defendants have disclosed all material facts concerning the Proposed Transaction** .

Pursuant to Judge Neel's order in connection with the scheduled preliminary injunction hearing scheduled for February 23, 2009 at 10 a.m., Plaintiffs hereby submit this memorandum in support of their motion for a preliminary injunction to temporarily enjoin the Proposed Transaction.

II. STATEMENT OF FACTS

Targanta is a corporation organized under the laws of the State of Delaware and maintains its principal corporate offices at 222 Third Street, Suite 2300, Cambridge, MA 02142-1122. The Company develops and commercializes antibiotics to treat serious infections in the hospital and other institutional settings. Its drug pipeline includes an intravenous version of oritavancin, a semi-synthetic lipoglycopeptide antibiotic currently awaiting EU regulatory approval, and an oral version of oritavancin for the possible treatment of Clostidium difficile-related infection. *See* Declaration of Juan E. Monteverde in Support of Plaintiffs' Motion for

Preliminary Injunction ("Monteverde Decl.").

Targanta recently went public in October 2007 through an initial public offering in which Leerink Swann LLC ("Leerink") was an underwriter. *See* Monteverde Decl., ¶ 3. On September 2, 2008, before the Targanta Board decided to explore the sale of the Company, Leerink, on its own, contacted Glenn Sblendorio, Executive Vice President and Chief Financial Officer of Medicines, to explore if Medicines would be interested in pursuing a strategic relationship or transaction with Targanta. *Id.* According to the 14D-9, Leerink had previously advised Medicines and, therefore, Leerink was apparently familiar with both Medicines and Targanta. *Id.* Leerink then put Medicines in contact with Targanta which resulted in Medicines executing a confidentiality agreement on October 6, 2008 for the purpose of conducting due diligence on Targanta. *Id.*

After determining that Medicines was interested in acquiring Targanta, on December 10, 2008, the Company formally retained Leerink as its financial adviser and authorized Leerink to identify and contact potential acquirers for the Company. *Id.* at ¶ 4. On that same day, Leerink commenced a sales process by contacting 22 parties to assess their interest in acquiring the Company. *Id.* Only seven days later and without conducting any meaningful follow-up with the contacted parties, Leerink advised Targanta to enter into an exclusivity agreement with Medicines. *Id.* Targanta executed an exclusivity agreement with Medicines on December 21, 2008 that was set to expire at 5pm on Friday, January 9, 2009. *Id.*

During the exclusivity period, Targanta received at least three indications of interest. *Id.* at ¶ 5. In fact, two of three indications of interest were from parties that were not on the list of 22 parties contacted by Leerink. *Id.* The Company, however, was forced to ignore these indications of interest because of the hastily agreed to exclusivity agreement. *Id.* Then, on

Sunday, January 11, 2009, Targanta entered into a merger agreement with Medicines, which was announced on January 12, 2009. *Id.*

Surprisingly, after failing to conduct a credible sales process and turning away potential acquirers during the exclusivity period, the Board agreed to include a "no solicitation" provision in the merger agreement that prohibited the Board from seeking a superior offer. *Id.* at ¶ 6. Thus, the Board agreed to sell the Company after conducting a hasty and superficial sales process and without conducting any market check to ensure that shareholder value was maximized.

On January 27, 2009, Targanta filed with the SEC its 14D-9 that recommended that shareholders tender their shares in connection with Proposed Transaction. *Id.* at ¶ 7. As explained below, the 14D-9 is replete with material misstatements and omissions. Given the lack of a credible sales process and market check, the need for full and accurate disclosure is heightened because that is all shareholders have to rely on in deciding whether the Proposed Transaction is fair.

III. THE MATERIALLY DEFICIENT 14D-9

The 14D-9 is materially deficient in the following ways:

Management's probability assumptions relied on by Leerink. Financial projections are generally the most important data for investors deciding whether to tender their shares. In rendering its fairness opinion, Leerink relied on a comprehensive set of probabilities prepared by management that reflected management's view as to the likelihood of the Company's products progressing from clinical development to commercialization. *Id.* at ¶ 8. Leerink used these probabilities to derive a set of financial projections it relied on in its fairness opinion. *Id.* These probabilities must be disclosed so that Targanta shareholders have the information necessary to

evaluate the reliability of Leerink's fairness opinion, the Company's prospects as a standalone entity and the likelihood of receiving the future CPR payments if the Proposed Transaction is completed. *Id.*

Key assumptions and information used by Leerink. In its fairness opinion, Leerink made several key assumptions for which the 14D-9 provides no explanation that would allow investors to evaluate the reliability of such assumptions. *Id.* at ¶ 9. For example, Leerink selected different discount rate ranges for its *Historical Stock Trading* and *Discounted Cash Flow* analyses but the 14D-9 fails to explain how these discount rate ranges were selected and why different ranges were selected for each of the analyses. *Id.* Also, for several of the analyses, the 14D-9 discloses conclusions reached by Leerink but fails to disclose certain intermediary steps and assumptions made by Leerink that shareholders need to evaluate the reliability of the fairness opinion. *Id.*

Leerink's relationship with Medicines. The 14D-9 states that Leerink has had prior experiences with Medicines but otherwise fails to disclose the nature of these prior experiences, whether Leerink has rendered financial services to Medicines and what fees, if any, that Medicines has paid to Leerink. *Id.* at ¶ 10. Because the nature and extent of any prior relationship between Leerink and Medicines raises a potential conflict of interest, the 14D-9 must fully disclose any such prior relationships so that Targanta shareholders can assess whether such facts undermine the credibility of Leerink as a financial adviser to Targanta.

As it stands now, Plaintiffs and the other Targanta shareholders must decide ***before February 24, 2009*****,** at the latest, whether to tender their shares and cash out their equity interest in the Company. *Id.* at ¶ 11. They cannot adequately do so, on an informed basis, with the inadequate and misleading information they have available to them now. *Id.*

IV. ARGUMENT

A. THE PRELIMINARY INJUNCTION STANDARD

In determining whether to grant a preliminary injunction, Massachusetts courts use a three-part balancing test involving a combination of the moving party's claim of injury and chance of success on the merits. *See Hull Mun. Lighting Plant v. Massachusetts Municipal Wholesale Elec. Co.* , 399 Mass. 640, 641 (1987) (affirming lower court's grant of preliminary injunction requiring continued payments where economic loss would be irreparable and moving party was likely to ultimately prevail). First, the court must evaluate the merits of a moving party's claim and determine whether it is likely to succeed. *See id.* at 644; *Grady* v. *Campbell*, No. 9401163, 1994 WL 879464, at *2 (Mass. Super. Aug. 31, 1994). The movant does not need to show that he cannot lose; just that success on the merits is probable. *See A. W. Chesterton Co., Inc. v. Chesterton*, 907 F. Supp. 19, 22 (D. Mass. 1995) (granting preliminary injunction to prevent a minority shareholder from violating his fiduciary duties by forcing the company to choose between purchasing his shares and losing its favorable tax status). Next, the court must find that there is a substantial risk of irreparable harm if it fails to grant the preliminary injunction. *See Hull Mun. Lighting Plant*, 399 Mass, at 643. Finally, the court must balance the risk of harm to the movant in the absence of an injunction against the harm suffered by the opposing party if the injunction is granted. *Id.*

Preliminary injunctions are routinely granted in lawsuits such as this one where a plaintiff is attempting to block an improper cash-out merger. [1] *See Sealy Mattress Co.* v. *Sealy, Inc.*, 532 A.2d 1324, 1326, 1342 (Del. Ch. 1987) (granting minority shareholders motion to preliminarily

[1] In the absence of a Massachusetts case on point, Massachusetts courts often look to Delaware case law in deciding cases such as the one at bar. *See e.g., In re Mi-Lor Corp.*, 348 F.3d 294, 304 (1st Cir. 2003) (looking to Delaware law to develop Massachusetts corporate law).

enjoin proposed cash-out merger due to breach of fiduciary duties by directors and an unfair price); *Roizen v. Multivest, Inc.*, No. 6535, 1981 WL 7631, at *4 (Del. Ch. Sept. 25, 1981) (issuing preliminary injunction blocking going-private merger where directors, who were also majority shareholders, had not adequately shown the merger was fair to minority shareholders or that the cash-out price was reasonable). Damages are difficult to determine when a contested merger is allowed to go forward but then ultimately ruled improper. *See Sealy Mattress*, 532 A.2d at 1341. Courts often consider the fact that damages would be difficult to assess as proof of irreparable harm to plaintiffs. *See id.* Fundamentally, a preliminary injunction is a mechanism to maintain the status quo until the merits of a case can be decided. *See Grady*, 1994 WL 879464 at *2. By granting a preliminary injunction and blocking an imminent merger, a court can preserve this status quo until it is sure of the merger's legitimacy. *See McCormack* v. *Zimmerman*, No. 045500 BLS, 2005 WL 127036 (Mass. Super. Jan. 3, 2005).

B. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS

With regard to this requirement, it is apparent that "the applicable standard on a motion for preliminary injunction falls well short of that which would be required to secure final relief following trial, since it explicitly requires only that the record establish a reasonable probability that this greater showing will ultimately be made." *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 579 (Del. Ch. 1998) (quoting Donald J. Wolfe, Jr. and Michael A. Pittenger, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY, § 10-2(b)(2)).[2]

Plaintiffs have alleged that the Defendants have breached their fiduciary duty of candor owed to the Company's public shareholders by disclosing misleading information in and

[2] Plaintiffs' claims are governed by Delaware law under the "internal affairs doctrine." *See, e.g., Harrison v. NetCentric Corp*., 433 Mass. 465, 471 (2001) (Today, we adhere to and reaffirm our policy that the State of incorporation dictates the choice of law regarding the internal affairs of a corporation").

omitting material information from the 14D-9. The fiduciary duty of candor requires disclosure of all information in defendants' possession that is germane to the transaction at issue. *See Shell Petroleum, Inc. v. Smith*, 606 A.2d 112, 114 (Del. 1992); *Stroud v. Grace*, 606 A.2d 75, 84-85 (Del. 1992); *Rosenblatt v. Getty Oil Co.*, 493 A.2d 929, 944 (Del. 1985). Directors "are under a fiduciary duty to disclose fully and fairly all material information within the board's control when it seeks shareholder action." *Arnold v. Society for Sav. Bancorp, Inc.* , 650 A.2d 1270, 1277 (Del. 1994) (citations omitted). The well-established test for whether a fact is material is as follows:

> An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote...It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused a reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been reviewed by the reasonable investor as having significantly altered the "total mix" of information made available.

Id. (citations omitted). "Courts should not assess the qualitative importance of a particular disclosure item because the standard requires 'full' disclosure of all material facts." *Id.* (citations omitted). The standard is whether the fact would have been relevant to investors' decisions, not whether it necessarily would have changed investors' decisions regarding the transaction. *See Shell Petroleum*, 606 A.2d at 114; *Barkan* v. *Amsted Indus., Inc.*, 567 A.2d 1279, 1289 (Del. 1989).

It is fundamental that, in order to make an informed decision, shareholders need certain financial information including a fair summary of a financial advisor's analyses. As the Delaware Chancery Court has stated:

> [S]tockholders are entitled to a fair summary of the substantive work performed by the investment bankers upon whose advice the recommendations of their board as to how to vote on a merger or tender rely... [T]he disclosure of the banker's "fairness opinion" alone and without more, provides stockholders with nothing other than a conclusion, qualified by a gauze of protective language designed to insulate the banker from liability.
>
> The real informative value of the banker's work is not in its bottom-line conclusion, but in the valuation analysis that buttresses that result.

In re Pure Resources, Inc. S'holders Litig., 808 A.2d 421, 449 (Del. Ch. 2002). For example, in *In re Pure Resources, Inc.*, the Court held that shareholders confronted with the choice of tendering or not would find it material to know "key assumptions" that an investment banker used in performing its analyses. *See also In re Netsmart Techs. Inc. S'holders litig.*, 924 A.2d 171 (Del. Ch. 2007) (enjoining $115 million proposed merger because, inter alia, the proxy statement failed to disclose the company's financial projections); *In re PNB Holding Co. S'holders Litig.*, No. 28-N, 2006 WL 2403999, at *15 (Del. Ch. Aug. 18, 2006) ("In the context of a cash-out merger, reliable management projections of the company's future prospects are of obvious materiality to the electorate."); *Shell Petroleum*, 606 A.2d at 114 (Del. 1992) (affirming award of damages for breach of fiduciary duty in not disclosing material misstatements, such as an error in calculating the discounted cash flow analysis).

Here, there can be no doubt that Plaintiffs can demonstrate a reasonable probability of proving that the 14D-9 omitted material information needed by Targanta shareholders to render a fully informed decision as to whether or not to tender their shares.

1. Management's Probability Assumptions

The 14D-9 discloses a set of financial projections prepared by management for the years 2009 to 2023. *See* Exhibit A at 27. Management also provided Leerink with its assumptions for the probability and timing of oritavancin — the Company's key drug — advancing to successive

stages from clinical development to commercialization ("Phase Transition Probability Schedule"). *Id.* While the 14D-9 discloses that management has developed this set of probabilities that places odds on the Company's future successes with regulatory authorities and in the marketplace, the 14D-9 fails to disclose this highly material information. Knowledge of the Phase Transition Probability Schedule is, therefore, vital to a Targanta shareholder's tender decision because it embodies management's assessment as to the likelihood that the Company's products will progress from clinical development to commercialization. *See* Affidavit of Matthew Morris in Support of Plaintiffs' Motion for Preliminary Injunction ("Morris Aff.").

Furthermore, Leerink used the Phase Transition Probability Schedule to adjust the financial projection provided by management to derive a probability-weighted set of projections ("Probability Projections") which it relied on for its *Discounted Cash Flow Analysis* ("DCF"). Without disclosure of the Phase Transition Probability Schedule, shareholders have no way of assessing the reliability of the Probability Projections that Leerink derived using the Phase Transition Probability Schedule. *See* Morris Aff. ¶¶ 5-6.

The Phase Transition Probability Schedule is also material to Targanta shareholders who are being asked to tender their shares in the hope that they will receive CPR payments of up to $4.55 per share, as far as 12 years out, that depend on the future success of the Company's products. It is patently unfair to ask shareholders to assess the likelihood of their receiving these future CPR payments without providing them with management's assessment of the probability of success of these products — information that is contained in the Phase Transition Probability Schedule. *See* Morris Aff. ¶¶ 5-6.

Thus, the Phase Transition Probability Schedule is material because its disclosure will alter the "total mix" of information available to shareholders by providing them with

management's assessment of the probability of success of the Company's products — information that shareholders will undoubtedly rely on heavily when deciding whether or not to tender. Accordingly, the Proposed Transaction should be enjoined until the Phase Transition Probability Schedule is disclosed to Targanta shareholders.

2. Leerink's Financial Valuations are Based on Undisclosed "Black Box" Calculations

In several instances, the 14D-9 fails to disclose key steps performed by Leerink in connection with its fairness opinion, making it impossible to draw any conclusions as to the reliability of its analysis. For example, in the *Discounted Stock Price Analysis* summary disclosed in the 14D-9, Leerink utilized price/earnings multiples for selected companies but does not adequately disclose those multiples (except for years 2104 and 2015). *See* Exhibit A at 29-30. Then, based on those multiples, Leerink somehow estimated a range of implied per share values for Targanta. It is impossible, however, for shareholders to assess the reliability of Leerink's analysis without knowing the multiples it relied upon.

Also, in the *Selected Publicly Traded Companies* analysis, the 14D-9 discloses that Leerink used a range of enterprise values derived from certain public companies to calculate a range of implied per share equity value for the Company. *See* Exhibit A at 29. Once again, the enterprise values used and the implied per share values derived by Leerink are not adequately disclosed.

Third, in Leerink's *Transaction Premium Analysis* summary, the 14D-9 discloses that Leerink applied derived premiums to the Company's stock prices to obtain an implied per share equity value. *See* Exhibit A at 31. The premiums, however, are not disclosed.

Finally, in its *Historical Stock Trading Analysis*, Leerink used a 15% discount rate but used a discount rate range of 12.5% to 17.5% for its *Discounted Cash Flow Analysis*. *See*

Exhibit A at 32. The 14D-9 fails to disclose how Leerink selected these discount rates and why different rates are used for each analyses. Also, the 14D-9 fails to disclose whether Leerink used terminal values in its *Discounted Cash Flow Analysis* and, if so, the terminal values used. The selection of these key inputs has a profound impact on the results obtained and is therefore material to a shareholder's evaluation of Leerink's analysis.

Failure to disclose the assumptions and key information relied on by Leerink and simply disclosing the "black box" calculations are insufficient as a matter of law. As explained in *Netsmart*:

> Once a board broaches a topic in its disclosures, a duty attaches to provide information that is 'materially complete and unbiased by the omission of material facts.' For this reason, when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion ***as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.*** Only providing some of that information is insufficient to fulfill the duty of providing a 'fair summary of the substantive work performed by the investment bankers upon whose advice the recommendations of the [] board as to how to vote ... rely.

924 A.2d at 203 (emphasis added). Further, as explained by the Delaware Chancery Court in *Pure Resources*:

> The real informative value of the banker's work is not in its bottom-line conclusion, but in the valuation analysis that buttresses that result. . . [a] ***stockholder engaging in the before-the-fact decision whether to tender would find it material to know the basic valuation exercises that First Boston and Petrie Parkman undertook, the key assumptions that they used in performing them, and the range of values that were thereby generated. ...***
>
> ***[F]ailure to disclose the information will deprive the stockholders of information material to making an informed decision whether the exchange ratio is favorable to them.***

808 A.2d at 449-450 (emphasis added; footnotes omitted). As in *Pure Resources*, Defendants have only disclosed Leerink's bare bones conclusions but have otherwise withheld the assumptions and

key inputs relied on by Leerink — information that is necessary for shareholders to evaluate the reliability of the conclusion that are being ask to accept.

3. Leerink's Prior Dealings with Medicines

The financial advisor's fairness opinion is "one of the most important process-based underpinnings of a board's recommendation of a transaction to its stockholders and, in turn, for the stockholders' decisions on the appropriateness of the transaction." *Simonetti Rollover IRA v. Margolis* , C.A. No. 3694-VCN (Del Ch. June 27, 2008) (enjoined a stockholder vote pending disclosure of the financial advisor's pecuniary interest in the transaction). Here, the 14D-9 states that Leerink has had prior experiences with Medicines but fails to disclose the nature and extent of such prior experiences, whether Leerink rendered financial services to Medicines and any pecuniary interest it received in exchange that may give rise to conflicts of interest between Leerink and the Company. The extent of the prior relationship between Leerink and Medicines is especially material because: (i) Leerink was the one that initiated discussions between between Targanta and Medicines prior to the Targanta Board even considering a sale of the Company; (ii) Leerink recommended that the Company end the sales process after merely a week and without conducting any meaningful follow-up with the parties it contacted; (iii) Leerink recommended that the Company grant exclusivity to Medicines which prevented the Company from entertaining three indications of interest; (iv) the merger agreement contained a "no-solicitation" provision that prevented the Company from seeking a better alternative to the Medicines offer; and (v) the Board relied on Leerink's fairness opinion in recommending the Proposed Transaction to Targanta shareholders. Thus, because Leerink played a key role throughout the sales process that appears to be nothing more than an attempt to sell the Company to Medicines, it is vital that shareholders be given material information regarding Leerink's prior experiences

with Medicines so that shareholders can assess the integrity of the sales process and the credibility of Leerink's fairness opinion.

C. PLAINTIFFS AND THE CLASS WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION

If the tender offer is not enjoined pending supplemental disclosures, Plaintiffs and the Class will be irreparably harmed by the deprivation of their right to make an informed decision with respect to the Proposed Transaction. Delaware courts recognize "'the irreversible harm which would occur by permitting a stockholder vote on a merger to proceed without all material information necessary to make an informed decision.'" *In re MONY Group Inc. S'holder Litig*, 852 A.2d 9, 32 (Del. Ch. 2004) (quoting *State of Wis. Inv. Bd. V. Bartlett*, 2000 Del. Ch. LEXIS 42, 2000 WL 238026 at *10 (Del. Ch. Oct. 27, 1999)). Asking stockholders "to make a decision as to whether to seek appraisal or accept the merger price based upon allegedly inadequate information creates the potential for irreparable harm." *Morton v. Am. Mktg. Indus. Holdings*, C.A. No. 14550, 1995 Del. Ch. LEXIS 162, at *10 (Del. Ch. Oct. 5, 1995); *see also Netsmart*, 924 A.2d at 207-08 (Del. Ch. 2007) (irreparable harm typically found where stockholders forced to make an important decision with inadequate disclosures); *La. Mun. Police Employees' Ret. Sys. v. Crawford*, 918 A.2d 1172, 1192 (Del. Ch. 2007) (holding that "[s]hareholders would suffer irreparable harm [if they] were.. .forced to vote without knowledge of...material facts"); *In re Pure Res. S'holders Litig.*, 808 A.2d 421, 452 (Del. Ch. 2002) (holding that making a decision regarding a tender offer "on the basis of materially misleading or inadequate information" constitutes irreparable harm); *Gilmartin v. Adobe Res. Corp.*, 1992 WL 71510, *43 (Del.Ch. Apr, 1992) (granting plaintiffs' motion for preliminary injunction and holding "[t]he right to cast an informed vote is specific, and its proper vindication in this case requires a specific remedy such as an injunction, rather than a substitutionary remedy such as damages") ;

see also State of Wisconsin Investment Bd. v. Bartlett, 2000 WL 193115, *3 (Del.Ch. Feb. 9, 2000) (“I further find that the Medco shareholders will suffer irreparable harm as a matter of law if they must vote for or against the merger [on the planned date] given my findings that they will not have adequate time to receive, absorb and consider the supplemental material.”); *Sealy Mattress Co. of NJ., Inc. v. Sealy Inc.* , 532 A.2d, 1324, 1340 (Del. Ch. 1987) (where stockholders have not received sufficient information to make an informed decision, “the inability to make that choice constitutes irreparable harm....”).

Further, a preliminary injunction “would remedy the wrong caused to the Stockholders right to cas[t] a vote after a full and fair disclosure of material facts because the necessary supplemental disclosure can be accomplished quickly.” *MONY* Group, 852 A.2d at 3233. *See also Morton*, 1995 Del. C. LEXIS 162, at *9 (“corrective disclosure ... is a favored remedy”).

D. THE BALANCE OF HARDSHIPS FAVORS AN INJUNCTION

Here, the balance of equities weighs heavily in favor of granting injunctive relief. The denial of this limited interim relief will forever foreclose the Targanta shareholders from making an informed investment decision based on the withheld information. By contrast, granting injunctive relief will result in the ability of Defendants to comply with their fiduciary duties owed to Plaintiffs and the Class — a procedural protection for the Plaintiffs and the Class.

Equally important, no hardship to the Defendants will occur as a result of a preliminary injunction requiring that Targanta shareholders have the opportunity to consider material supplemental disclosures before deciding whether to tender their shares. *See In re Staples S’holders Litigation*, 792 A.2d 934 (Del Ch. 2001) ([O]ur cases recognize that it is appropriate for the court to address material disclosure problems through the issuance of a preliminary injunction that persists until the problems are corrected. An injunctive remedy of that nature specifically vindicates the stockholder right at issue — the right to receive fair disclosure of the

material facts necessary to cast a fully informed vote — in a manner that later monetary damages cannot and is therefore the preferred remedy, where practicable."); *see also State of Wisconsin Inv. Bd.* v. *Bartlett*, 2000 WL 193115 (Del. Ch. Feb. 9, 2000) (noting that hardships suffered by defendant by delay of vote were de minimus when compared to the possibility that the shareholders voted on the extinction of their corporation with less than all the material reasonably available to them); *In re Anderson, Clayton Shareholders' Litigation*, 519 A.2d 669, 676 (recognizing, in balancing harm, that delay in any large transaction may involve risks of employee agitation or market fluctuations, but finding those factors not especially significant in view of the fundamental importance of the transaction" and its likely long-term consequences).

Furthermore, Defendants will suffer no prejudice from a short postponement of the closing of the Proposed Transaction to give shareholders sufficient time to absorb the curative disclosures. Indeed, the Proposed Transaction was only announced on January 12, 2009, and the 14D-9 only issued on January 27, 2009. Accordingly, a mere few *weeks* will have gone by since the shareholders were first presented with the Transaction — a tremendously rapid pace for such a transaction. Furthermore, the merger agreement itself allows for the extension of time for the expiration of the tender in connection with the Proposed Transaction.

Any postponement of the closing of the Proposed Transaction, to the extent that is even necessary, to allow for corrective disclosures is, on balance, worth the cost because it will ensure an informed decision on the tender in connection with the Proposed Transaction. *See In re Staples*, 792 A.2d 934. The shareholders' right to an informed decision clearly must be protected. [R]espect for the shareholders' right to determine the course of this Company's future compels granting Plaintiffs motion for a preliminary injunction. *In re Anderson*, 519 A.2d 669, 679.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court issue an order preliminarily enjoining Defendants, their agents, employees, and anyone acting on their behalf from facilitating, effectuating, enforcing, or taking steps to facilitate, effectuate, enforce or consummate the Proposed Transaction until such time as curative disclosures are made.

February 16, 2009

Respectfully submitted,

HERMAN DEVALERIO

/s/ Kristin Moody

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
Civ. Action No. 09-0269-BLS

MARTIN ALBRIGHT AND VITO CARUSO, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
v.	)
MARK LEUCHTENBERGER, STÉPHANE BANCEL, M.D., GAREN BOHLIN, JEFFREY COURTNEY, ROSEMARY A. CRANE, WILLIAM W. CROUSE, ERIC M. GORDON, PH.D., DILIP MEHTA, M.D., PH.D, TARGANTA THERAPEUTICS CORPORATION, THE MEDICINES COMPANY, AND BOXFORD SUBSIDIARY CORPORATION,	)
Defendants.	)

AFFIDAVIT OF JUAN E. MONTEVERDE IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

JUAN E. MONTEVERDE, of full age, hereby states as follows:

1. I am an associate with Levi & Korsinsky, LLP and I am familiar with the facts in this action. This declaration is in support of Plaintiffs' Motion for Preliminary Injunction (the "Memorandum"). In order to prepare this declaration I have reviewed, gathered and relied on publicly available information, including, but not limited to, the Recommendation Statement on Form 14D-9 filed by the Targanta Therapeutics, Corporation ("Targanta") on January 27, 2009 and through the documents produced by Defendants in connection with this action.

2. Targanta is a corporation organized and existing under the laws of the State of

Delaware and maintains its principal corporate offices at 222 Third Street, Suite 2300, Cambridge, MA 02142-1122. The Company develops and commercializes antibiotics to treat serious infections in the hospital and other institutional settings. Its drug pipeline includes an intravenous version of oritavancin, a semi-synthetic lipoglycopeptide antibiotic currently awaiting EU regulatory approval, and an oral version of oritavancin for the possible treatment of Clostidium difficile-related infection.

3. Targanta recently went public in October 2007 through an initial public offering in which Leerink Swann LLC ("Leerink") was an underwriter. On September 2, 2008, before the Targanta Board decided to explore the sale of the Company, Leerink, on its own, contacted Glenn Sblendorio, Vice President and Chief Financial Officer of Medicines, to explore if Medicines would be interested in pursuing a strategic relationship or transaction with Targanta. The 14D-9 specifically states that Leerink had previously advised Medicines, and, therefore, Leerink was apparently familiar with both Targanta and Medicines. Leerink then put Medicines in contact with Targanta, which resulted in Medicines executing a confidentiality agreement on October 6, 2008 so that it could conduct due diligence on Targanta.

4. After determining that Medicines was interested in acquiring Targanta, on December 10, 2008, the Company formally retained Leerink as its financial adviser and authorized Leerink to identify and contact potential acquirers for the Company. On that same day, Leerink commenced a sales process by contacting 22 parties to assess their interest in acquiring the Company. Only seven days later and without conducting any meaningful follow-up with the contacted parties, Leerink advised Targanta to enter into an exclusivity agreement with Medicines. Targanta executed an exclusivity agreement with Medicines on December 21, 2008 that was set to expire at 5pm on Friday, January 9, 2009.

5. During the exclusivity period, Targanta received at least three indications of interest. In fact, two of three indications of interest were from parties that were not on the list of 22 parties contacted by Leerink. The Company, however, was forced to ignore these indications of interest because of the hastily agreed to exclusivity agreement. Then, on Sunday, January 11, 2009, Targanta entered into a merger agreement with Medicines which was announced on January 12,2009.

6. Surprisingly, after failing to conduct a credible sales process and seeing that potential acquirers were turned away during the exclusivity period, the Board agreed to include a “no solicitation” provision in the merger agreement that prohibited the Board from seeking a superior offer. Thus, the Board agreed to sell the Company after conducting a hasty and superficial sales process and without conducting any market check to ensure that shareholder value was maximized.

7. On January 27, 2009, Targanta filed with the SEC its 14D-9 that recommends the shareholders to tender their shares in connection with Proposed Transaction, as defined in the Memorandum. As explained in the Memorandum, the 14D-9 is replete with material misstatements and omissions.

8. In rendering its fairness opinion, Leerink relied on a comprehensive set of probabilities prepared by management that reflected management’s view as to the likelihood of the Company’s products progressing from clinical development to commercialization. Leerink used these probabilities to derive a set of financial projections it relied on in its fairness opinion. These probabilities must be disclosed so that Traganta shareholders have the information necessary to evaluate the reliability of Leerink’s fairness opinion, the Company’s prospects as a

standalone entity and the likelihood of receiving the future CPR payments if the Proposed Transaction is completed.

9. The fairness opinion of Leerink made several key assumptions for which the 14D-9 provides no explanation that would allow investors to evaluate the reliability of such assumptions. For example, Leerink selected different discount rate ranges for its *Historical Stock Trading and Discounted Cash Flow* analyses but the 14D-9 fails to explain how these discount rate ranges were selected and why different ranges were selected for each of the analyses. Also, for several of the analyses, the 14D-9 disclosed conclusions reached by Leerink but failed to disclose certain intermediary steps and assumptions made by Leerink that shareholders need to evaluate the reliability of the fairness opinion.

10. The 14D-9 also states that Leerink has had prior experiences with Medicines but otherwise fails to disclose the nature of these prior experiences, whether Leerink has rendered financial services to Medicines and what fees, if any, that Medicines has paid to Leerink.

11. As it stands now, Plaintiffs and the other Targanta shareholders must decide ***before February 24, 2009***, at the latest, based on inadequate and misleading information, whether to tender their shares and cash out their equity interest in the Company. They cannot adequately do so, on an informed basis, with the paltry information they have available to them now.

February 16, 2009

/s/ Juan E. Monteverde
Juan E. Monteverde, Esq.

New York State, New York County. Subscribed and sworn to before me, this 16th day of February, 2009.

/s/ Steven J. Corvi
Notary

STEVEN J. CORVI, SR.
NOTARY PUBLIC, STATE OF NEW YORK
NO. 30-4866352
QUALIFIED IN NASSAU COUNTY & NYC
COMMISSION EXPIRES JULY 28, 2010

CERTIFICATE OF SERVICE

I, Kristin J. Moody, hereby certify that a true and correct copy of the above document was served on counsel for the defendants via U.S. mail and electronic mail.

February 17, 2009

/s/ Kristin J. Moody
Kristin J. Moody

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
Civ. Action No. 09-0269-BLS

MARTIN ALBRIGHT AND VITO CARUSO, individually and on behalf of all others similarly situated,

Plaintiffs,

V.

MARK LEUCHTENBERGER, STÉPHANE BANCEL, M.D., GAREN BOHLIN, JEFFREY COURTNEY, ROSEMARY A. CRANE, WILLIAM W. CROUSE, ERIC M. GORDON, PH.D., DILIP MEHTA, M.D., PH.D, TARGANTA THERAPEUTICS CORPORATION, THE MEDICINES COMPANY, AND BOXFORD SUBSIDIARY CORPORATION,

Defendants.

AFFIDAVIT OF MATTHEW MORRIS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

State of Texas)
) ss.:
County of Dallas)

Before the undersigned, an officer duly commissioned by the laws of the State of Texas, on this 15th day of February 2009, personally appeared Matthew Morris, who having been first duly sworn, deposes and states:

I, Matthew Morris, state under penalty of perjury that:

1. I am the Managing Director of Fin Econ Partners, a financial advisory firm specializing in financial, economic and valuation issues relating to transactions, public reporting, tax planning, intellectual property and litigation. A copy of my curriculum vitae, which outlines my background and professional experience, is attached as Schedule A. I have acted as a financial advisor in numerous transactions over the course of my professional career. As part of my advisory practice, I routinely provide financial counsel to buyers and sellers of companies and prepare valuation and fairness opinions for a variety of purposes. Over the course of my career, I have prepared numerous valuations and other financial analyses of companies operating in the biotechnology / pharmaceutical industry and also worked for a biotech firm earlier in my career.

2. I was retained by Plaintiffs' legal counsel in connection with the above-captioned matter relating to a tender offer made by an affiliate of The Medicines Company, Inc. ("Medicines") to acquire the shares of Targanta Therapeutics Corporation ("Targanta" or the "Company") for upfront cash consideration of $2 per share plus additional cash consideration that is contingent on achieving certain future milestones (the "Proposed Transaction").

3. I relied on several sources of information, including documents produced in this matter, filings with the Securities and Exchange Commission ("SEC") and other public information. To the extent additional information is made available to me after the date of this opinion, I expressly reserve the right to update my analysis and opinion as appropriate. Although referred to in my affidavit, I have not attached a copy of Targanta's Recommendation Statement contained in the Form 14D-9 filed with the SEC on January 27, 2009 (the "14D-9"), which is attached as Exhibit A to Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction.

4. Based on a review of the materials provided and my significant experience in the valuation of assets and securities, it is my considered opinion that the 14D-9 lacks specific information that is significant in Targanta's shareholders' determination of whether to tender or withhold their shares.

THE PROBABILITY WEIGHTINGS ASSOCIATED WITH TARGANTA'S FINANCIAL PROJECTIONS ARE CRUCIAL TO UNDERSTANDING THE COMPANY'S FINANCIAL PROSPECTS AS WELL AS THE VALUE OF THE CONTINGENT PAYMENT RIGHT

5. The probability weightings associated with Targanta's financial projections are important for two reasons. First, these weightings are a significant driver of Targanta's future revenue and profits. By their nature, financial projections relating with unapproved drugs, devices and other medical products often include assumptions about the probability and timing of future regulatory approval(s). To accomplish this, projections incorporate a time series of probabilities associated with various stages of the regulatory approval process, and these probabilities are typically the primary factors influencing value. To illustrate, consider the following examples. If a drug company with no marketable products had a potential blockbuster drug in its pipeline, investors would value the company more highly if the drug had a 90% chance of regulatory approval versus only a 10% chance, all else equal. Conversely, investors would value the company more highly if the drug was anticipated to be approved in one year as opposed to five years. The probability weightings associated with Targanta's financial projections contain embedded information about the probability and timing of the regulatory approval of the individual products under development. Because Targanta is still in its pre-revenue phase, there is no reliable way to evaluate Targanta's future financial prospects or the

relative financial merit of the Proposed Transaction without an understanding of the probability weightings associated with the Company's financial projections.

6. Second, the probability weightings are critical to the valuation of the contingent consideration portion of the Proposed Transaction (the "Contingent Payment Right"). The Contingent Payment Right entitles Targanta's shareholders to additional payments if certain milestones are achieved. Generally described, the Contingent Payment Right includes up to $1.00 per share if the Company's oritavancin antibiotic is approved for marketing in Europe for the treatment of complicated skin and skin structure infections ("cSSSI"), up to an additional $1.20 per share if certain milestones are achieved with respect to its approval for treatment of cSSSI in the United States and an additional $2.35 per share if aggregate net sales of oritavancin products exceed $400 million in any four-quarter period ending on or before December 31, 2021.[1] Without understanding the probabilities and the timing related to achieving these milestones, there is no practical method by which the present value of the Contingent Payment Right can be estimated on a risk-adjusted basis. Given that the Contingent Payment Right potentially represents the lion's share of the Proposed Transaction consideration, Targanta's shareholders are unable to properly assess the risk and value of its collection in the context of assessing the financial merit of the Proposed Transaction.

7. For the reasons stated above, the probability weightings associated with Targanta's financial projections are necessary to develop an accurate assessment of the Company's financial prospects and to value the Contingent Payment Right and are, therefore, essential in evaluating the Proposed Transaction.

---

[1] 14D-9, pp. 2-3

Signed under the pains and penalty of perjury this 15th day of February 2009,

/s/ Matthew Morris
MATTHEW MORRIS, CFA

State of Texas
County of Dallas

SUBSCRIBED AND SWORN to before me this 15th day of February, 2009

/s/ Brandi Fulmer
Notary Public for Texas
My Commission Expires: 3/7/2012

Schedule A: Curriculum Vitae of Matthew Morris

Matthew Morris, CFA, CLP

Biography

Mr. Morris is the Managing Director of Fin | Econ Partners, a corporate finance advisory firm specializing in the practical application of financial, economic and valuation principles to solve a variety of challenges. The scope of his work with clients includes financial and economic analyses for transactions, intellectual property strategy, asset and securities valuation and commercial disputes. Mr. Morris possesses a broad range of noteworthy industry experience in the following markets:

- § Aerospace & defense
- § Banking & insurance
- § Biotechnology, healthcare & pharma
- § Computer software & hardware
- § Construction & materials
- § Consumer products
- § Distribution
- § Energy, utilities & chemicals
- § Real estate & hospitality
- § Retail
- § Sports & entertainment
- § Telecommunications

Mr. Morris has been published on several occasions and has served as a consulting or testifying expert in a number of litigation matters. Cases in which he has prepared financial analyses and estimations of economic damage include merger-related litigation, patent infringement and fraud.

Formal Education

Master of Science, Finance
University of Strathclyde, Glasgow, Scotland

MIM, International Management
Schiller University, Heidelberg, Germany

Bachelor of Arts, History (cum laude)
University of Dallas, Dallas, Texas

Secondary Education
Cistercian Preparatory School, Irving, Texas

Accreditations and Designations

Chartered Financial Analyst (CFA)
Certified Licensing Professional (CLP)
Phi Alpha Theta

Organizations and Professional Associations

Entrepreneurs' Organization (EO)
CFA Institute
CFA Society of Dallas-Fort Worth
Licensing Executives Society (Past Chair, D/FW Chapter)
American Finance Association
Institute for the Study of Business Markets (ISBM)
Advisory Committee — Patent Rules Task Force for the Northern District of Texas
University of Dallas Graduate School of Management — Adjunct Faculty Member
Lakeland Academy — Board Member & Finance Committee Chair

Publications

Royalty Securitizations: Were "Bowie Bonds" Just a Fad?
Capital Formation Institute Website

Victor's Little Secret
VALUE Advisory, Summer 2003

Will SFAS 141 Make a Difference?
VALUE Advisory, Fall 2002

How to Enhance the Value of Patents
DFW TechBiz, September 17, 2001

The Pre-IPO Cheap Stock Issue: Sources and Solutions
Capital Network's Capital Update, Spring 2000

The Valuation of Asset Holding Companies
Financial Valuation: Businesses and Business Interests, 1999 Update, Warren Gorham & Lamont

Selected Lectures and Presentations

Navigating the Changing Landscape for Technology Assets
World's Best Technologies Showcase, Arlington, Texas — 2008

Creating and Measuring Early Stage Value
World's Best Technologies Showcase, Arlington, Texas — 2007

Strategic Value Creation
Guest Lecturer, University of Texas at Arlington — 2006

Royalty Rate, Licensing & Litigation
World's Best Technologies Showcase, Arlington, Texas — 2006

Value-Based Solutions for Consumer Products Issues
LES Annual Conference, Phoenix, Arizona — 2005

Early Stage Valuation
Minnesota Chapter of LES, Minneapolis, Minnesota — 2005

Business Valuation (conference co-chair)
Accounting and Finance for Attorneys, Dallas and Houston, Texas — 2005

Extracting Value from Trademark Assets
IP Licensing Nuts and Bolts: Strategy, Negotiation and Drafting, Houston / Austin, Texas - 2004/2005

Introduction to Finance (conference co-chair)
Accounting and Finance for Attorneys, Dallas and Houston, Texas — 2005

Strategies and Solutions for Optimizing IP Valuation & Value Creation (conference chair)
World Research Group, Chicago, Illinois — 2004

Introduction to Brand Finance
LES Annual Meeting, San Diego, California — 2003

Topics in Valuation
Internal Revenue Service Gift & Estate Section, Ft. Worth, Texas — 2002

Early Stage Company Valuations and the Cheap Stock Issue
CLE Seminar, Gray Cary Ware & Freidenrich; Austin, Texas — 2000

CERTIFICATE OF SERVICE

I, Kristin J. Moody, hereby certify that a true and correct copy of the above document was served on counsel for the defendants via U.S. mail and electronic mail.

February 17, 2009

/s/ Kristin J. Moody
Kristin J. Moody

TARGANTA ENTERS INTO MEMORANDUM OF UNDERSTANDING
TO RESOLVE SHAREHOLDER LAWSUIT

CAMBRIDGE, MA — February 20, 2009 — Targanta Therapeutics Corporation ("Targanta") (Nasdaq: TARG) today announced that the defendants and the plaintiffs in the purported class action lawsuit (the "Action") pending in the Superior Court of the Commonwealth of Massachusetts (the "Court") entitled *Albright, et. al., v. Leuchtenberger, et al.,* Civil Action No. 09-0269-BLS entered into a Memorandum of Understanding (the "Memorandum") providing for a settlement of the lawsuit. As part of the settlement, Targanta agreed to make certain supplemental disclosures to its solicitation/recommendation statement on Schedule 14D-9, which disclosures are included in an amendment to the solicitation/recommendation statement on Schedule 14D-9 filed by Targanta today with the Securities and Exchange Commission (the "SEC"). The Memorandum contains no admission of wrongdoing. However, given the potential cost and burden of continued litigation, Targanta believes the settlement is in its best interests and the best interests of its shareholders.

The supplemental disclosures were made in exchange for the settlement and a release in favor of, among others, all defendants, their agents, advisors and insurers of all claims, including known and unknown claims. Subject to court approval and further definitive documentation, the Memorandum resolves the allegations by the plaintiffs against the defendants in connection with the merger agreement entered into with The Medicines Company and Boxford Subsidiary Corporation, a wholly owned subsidiary of The Medicines Company, and the transactions contemplated by the merger agreement, including without limitation the tender offer by The Medicines Company to acquire all of the outstanding shares of Targanta and the subsequent merger of Targanta with and into Boxford Subsidiary Corporation, and provides a release and settlement by the purported class of Targanta's stockholders of all claims against the defendants and their affiliates and agents in connection with the merger agreement and the transactions contemplated by the merger agreement, including without limitation the tender offer and the merger. The settlement is contingent upon, among other things, the merger becoming effective under Delaware law.

About Targanta Therapeutics

Targanta Therapeutics Corporation (NASDAQ: TARG) is a biopharmaceutical company focused on developing and commercializing innovative antibiotics to treat serious infections in the hospital and other institutional settings. Targanta's pipeline includes an intravenous version of oritavancin, a semi-synthetic lipoglycopeptide antibiotic currently awaiting EU regulatory approval, and a program to develop an oral version of oritavancin for the possible treatment of *Clostidium difficile*-related infection. Targanta has operations in Cambridge, MA, Indianapolis, IN, and Montreal, Quebec, Canada. For more information on Targanta, visit www.targanta.com.

About The Medicines Company

The Medicines Company (NASDAQ: MDCO) is focused on advancing the treatment of critical care patients through the delivery of innovative, cost-effective medicines to the worldwide hospital marketplace. The Medicines Company markets Angiomax® (bivalirudin) in the United States and other countries for use in patients undergoing coronary angioplasty, and Cleviprex® (clevidipine butyrate) injectable emulsion in the United States for the reduction of blood pressure when oral therapy is not feasible or not desirable. The Medicines Company also has an investigational antiplatelet agent, cangrelor, in late-stage development and a serine protease inhibitor, CU-2010, in early-stage development. The Medicines Company's website is www.themedicinescompany.com.

Safe Harbor Statement

This press release contains "forward-looking statements" that are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements involve known and unknown risks and uncertainties that may cause actual future results to differ materially from those projected or contemplated in the forward-looking statements. The risks and uncertainties referred to above include the possibility that the merger may not be completed and that the Court may not approve the settlement and stipulation or dismiss the Action. Except as otherwise required by law, Targanta does not undertake any obligation to update any of these forward-looking statements to reflect a change in its views or events or circumstances that occur after the date of this release.

Additional Information

This press release is not a recommendation, an offer to purchase or a solicitation of an offer to sell shares of Targanta's common stock. In connection with the tender offer and the merger, Targanta filed a solicitation/recommendation statement on a Schedule 14D-9 and The Medicines Company and Boxford Subsidiary Corporation filed a tender offer statement on a Schedule TO-T with the SEC. You may obtain copies of these and other documents relevant to the tender offer and the merger at the SEC's website at http://www.sec.gov. In addition, stockholders may obtain a free copy of these documents from Targanta by contacting Targanta at 222 Third Street, Suite 2300, Cambridge, MA 02142, attention: Investor Contact or by calling Targanta at (617) 577-9020.

MEMORANDUM OF UNDERSTANDING

WHEREAS, there is a lawsuit pending in the Superior Court of the Commonwealth of Massachusetts, in and for Suffolk County, (the "Court") entitled *Albright, et. al., v. Leuchtenberger, et al.,* Civil Action No. 09-0269-BLS (the "Action");

WHEREAS, the Action was brought by Martin Albright and Vito Caruso (each a "Plaintiff" and both collectively and with members of the Class (as defined in paragraph 3(a) herein) the "Plaintiffs") as a purported class action on behalf of all public stockholders of Targanta Therapeutics Corporation ("Targanta" or the "Company") other than the named defendants and their respective affiliates;

WHEREAS, the Action seeks, among other things, injunctive and equitable relief against Targanta and certain of its officers and directors, as well as against The Medicines Company and its wholly-owned subsidiary, defendant Boxford Subsidiary Corporation (collectively "TMC"), with respect to the proposed acquisition of Targanta by TMC (the "Proposed Transaction");

WHEREAS, on or about January 12, 2009, Targanta and TMC entered into an Agreement and Plan of Merger (the "Merger Agreement") by which TMC would acquire Targanta through an all-cash tender offer (the "Tender Offer") and a second-step merger (collectively the "Merger"), after on January 11, 2009, the Targanta's Board of Directors (the "Board") determined that the Tender Offer and the Merger were fair to, and in the best interest of, the Company and its stockholders, and resolved to recommend that the Company's stockholders tender their shares into and accept the Tender Offer and, if necessary, adopt the Merger Agreement;

WHEREAS, through the Tender Offer, TMC has offered to purchase all outstanding shares of Common Stock of Targanta at a purchase price of $2.00 per share in cash upfront, plus contractual rights to contingent payments which could bring the total per share consideration up to $6.55 if certain milestones are met;

WHEREAS, the Tender Offer is currently scheduled to expire on February 24, 2009;

WHEREAS, the Plaintiffs challenge the Proposed Transaction and the Merger, including the disclosures in the Tender Offer Statement (as defined below) and the terms of the Merger Agreement, alleging, among other things, that directors Mark Leuchtenberger, Stéphane Bancel, Garen Bohlin, Jeffrey Courtney, Rosemary Crane, William Crouse, Eric Gordon, Ph.D., and Dilip Mehta, M.D., Ph.D. (the "Individual Defendants", and together with Targanta and TMC, the "Defendants") breached fiduciary duties to the stockholders of Targanta by, among other things, failing to adequately disclose certain material information in the Recommendation Statement (defined below) concerning the Merger, and that Targanta and TMC aided and abetted such breaches;

WHEREAS, on January 27, 2009, TMC filed a Schedule TO Tender Offer Statement (the "Tender Offer Statement") with the Securities and Exchange Commission (the "SEC"), and Targanta filed a Schedule 14D-9 Solicitation/Recommendation Statement with the SEC (the "Recommendation Statement");

WHEREAS, counsel for the Plaintiffs have conducted expedited document discovery, during which Targanta produced over 700 pages of documents, including minutes of meetings of the Board and the Board's transaction committee (the "Transaction Committee"), documents provided to the Board and the Transaction Committee regarding the Proposed Transaction and Merger, and written presentations made to the Board by Targanta's financial advisor, Leerink Swann LLC ("Leerink Swann"), that relate to the Proposed Transaction and Merger;

WHEREAS, counsel for the Plaintiffs have conducted depositions of defendant Mark Leuchtenberger, Targanta's Chief Executive Officer and a member of the Board, and Daniel Lepanto, a representative of Leerink Swann, in connection with the Action;

WHEREAS, counsel for the Plaintiffs have reviewed hundreds of pages of documents produced by the Defendants; have taken two (2) depositions; have reviewed the Tender Offer Statement, the Recommendation Statement and the Supplemental Disclosures; and have retained experts in the fields of public business valuation and Delaware corporate governance law to assist in the prosecution of the Action;

WHEREAS, the amended complaint in the Action, dated February 2, 2009, (the "Amended Complaint") makes specific allegations about the adequacy of disclosures in the Recommendation Statement, and counsel for the Plaintiffs have made specific recommendations to counsel for the Defendants concerning additional disclosures that the Plaintiffs consider necessary so that the Recommendation Statement does not omit to state facts necessary to make the statements therein not misleading, and to ensure that Targanta's public stockholders receive all material information concerning the Merger

necessary to enable them to make an informed decision as to whether they should tender their shares;

WHEREAS, on February 16, 2009, Plaintiff served on Defendants their Motion for Preliminary Injunction in connection with their claims regarding the inadequacy of disclosure in connection with the Tender Offer and Merger;

WHEREAS, counsel for the Plaintiffs and counsel for the Defendants have engaged in extensive arm's-length negotiations concerning a possible settlement of the Action;

WHEREAS, a supplement to the Recommendation Statement (the "Supplemental Disclosure") containing additional details relating to the Proposed Transaction will be filed with the SEC prior and sufficiently in advance to the currently scheduled expiration of the Tender Offer on February 24, 2009 that forms the basis for a settlement of the Action;

WHEREAS, counsel for all parties have concluded that the terms contained in this Memorandum of Understanding ("MOU") are fair and adequate to the Company, its stockholders, and members of the Class, that it is reasonable to pursue the settlement of the Action based upon the procedures and terms outlined herein and the benefits and protections offered hereby, and the parties wish to document their agreement in this MOU;

WHEREAS, the defendants have denied, and continue to deny, that they have committed or aided and abetted in the commission of any violation of law of any kind or

engaged in any of the wrongful acts alleged in the Action, and expressly maintain that they have diligently and scrupulously complied with their fiduciary and other legal duties, and are entering into this MOU solely to eliminate the burden and expense of further litigation; and

WHEREAS, all parties recognize the time and expense that would be incurred by further litigation of the Action and the uncertainties inherent in such litigation;

NOW, THEREFORE, as of this 19th day of February, 2009, counsel for the parties have reached an agreement, expressed in this MOU, providing for the settlement of the Action (that agreement is herein referred to as the "Settlement Agreement" and the acts, terms and conditions contemplated thereby are referred to as the "Settlement") between and among the Plaintiffs and the Defendants, on the terms and subject to the conditions set forth below:

1. **Supplemental Disclosure.** Counsel for the Plaintiffs and counsel for the Defendants have conferred on certain disclosures supplemental to those contained in the Recommendation Statement, and Targanta will make further public disclosures by filing electronically an amendment to the Recommendation Statement in connection with the Tender Offer as requested by the Plaintiffs and as agreed upon by the Defendants and the Plaintiffs in the Supplemental Disclosures, which additional disclosures shall include (and need not include any more than) the following:

- Targanta will disclose the criteria considered to select the twenty-two (22) potential strategic partners contacted by Leerink Swann on behalf of Targanta;

- Targanta will provide additional information in connection with the Board meeting on December 17, 2008, during which Leerink Swann advised the Board that exclusivity would be required to negotiate with TMC based on prior experiences with TMC and additional information regarding Leerink Swann's prior experiences with TMC;
- Targanta will disclose the justification for selecting a discounted annual rate of 15% in the Historical Stock Trading Analysis performed by Leerink Swann;
- Targanta will disclose the multiples applied or derived for each company (or at least the range, high/median/mean/low) in the Publicly Traded Analysis performed by Leerink Swann;
- Targanta will disclose the multiples observed for each company resulting in a range of implied per share value (or at least the range, high/median/mean/low) in the Publicly Traded Analysis performed by Leerink Swann;
- Targanta will disclose the justification for selecting discount rates of 12.5% to 17.5% and P/E multiples of 15.0x and 25.0x in 2014 in the Discounted Stock Price Analysis performed by Leerink Swann;
- Targanta will disclose the multiples applied or derived for each company (or at least the range, high/median/mean/low) in the Discounted Stock Price Analysis performed by Leerink Swann; and
- Targanta will disclose the justification for selecting a discount rate of 12.5% to 17.5% in the Discounted Cash Flow Analysis performed by Leerink Swann.

The Defendants acknowledge that the aforementioned additional disclosures to be contained in the Supplemental Disclosures to the Recommendation Statement confer a benefit to Targanta's shareholders and were or will be made as a result of the filing, pendency and prosecution of the Action and the issues raised therein by the Plaintiffs. The Plaintiffs acknowledge that they have reviewed the aforementioned additional disclosures to be contained in the Supplemental Disclosures to the Recommendation Statement and deem them an adequate basis for settling the Action.

2. **Stipulation of Settlement; Cooperation**. The parties to the Action and their respective counsel agree to cooperate fully and to use their best efforts to effectuate the Settlement. By **February 27, 2009**, or a later date if needed, the parties shall negotiate and execute an appropriate Stipulation of Settlement (the "Stipulation"), to be filed in the Action and which, upon Final Approval of the Settlement (as defined herein) shall: (i) resolve and provide for the dismissal with prejudice and without costs to any party, except as set forth in paragraph 4 herein, of all claims asserted or that could have been asserted in the Action and all other claims (as described hereinafter), if any, arising out of or relating, in whole or in part, to the Merger; and (ii) provide for the preparation and filing of such other documentation as may be necessary to obtain approval of the Stipulation in the Action upon and consistent with the terms set forth in this MOU. As used herein, "Final Approval" of the Settlement means that the Court has entered a final order and judgment approving the Settlement, dismissing the Action with prejudice on the merits and with each party to bear its own costs (except for the costs set forth in paragraph 4), and providing for such release language as is contained herein, and that such final order and judgment is finally affirmed on appeal or is no longer subject to appeal and the

time for any petition for reargument, appeal or review, by certiorari or otherwise, has expired; *provided*, however, and notwithstanding any provision to the contrary in this MOU, Final Approval shall not include (and the Settlement is expressly not conditioned on) the approval of attorneys' fees, costs and expenses of Plaintiffs' counsel as provided in paragraph 4 and any appeal related thereto.

3. **Certain Terms of the Stipulation**. The Stipulation will also expressly provide, *inter alia*:

(a) for certification by the Court, for settlement purposes only, pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, of a settlement class consisting of all record and beneficial holders of the common stock of the Company at any time during the period beginning on and including **January 12, 2009** (the date that the Proposed Transaction was publicly announced) through and including the effective date of consummation of the Merger, including any and all of their respective legal representatives, heirs, successors, successors in interest, predecessors, predecessors in interest, trustees, executors, administrators, transferees and assigns, and any person or entity acting for or on behalf of, or claiming under, any such foregoing holders, immediate and remote, resident and non-resident in the Commonwealth of Massachusetts, except for the Defendants and their "affiliates" and "associates" (as those terms are defined in Rule 12b-2 promulgated pursuant to the Securities Act of 1934) (the "Class");

(b) that the Company shall cause a dissemination of notice of the Settlement to members of the Class in accordance with Massachusetts law and

shall pay all costs and expenses incurred in providing such notice to members of the Class, and that said notice will provide that members of the Class shall have an opportunity to object to the Settlement;

(c) that all the Defendants have vigorously denied, and continue to vigorously deny, any wrongdoing or liability with respect to all claims asserted in the Action, including that they have committed any violations of law, that they have acted improperly in any way, that they have any liability or owe any damages of any kind to the Plaintiffs and the Class, and that any additional disclosures (including the additional disclosures made in the Supplemental Disclosures) are required under any applicable rule, regulation, statute, or law, but are entering into this MOU and will execute the Stipulation solely because they consider it desirable that the Action be settled and dismissed on the merits and with prejudice in order to (i) eliminate the burden, inconvenience, expense, risk and distraction of further litigation, (ii) finally put to rest and terminate all the claims which were or could have been asserted against the Defendants in the Action, and (iii) thereby permit the Tender Offer and the Merger to proceed without risk of injunctive or other relief;

(d) for the release and full and complete discharge, dismissal with prejudice on the merits, settlement and release of all claims, rights, demands, suits, matters, issues, Action or causes of action, liabilities, damages, losses, obligations and judgments of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, that have been, could have been, or in the future might be

asserted in the Action or in any court, tribunal or proceeding, (including, but not limited to, any claims arising under federal or state law related to the alleged breach of any duty, negligence, violations of the federal securities or antitrust laws or otherwise) by the Plaintiffs, or by or on behalf of any member of the Class, whether in an individual, class, direct, derivative, representative, legal, equitable, or any other type of capacity against all the Defendants (or any one of them) or any of their respective families, affiliates, parents, or subsidiaries and each and all of their respective past, present or future officers, directors, stockholders, members, employees, agents, attorneys, advisors, insurers, accountants, trustees, financial or investment advisors, commercial bankers, persons who provided fairness opinions, investment bankers, associates, representatives, general partners, limited partners, partnerships, heirs, executors, personal representatives, estates, administrators, predecessors, successors and assigns (herein collectively "Defendants' Affiliates"), whether under state or federal law, including but not limited to the federal securities or antitrust laws, (except for the rights conferred by this Settlement), and whether directly, derivatively, representatively or arising in any other capacity, in connection with, or that arise out of, any of the allegations, facts, practices, events, transactions, acts, claims that were or could have been brought in the Action, or that arise now or hereafter out of, or that relate in any way to, the acts, facts or the events alleged in the Action, including without limitation the Merger Agreement, the Tender Offer, the Merger and the other transactions contemplated by the Merger Agreement, the negotiation and consideration of the Merger Agreement and the transactions contemplated by the Merger Agreement, including, without limitation, the Tender Offer and the

Merger, and any agreements and disclosures relating thereto, and any acts, allegations, facts, matters, events, transactions, occurrences, statements, conduct, representations, misrepresentations or omissions relating to or arising out of the subject matter referred to in the Action, and the fiduciary and disclosure obligations of any of the Defendants or Defendants' Affiliates with respect to any of the foregoing (whether or not such claim could have been asserted in the Action) (collectively the "Released Claims"), *provided,* that the Released Claims shall not include any rights available under Delaware law to seek appraisal of the value of their shares pursuant to Section 262 of the Delaware General Corporation Law;

(e) that the release contemplated by this MOU and by the Stipulation shall extend to claims that the releasing parties do not know or suspect to exist at the time of the release, which, if known, might have affected the releasing parties decision to enter into the release; that the releasing parties shall be deemed to relinquish, to the extent applicable, and to the full extent permitted by law, the provisions, right and benefits of Section 1542 of the California Civil Code, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT NOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

and that the releasing parties shall be deemed to waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to

California Civil Code Section 1542. The parties to this MOU acknowledge that the foregoing waiver was separately bargained for and is a material term of this MOU;

(f) for the entry of a final and binding judgment dismissing with prejudice (whether voluntary or involuntary) the Action upon the Final Approval of the Settlement;

(g) that the Defendants and Defendants' Affiliates similarly release all claims against Plaintiffs, members of the Class, and their counsel arising out of or relating to the institution, prosecution, and resolution of the Action;

(h) that all the Defendants shall have the right to withdraw from the Settlement in the event that any court enjoins or otherwise precludes the Tender Offer, the Merger or any of the transactions contemplated by the Merger Agreement, or in the event that any claim related to the subject matter of the Action, the Merger Agreement, the transactions contemplated by the Merger Agreement, including, without limitation, the Tender Offer and the Merger, or the Released Claims is commenced or prosecuted against any of the Defendants in any court prior to Final Approval of the Settlement, and (following a motion by the Defendants) any such claim is not dismissed with prejudice or stayed in contemplation of dismissal with prejudice. In the event that any such claim is commenced or prosecuted, the parties shall cooperate and use best efforts to secure the dismissal with prejudice (or a stay in contemplation of dismissal with prejudice, following Final Approval of the Settlement) thereof;

(i) that, subject to an order of the Court, pending final determination of whether the Settlement and Stipulation should be approved, the Plaintiffs and all members of the Class, or any of them, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any claims against any of the Defendants or Defendants' Affiliates; and

(j) that the terms of the Stipulation, including the entry of final judgment, the release of all claims, and the payment of any awards of attorneys' fees or other consideration (as set forth below), are expressly conditioned upon the Merger becoming effective under Delaware law.

4. **Attorneys' Fees**. The parties agree that Levi & Korsinsky, L.L.P., as Lead Counsel for the Plaintiffs and the Class ("Lead Counsel") and as receiving agent for counsel for the Plaintiffs, shall apply to the Court for an award to Plaintiffs' counsel of attorneys' fees, costs and expenses (the "Attorneys' Fee Application"), to be paid by the Company subject to Court approval. Counsel for the Defendants acknowledge that Plaintiffs' counsel have a claim for a Attorneys' Fee Application based on the benefits the settlement has and will provide to Targanta shareholders and Defendants have agreed that they will not oppose the Attorneys' Fee Application, and will cause Targanta (or any successor thereto) to pay any award of attorneys' fees, costs and expenses (the "Attorneys' Fee Award"), as directed by the Court, if and solely to the extent that such Attorneys' Fee Award does not exceed $250,000.00, and subject to the explicit conditions of paragraph 3(j) that the Merger shall become effective under Delaware law. All parties agree that, notwithstanding anything in this MOU to the contrary, or any order of the

Court making or approving an Attorneys' Fee Award, in no event shall Targanta or its successors be obliged to pay to Plaintiffs, the Class or Plaintiffs' counsel any amount in excess of $250,000.00 for attorneys' fees, costs and expenses in connection with the Action (other than those expenses incurred in disseminating the notice of Settlement in accordance with paragraph 3(b)), and in no event shall any Defendant other than Targanta or its successors be obliged to pay any part of the Attorneys' Fee Award or any of Plaintiffs' attorneys' fees, costs and expenses. Subject to the approval of the Court, Lead Counsel shall allocate any Attorneys' Fee Award among counsel for Plaintiffs in the Action. Subject to the foregoing, Targanta agrees to pay the Attorneys' Fee Award within ten (10) days of Court approval of the Settlement and dismissal of the Action pursuant to the Settlement, or the closing of the Merger, whichever is later. Counsel for the Plaintiffs shall be obliged to return to Targanta or its successors any portion of the Attorneys' Fee Award that is affected by any decision by any court, or by any appellate court, to reduce, vacate, dismiss, modify or otherwise change or nullify any court order making or approving an Attorneys' Fee Award.

5. **Notice to the Court**. The parties will promptly advise the Court of the Settlement and will present the Settlement to the Court for hearing and approval as soon as practicable.

6. **Court Approval Required**. This MOU and any Stipulation of Settlement shall be null and void and of no force and effect if final Court approval of the Settlement does not occur for any reason. In such event, the parties shall return to their respective litigation positions as of the time immediately prior to the date of the execution of this MOU, as though it were never executed or agreed to, and this MOU shall not be deemed

to prejudice in any way the positions of the parties with respect to the Action, or to constitute an admission of fact by any party, shall not entitle any party to recover any costs or expenses incurred in connection with the implementation of this MOU or the Settlement, and neither the existence of this MOU nor its contents shall be admissible in evidence or be referred to for any purposes in the Action or in any litigation or judicial proceeding, other than to enforce the terms hereof.

7. **Stay Pending Approval**. The parties agree to jointly request that the Court stay any further proceedings in the Action, or any similar proceedings in any court, pending submission of the Settlement to the Court for approval. The Defendants' time to answer or otherwise respond to the Amended Complaint is extended indefinitely. The Plaintiffs will stay, and will not initiate, any other proceedings other than those incident to the Settlement. The parties also agree to use their best efforts to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any member of the Class in any other litigation against any of the parties to this MOU, or which challenges the Settlement, the Merger Agreement, any of the transactions contemplated by the Merger Agreement, including, without limitation, the Tender Offer or the Merger, or otherwise involves a Released Claim.

8. **Return of Documents**. Counsel for the Plaintiffs agree that within ten (10) days of receipt of a written request by any producing party following Final Approval of the Settlement, they will return to the producing party all discovery material obtained from, including all documents produced by and/or deposition testimony given by, any of the Defendants or Defendants' Affiliates in the Action (herein "Discovery Material"), or certify in writing that such Discovery Material has been destroyed. The parties agree to

submit to the Court any dispute concerning the return or destruction of Discovery Material.

9. **Execution in Counterparts**. This MOU may be executed in multiple counterparts by the signatories hereto, including by email in PDF format or by telecopier, and as so executed shall constitute one agreement.

10. **Governing Law**. This MOU and the Settlement contemplated by it, and all disputes arising out of or relating to it, shall be governed by, and construed in accordance with, the substantive laws and procedural rules of the Commonwealth of Massachusetts.

11. **Written Modifications**. This MOU constitutes the entire agreement among the parties with respect to the subject matter hereof, supersedes all written or oral communications, agreements or understanding that may have existed prior to the execution of this MOU, and may be modified or amended only by a writing signed by the parties hereto.

12. **Successors, Assigns and Third Party Beneficiaries**. This MOU shall be binding upon and inure to the benefit of the parties (including members of the Class) and their respective agents, executors, heirs, successors and assigns; *provided,* that no party shall assign or delegate its rights or responsibilities under this MOU without the prior written consent of the other parties hereto. The Defendants' Affiliates are intended third party beneficiaries under this MOU entitled to enforce this MOU in accordance with its terms.

13. **Severability**. Should any part of this MOU be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this MOU should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

14. **Representation of Named Plaintiffs**. Named Plaintiffs Martin Albright and Vito Caruso represent and warrant that they have been stockholders in Targanta throughout the period covered by the Action and the Settlement and have not assigned, encumbered, or in any manner transferred in whole or in part the claims in the Action.

15. **Authority**. This MOU is being executed by counsel for the parties, each of whom represents and warrants that he or she has been granted full and complete authority from his or her client or clients to enter into this MOU, which has full force and effect as a binding obligation of such clients.

WHEREFORE, the parties hereto have executed this MOU as of this 19th day of February, 2009.

LEVI & KORSINSKY, L.L.P.

/s/ Joseph Levi, Esq.

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