UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STEVEN BRODY, CHAIM HIRSCHFELD, and SUZANNE GRUNSTEIN, on behalf of themselves and all others similarly situated, Plaintiffs, v. MERCK & CO., INC., f/k/a SCHERING-PLOUGH CORPORATION, MSD CONSUMER CARE, INC., f/k/a SCHERING-PLOUGH HEALTHCARE PRODUCTS, INC., MERCK SHARP & DOHME CORP., AS SUCCESSOR IN INTEREST TO SCHERING CORPORATION, SCHERING-PLOUGH HEALTHCARE PRODUCTS SALES CORPORATION, AND SCHERING-PLOUGH HEALTHCARE PRODUCTS ADVERTISING CORPORATION, Defendants.	CIVIL ACTION NO. 3:12-cv-04774-PGS-DEA *DOCUMENT ELECTRONICALLY FILED*

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THE JOINT MOTION FOR PRELIMINARY APPROVAL OF THE NATIONWIDE CLASS ACTION SETTLEMENT AND ISSUANCE OF RELATED ORDERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

OTHER AUTHORITIES

Defendants Merck & Co., Inc., MSD Consumer Care, Inc., and Merck Sharp & Dohme Corp. (collectively, "Merck" or "Defendants") join plaintiffs, Steven Brody, Chaim Hirschfeld, and Suzanne Grunstein (collectively, "Plaintiffs"), and settlement class counsel, Abraham, Fruchter & Twersky, LLP ("Settlement Class Counsel"), in respectfully requesting that this Court: (i) preliminarily certify a nationwide class for settlement purposes only; (ii) preliminarily approve the proposed settlement, including the settlement agreement and accompanying exhibits; (iii) approve the notice plan and authorize the dissemination of notice; (iv) appoint the Notice and Settlement Administrator; (v) set dates and procedures for a final approval hearing on the proposed settlement; (vi) set forth procedures and deadlines for settlement class members to request exclusion from the class, to file objections and to appear at the final approval hearing; (vii) issue a preliminary injunction barring and enjoining certain persons from prosecuting other proceedings alleging claims similar to the claims asserted by the Plaintiffs in this action; and (viii) issue related orders.

I. PRELIMINARY STATEMENT

As a result of extensive litigation, investigations, and arms' length negotiations, Merck and Settlement Class Counsel, acting on behalf of Plaintiffs and the Settlement Class, have executed a proposed Settlement Agreement to resolve this class action, and Injunctive Relief Claims in a related class action in

the Superior Court of California, asserting claims relating to alleged misrepresentations about the nature and extent of the benefits provided by Merck's "Eligible Coppertone Sunscreen Products", as defined in the proposed Settlement Agreement.[1] Under the proposed Settlement Agreement, Merck has agreed to provide the following relief: (1) injunctive relief relating to label and advertising changes for the Eligible Coppertone Sunscreen Products; (2) payments to Settlement Class Members who submit valid and timely Claims; and (3) guaranteed *cy pres* awards, as defined below and in the Settlement Agreement.

The Parties have worked closely and diligently to effect a consumer-friendly process. Specifically, in addition to injunctive relief relating to label and advertising changes for the Eligible Coppertone Sunscreen products, which will benefit the entire Settlement Class in this action, Merck will pay a minimum of $3 million and a maximum of $10 million as part of a Settlement Fund to resolve timely and valid claims as further described in the Settlement Agreement, which amounts shall include making guaranteed *cy pres* payments, payments to Named Plaintiffs for incentive awards, claim administration costs, and other relief, as further specified below and in the Settlement Agreement. In addition, as specified

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[1] This Memorandum of Law discusses certain aspects of the Settlement Agreement, which is incorporated by reference herein. If there is any contradiction or inconsistency between this Memorandum of Law and the Settlement Agreement, the Settlement Agreement shall control.

in more detail below and in the Settlement Agreeement, Merck shall separately pay, in addition to the Settlement Fund, notice and related notice administration costs as further specified in the Settlement Agreement (the "Notice Payment"), as well as Attorneys' Fees and Expenses not to exceed $2 million, as awarded by the Court. Merck will make an initial payment of $1.5 million, with up to $1 million to be used for notice and related notice administration costs and expenses and not less than $500,000 to be used as an advance (and credited as a payment towards the Settlement Fund) to pay Claims and claims administration and associated costs.

II. BACKGROUND

A. Factual and Procedural Background

Between October 31, 2003 and February 10, 2004, five separate actions were filed against Merck in the Superior Courts for the State of California. Each of these actions related to alleged misrepresentations concerning the nature and extent of the benefits provided by the Eligible Coppertone Sunscreen Products. Specifically, the following actions were commenced between October 2003 and February 2004:

- On or about October 31, 2003, plaintiff Joseph Goldstein filed an action against Merck in the Superior Court for the State of California, County of Los Angeles in which he asserted claims on behalf of a putative class of consumers relating to alleged misrepresentations concerning the nature and extent of the benefits provided by the Eligible Coppertone Sunscreen Products.

- On or about November 13, 2003, plaintiffs Christopher Rovere and Rhonda Mason filed an action against Merck in the Superior Court for the State of California, County of Alameda, in which they asserted claims on behalf of a putative class of consumers relating to alleged misrepresentations concerning the nature and extent of the benefits provided by the Eligible Coppertone Sunscreen Products.

- On or about November 25, 2003, plaintiffs Cristina Williams and Jessica Mulhearn filed an action against Merck in the Superior Court for the State of California, County of Los Angeles, in which they asserted claims on behalf of a putative class of consumers relating to alleged misrepresentations concerning the nature and extent of the benefits provided by the Eligible Coppertone Sunscreen Products.

- On or about November 25, 2003, plaintiff Glynis Lowd filed an action against Merck in the Superior Court for the State of California, County of Alameda, in which she asserted claims on behalf of a putative class of consumers relating to alleged misrepresentations concerning the nature and extent of the benefits provided by the Eligible Coppertone Sunscreen Products as defined below.

- On or about February 10, 2004, plaintiff Robert Gaston filed an action captioned Gaston v. Schering-Plough Corporation, et al., Case No. BC310407 (the "Gaston Action") in the Superior Court for the State of California, County of Los Angeles, in which he asserted claims on behalf of a putative class of consumers relating to alleged misrepresentations concerning the nature and extent of the benefits provided by the Eligible Coppertone Sunscreen Products as defined below.

In addition to the above five actions, similar actions were filed in 2003, 2004, and 2005 against four other sunscreen manufacturers making similar claims.

On April 26, 2004, the first four actions set forth in the above bullet points (and in Sections I.A-D of the Settlement Agreement) were coordinated in the Superior Court in a Judicial Council Coordination Proceeding styled

SUNSCREEN CASES, JCCP No. 4352 (the "Coordinated Proceeding"). On August 23, 2004, the Gaston Action was added to the Coordinated Proceeding. Pursuant to an Order Granting Plaintiffs' Petition to Add Cases for Coordination with JCCP No. 4352 entered February 3, 2006, the similar actions filed in 2003, 2004, and 2005 (referenced above and in Section I.F of the Settlement Agreement) were added to the Coordinated Proceeding. Pursuant to a Minute Order dated October 13, 2004, Abraham, Fruchter & Twersky, LLP was appointed as lead counsel for the plaintiffs in the Coordinated Proceeding.

In 2008, the individual claims and causes of action asserted by plaintiffs identified in the first four actions cited in the above bullet points (and referenced in Sections I.A-D of the Settlement Agreement) were dismissed in summary judgment proceedings. At that time, Mr. Gaston's breach of warranty claims were dismissed via summary adjudication but his claims for violations of California's Unfair Competition Law ("UCL"); California's Consumer Legal Remedies Act ("CLRA") and common law fraud survived.

On May 30, 2008, Mr. Gaston filed a motion in the Coordinated Proceeding seeking to certify a California state-wide class of purchasers of Coppertone Sport SPF 30 manufactured by Merck. The trial court denied Mr. Gaston's motion based upon the predominance of individual questions of fact regarding reliance, causation, deception and injury. The trial court acknowleged its decision was the

result of confusion about the impact of Proposition 64 on the elements of proof for UCL class action claims. The trial court stated that it did not believe that the voters intended Proposition 64 to require absent class members to prove actual reliance and damages and that no class would ever be certified under such a rigorous standard. The trial court did find that Mr. Gaston satisfied the other criteria for class certification, which were numerosity, ascertainability, typicality, and adequacy of representation. Mr. Gaston appealed the decision to the California Court of Appeals.

On appeal, Mr. Gaston posited that the touchstone of the trial court's ruling with respect to his UCL claim was that the UCL, as amended by Proposition 64, required a plaintiff to ultimately prove that all class members had relied upon, were deceived by and suffered damages as a result of the alleged misrepresentations and that consequently the trial court incorrectly determined that individual questions of fact predominated. Mr. Gaston argued that in light of the California Supreme Court's holding in *In re Tobacco II*, 46 Cal. 4th 298 (2009), the trial court's ruling should be reversed as it was grounded on erroneous legal assumptions.

The Court of Appeals agreed with Mr. Gaston and found that, *inter alia*, Mr. Gaston had shown that there were common questions of law and fact with respect to his UCL, CLRA and common law fraud causes of action. As such, the Court of Appeals held that the trial court's ruling should be reversed as it was grounded on

erroneous legal assumptions and the case should be remanded with directions for the trial court to enter an order certifying the class. Merck's Petition for Writ of Certiorari to the California Supreme Court was denied, without reasons specified, on November 2, 2011.

On August 1, 2012, Mr. Gaston, who is also represented by Proposed Settlement Class Counsel in this Action, and Merck filed, and received court approval of a settlement the Coordinated Proceeding that provides injunctive relief to a California class of purchasers of Eligible Coppertone Sunscreen Products purchased in that state. The parties to the settlement agreement filed in the Coordinated Proceeding have agreed to stay the non-injunctive relief claims raised against Merck in the Coordinated Proceeding pending the final determination by this Court of the Settlement Agreement in this Action.

This Action was filed on July 31, 2012, by Plaintiffs, Steven Brody, Chaim Hirschfeld, and Suzanne Grunstein, through Proposed Settlement Class Counsel, and asserts claims on behalf of a putative nationwide class of purchasers of Eligible Coppertone Sunscreen Products, which are substantially similar to those alleged by plaintiffs against Merck in the Coordinated Proceeding.

During the past eight years, Mr. Gaston and other plaintiffs in the Coordinated Proceeding, through Proposed Settlement Class Counsel, and Merck, through its Counsel, have conducted a thorough examination and investigation of

the facts and law relating to the matters set forth in the operative complaints and the claims set forth therein and have undertaken substantial investigation and formal discovery in the litigation. Mr. Gaston and other plaintiffs asserting claims against Merck in the Coordinated Proceeding, through Proposed Settlement Class Counsel, and Merck, through Defendants' Counsel, have also engaged in extensive briefing in the Coordinated Proceeding, including motions for early determination of threshold legal issues regarding preemption, primary jurisdiction and damages, a motion for preliminary injunction, motions for summary judgment, motions for class certification, and an appeal of the ruling on class certification to the California Court of Appeals and California Supreme Court.

Accordingly, based upon their extensive discovery, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings in this Action and the claims asserted against Merck in the Coordinated Proceeding, the Parties seek to resolve any and all claims raised in the Action on a nationwide basis pursuant to the terms of this Settlement Agreement. Specifically, Plaintiffs have agreed to a settlement pursuant to the provisions of the Settlement Agreement, after considering, among other things: (1) the substantial benefits to Plaintiffs and the proposed Settlement Class under the terms of this Agreement; (2) the risks, costs and uncertainty of protracted litigation, especially in complex actions such as these, as well as the difficulties and delays inherent in such

litigation; and (3) the desirability of consummating this Agreement promptly in order to provide effective relief to Plaintiffs and the Settlement Class. Defendants have agreed to class action treatment of the claims alleged solely for the purpose of affecting the compromise and settlement of those claims on a class basis as set forth herein.

The Parties are willing to enter into this Settlement Agreement to settle the claims of the Settlement Class because of, among other reasons, the attendant expense, risks, difficulties, delays, and uncertainties of continued litigation. Plaintiffs and Proposed Settlement Class Counsel believe that this Settlement Agreement provides fair, reasonable, and adequate relief to the Settlement Class, and is in the best interests of the Settlement Class as a whole.

Merck expressly denies all claims asserted against Merck, denies that class certification is appropriate if the case is litigated rather than settled, denies all allegations of wrongdoing and liability, and denies that anyone was harmed by the conduct alleged against Merck in the Action and/or the Coordinated Proceeding, but nevertheless desires to settle the claims of Plaintiffs and the Settlement Class on the terms and conditions set forth in this Settlement Agreement solely for the purpose of avoiding the burden, expense, risk and uncertainty of continuing to litigate those issues, and for the purpose of putting to rest the controversies engendered.

B. Terms of the Settlement Agreement

Under the terms of the Settlement Agreement, Merck has agreed, subject to the terms and conditions discussed in the Settlement Agreement, to provide substantial relief, which consists of: (1) injunctive relief relating to label and advertising changes for the Eligible Coppertone Sunscreen Products; (2) payments to Settlement Class Members who submit valid and timely Claims; and (3) guaranteed *cy pres* awards, as discussed below and in the Settlement Agreement. *See* Settlement Agreement § III.

Merck has agreed that all Coppertone sunscreen products manufactured on or after June 22, 2012 for sale in the United States, its territories and possessions, will not use the terms "sunblock," "waterproof," "sweatproof," "all day" and/or "all day protection" in the labeling, advertising, marketing or promotion of these products. *Id.* Merck has also agreed that any Coppertone sunscreen product manufactured on or after June 22, 2012 for sale in the United States, its territories and possessions, will contain labels that comply with the requirements set forth in the Final Rule styled "Labeling and Effectiveness Testing; Sunscreen Products for Over-the-Counter Human Use" and codified in 76 FR 35620 ("Final Rule"), except with respect to the one (1) ounce Coppertone sunscreen products, as to which Merck represents it is still determining how to comply with the Final Rule given the limited space on these products. *Id.* § III.A.1. Merck's agreement to comply

with the Final Rule as of June 22, 2012 is particularly beneficial to the Settlement Class because the Final Rule is not currently expected to be in effect until December 17, 2012, at the earliest. Merck will also comply with any subsequent enforcement rulings under the Final Rule as they become effective. *Id.*

Further, subject to the terms of the Settlement Agreement, Merck will pay a minimum of $3 million and a maximum of $10 million to be used for: (a) payments from the Escrow Account to Claimants for timely, valid, and approved Claims; (b) claim administration costs, including, but not limited to, any escrow administrative and/or bank-related fees and costs associated with and/or related to the Escrow Account; (c) payments to Named Plaintiffs for incentive awards as ordered by the Court; (d) the guaranteed *cy pres* awards and (e) residual payments, if any[2], to the *cy pres* recipients as further specified in the Settlement Agreement. *Id.* § III.B.1. All payments identified in the prior sentence shall constitute the Settlement Fund and Defendants shall not be required to contribute any more funds to the Settlement Fund, except as otherwise specified in the Settlement Agreement. *Id.* Merck shall also separately pay, in addition to the Settlement Fund,: (a) notice and related notice administration costs, as further specified in the Settlement

[2] If the total amount of payments from the Settlement Fund is $3 million or greater, then, by definition, there will be no residual payments.

Agreement; and (b) any Attorneys' Fees and Expenses, as awarded by the Court, as further specified in Section IX of the Settlement Agreement. *Id.*

Within thirty (30) days after the attainment of the Final Settlement Date, Merck will make the guaranteed *cy pres* payments of $333,333.33 each to the Legal Aid Foundation of Los Angeles ("LAFLA") and Legal Services of New York City ("LSNYC"), and $333,333.34 to Legal Services of New Jersey ("LSNJ") (hereinafter the "guaranteed *cy pres* awards"). *Id.* § III.B.2.

Within twenty (20) days of the issuance of the Preliminary Approval Order, Merck will make an initial payment of $1.5 million into the Escrow Account with the Depository Bank, pursuant to the terms of the Escrow Agreement. *Id.* § III.B.3. Of this $1.5 million initial payment amount, up to $1 million shall be used for notice and related notice administration costs and expenses ("Notice Payment"), and not less than $500,000 shall be used as an advance (and credited as a payment towards the Settlement Fund) to pay Claims and claims administration and associated costs, as indicated in Section III.B.4 of the Settlement Agreement, with any remainder from the $1 million Notice Payment to be used as a credit for Claims and claims administration and associated costs and credited as a payment towards the Settlement Fund. *Id.*

As set forth in the Settlement Agreement, the Settlement Class includes all natural persons who purchased Eligible Coppertone Sunscreen Products in the

United States of America, its territories and possessions up to the date notice is first disseminated pursuant to the Notice Plan. *See id.* § II.31. Excluded from the Settlement Class are: (a) all persons who timely and validly request exclusion from the Settlement Class; (b) natural persons who purchased Eligible Coppertone Sunscreen Products for purposes of resale; (c) Defendants' officers, directors, and employees; (d) Defendants' attorneys; (e) Plaintiffs' Counsel; (f) this Court and the members of his or her staff and immediate family; (g) the Honorable John Shepard Wiley, Jr. and the members of his or her staff and immediate family; (h) the Honorable Carl West and the members of his or her staff and immediate family, and (i) any Judge to which the case is subsequently assigned and the members of his or her staff and immediate family, if applicable. *Id.*

Also as set forth in the Settlement Agreement, "Eligible Coppertone Sunscreen Products" means any and all sunscreen products sold in the United States of America, its territories and possessions under the brand name "Coppertone," which were labeled and/or advertised to provide protection against the sun's UVA and/or UVB rays. *See id.* § II.13.

Each Settlement Class Member who purchased an Eligible Coppertone Sunscreen Product from July 31, 2006 up to the date that notice is first disseminated shall be entitled to submit a Claim in either hard copy or electronically to the Notice and Settlement Administrator during the Claim Period.

See id. § III.C.2. The payment for each Eligible Coppertone Sunscreen Product shall be up to $1.50, subject to the adjustments and other procedures discussed in this Settlement Agreement. *Id.* No Claimant may submit more than one Claim for each Eligible Coppertone Sunscreen Product for which the Claimant is seeking payment from monies in the Escrow Account that are a part of the Settlement Fund. *Id.*

Claimants may seek reimbursement for purchases of up to six (6) Eligible Coppertone Sunscreen Products without proof of purchase. *Id.* Merck shall have the right to request that the Notice and Settlement Administrator request and require proof of purchase for each unit from Claimants who seek reimbursement for between seven (7) and nine (9) Eligible Coppertone Sunscreen Products. *Id.* Claimants who seek reimbursement for purchases of ten (10) or more Eligible Coppertone Sunscreen Products will be required to provide proof of purchase for each unit with the submission of the Claim. *Id.* Each individual unit purchased shall constitute one (1) Eligible Coppertone Sunscreen Product. *Id.* Acceptable proof of purchase includes a photocopy of the label(s) on the tube(s), spray(s), bottle(s), and/or similar container(s), cash register receipt(s), credit card receipt(s), credit card statement(s) or similar document(s) that sufficiently indicate the purchase of Eligible Coppertone Sunscreen Products. *Id.*

The Claim Form is a short and simple form, is easily understood and asks only a few basic questions. Claim Forms may be submitted electronically or by U.S. Mail. *Id.* § III.C-D. The Claim Period shall run for one hundred fifty (150) days from the date of the establishment of the Settlement Website. *See id.* § II.6.

Unless otherwise ordered by the Court, the Notice and Settlement Administrator shall distribute funds from the Escrow Account to Settlement Class Members who timely returned a complete Claim Form that has been verified and approved for payment by the Notice and Settlement Administrator within one hundred twenty (120) days of the last day of the Claim Period, provided that this provision can be triggered no earlier than forty five (45) days from the occurrence of the Final Settlement Date, subject to any adjustments discussed in the Settlement Agreement. *See Id.* § III.E.2.

The Settlement Fund shall be used to make all of the following payments, to the extent such payments do not exceed $10 million: (a) all timely, valid and approved Claims; (b) the guaranteed *cy pres* awards; (c) claim administration and associated costs; and (d) payments to Named Plaintiffs for incentive awards as ordered by the Court. *See id.* § III.F.1.

If the amounts required to pay (a) all timely, valid and approved Claims; (b) the guaranteed *cy pres* awards; (c) claim administration and associated costs; and (d) payments to Named Plaintiffs for incentive awards as ordered by the Court,

exceed the $10 million maximum, the balance of the Settlement Fund (i.e., the balance of the $10 million maximum) remaining following payment of the amounts to be paid as specified in sections (b)-(d) of this paragraph, shall be distributed among all timely, valid and approved Claims such that the cash payment for each Eligible Coppertone Sunscreen Product shall be the amount resulting from dividing the amount remaining in the Settlement Fund after payments have been made for the items specified in sections (b)-(d) of this paragraph, by the number of Eligible Coppertone Sunscreen Products for which timely, valid and approved Claims have been submitted. *See id.* § III.F.2.

Any amount of the $3 million minimum not used to pay (a) all timely, valid and approved Claims; (b) claim administration and associated costs; (c) payments to Named Plaintiffs for incentive awards as ordered by the Court; and (d) the guaranteed *cy pres* awards, shall be paid in equal amounts as cy pres to LAFLA, LSNYC, and LSNJ. Any such residual amounts to be paid as cy pres to LAFLA, LSNYC, and LSNJ shall be paid no later than thirty (30) days after the expiration of the last uncashed check issued to Claimants. *See id.* § III.F.3.[3] Thus, no funds shall be returned to Merck.

[3] Any such residual amounts to be paid as *cy pres* to LAFLA, LSNYC, and LSNJ shall be paid not later than thirty (30) days after the expiration of the last uncashed check issued to Claimants. *Id.*

Pursuant to the terms of the Settlement Agreement, Settlement Class Counsel has agreed to make, and Merck has agreed not to oppose, an application for an award of Attorneys' Fees and Expenses in the Action that will not exceed $2 million in fees and expenses incurred in the Action and/or the Coordinated Proceeding with respect to claims brought against Merck up to the submission of their expenses to the Court prior to the Final Approval Hearing. *See id.* § IX.A. Merck shall pay to Settlement Class Counsel the entire Attorneys' Fees and Expenses awarded by the Court not later than twenty (20) days after the occurrence of the Final Settlement Date. *See id.* § IX.B.

Settlement Class Counsel may also petition the Court for incentive awards of up to $2,500 per Plaintiff. Any incentive awards made by the Court shall be paid from the Settlement Fund, as instructed by Settlement Class Counsel, within thirty (30) days after the occurrence of the Final Settlement Date. *See id.* § IX.D.

In return for the benefits provided in the Settlement Agreement, the Settlement Class will release and discharge Defendants from any and all claims that were, could have been, or may be asserted in the filed actions, or that relate to the purchase of Eligible Coppertone Sunscreen Products, excluding claims for personal injury. *See id.* § VII.

Defendants have also agreed to a release (the "Defendants' Release"), whereby upon entry of the Final Approval Order and Final Judgment, they will

release any and all claims that Defendants may have against the Named Plaintiffs and Mr. Gaston and their counsel, including Settlement Class Counsel, for damages, penalties, fines or sanctions arising out of or pertaining to the prosecution or conduct of the Action or the Coordinated Proceeding. *See id.* § VIII.

C. The Dissemination of the Notice

The Settlement Class will be informed of the terms of the Settlement Agreement, including any dates and deadlines, through a notice plan that will use, among others, (i) direct mail for each Settlement Class member who requests it, provided that the Settlement Class Member makes the request prior to the deadline to opt out and/or submit an objection; (ii) publication of a Publication Notice as described in the Declaration of the Notice and Settlement Administrator and in such additional newspapers, magazines and/or other media outlets as shall be agreed upon by the Parties; (iii) an Internet website, www.sunscreensettlement.com, that will inform Settlement Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information; (iv) a neutral press release issued no later than forty (40) days before the Final Approval Hearing; (v) a toll-free telephone number (which will provide Settlement-related information in English and, as requested, in Spanish, to

Settlement Class Members); and (vi) such other notice as identified in the Declaration of the Notice and Settlement Administrator. *See id.* § IV.A-B.

The Notice and Settlement Administrator shall send the Long Form Notice, which will contain the Claim Form, by First-Class U.S. Mail, proper postage prepaid, to each Settlement Class Member who requests it, provided that the Settlement Class Member makes the request prior to the deadline to opt out and/or submit an objection. *See id.* § IV.B.1.a.i. The Notice and Settlement Administrator will also send the applicable documents to each appropriate State and Federal official, as specified in 28 U.S.C. § 1715, and will otherwise comply with Rule 23 of the Federal Rules of Civil Procedure and any other applicable statute, law, or rule, including, but not limited to, the Due Process Clause of the United States Constitution. *See id.*

The Notice and Settlement Administrator will also: (a) re-mail any notices returned by the United States Postal Service with a forwarding address that are received by the Notice and Settlement Administrator; (b) by itself or using one or more address research firms, as soon as practicable following receipt of any returned notices that do not include a forwarding address, research any such returned mail for better addresses and promptly mail copies of the Long Form Notice to the better addresses so found. *See id.* § IV.B.1.a.ii.

The Long Form Notice shall contain a plain and concise description of the nature of the Action, the history of the litigation of the claims, the preliminary certification of the Settlement Class, and the proposed Settlement, including information on the identity of Settlement Class Members, how the proposed Settlement would provide relief to the Settlement Class Members, what claims are released under the proposed Settlement and other relevant terms and conditions. *See id.* § IV.B.1.b.i. It will also inform Settlement Class Members that they have the right to opt out of the Settlement Agreement, and will provide the deadlines and procedures for exercising this right. *See id.* § IV.B.1.b.ii. In addition, the Long Form Notice shall inform Settlement Class Members of their right to object to the proposed Settlement and appear at the Final Approval Hearing, and will provide the deadlines and procedures for these rights as well. *See id.* § IV.B.1.b.iii. Further, the Long Form Notice will inform Settlement Class Members about the amounts being sought by Settlement Class Counsel as Attorneys' Fees and Expenses and the incentive awards being sought for the Named Plaintiffs. *See id.* § IV.B.1.b.iv. Importantly, both the Long Form Notice and Publication Notice are based on models from the Federal Judicial Center, and are designed to be easy to understand and reader friendly.

The Long Form Notice will include the Claim Form. *See id.* § IV.B.1.b.v. The Claim Form will also be available to be completed and submitted

electronically on the Settlement Website, referenced below and in the Settlement Agreement. *See id.* The Claim Form will provide the Settlement Class Member with the terms, deadlines, and requirements to submit a Claim, including but not limited to, that he or she must fully complete and timely return the Claim Form within the Claim Period to be eligible to obtain relief pursuant to this Agreement. *See id.*

In addition to the preparation and mailing of the Long Form Notice, the Notice and Settlement Administrator will also have the publication of the Publication Notice substantially completed no later than forty (40) days before the Final Approval Hearing as described in the Declaration of the Notice and Settlement Administrator and in such additional newspapers, magazines and/or other media outlets as shall be agreed upon by Settlement Class Counsel and Merck. *See id.* § IV.B.1.c.

In addition, no later than ten (10) days after the entry of the Preliminary Approval Order, the Notice and Settlement Administrator will also establish an Internet website, www.sunscreensettlement.com, that will inform Settlement Class Members of the terms of this Agreement, their rights, dates and deadlines, and related information. See id. § IV.B.1.d. The Settlement Website shall include, in .pdf format: (i) the Settlement Agreement; (ii) the Long Form Notice; (iii) the Claim Form, (iv) the Preliminary Approval Order; (v) Frequently Asked Questions

in a form substantially similar to the one attached to the Agreement as Exhibit 9, which will reference the Website and the toll-free telephone number, (vi) the toll-free telephone number (which will provide Settlement-related information in English and, if requested, in Spanish); and (vii) as agreed, other relevant orders of the Court. *See id.* Nationwide access to the Settlement Website will be ensured via the following methods: (x) the Settlement Website will be registered with Google so that appropriate queries on Google will yield a link to the Settlement Website; (y) the Publication Notice will reference the Settlement Website; and (z) the Long Form Notice will reference the Settlement Website. *See id.*

In addition, the Notice and Settlement Administrator will also issue a neutral press release no later than forty (40) days before the Final Approval Hearing as further discussed in the Declaration of the Notice and Settlement Administrator. *Id.* § IV.B.1.e.[4]

Finally, within ten (10) days after the entry of the Preliminary Approval Order, the Notice and Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information in English and, as requested, in Spanish to Settlement Class Members, which will also be referenced

[4] The Parties and their counsel have agreed not to issue any other notice, press release, and/or similar statement relating to the Settlement of the Action, and/or claims against Merck in the Coordinated Proceeding, unless otherwise agreed to by the Parties. *See id.*

in the Long Form Notice, FAQs, and publication notice and on the internet website. *Id.* § IV.B.1.g.

III. ARGUMENT

A. This Settlement Merits Preliminary Approval

The Court reviews the settlement "preliminarily to determine whether it is sufficient to warrant public notice and a hearing." Manual for Complex Litigation, Fourth § 13.14. "Preliminary approval of a proposed settlement is the first in a two-step process required before a class action may be settled" pursuant to Fed. R. Civ. P. 23. *Jones v. Commerce Bancorp, Inc.*, No. 05-5600 (RBK), 2007 WL 2085357, at *2 (D.N.J. July 16, 2007); *see also Mazon v. Wells Fargo Bank, N.A.*, CIV. 10-700 RBK/KMW, 2011 WL 6257149, at *1 (D.N.J. Dec. 14, 2011); *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

"First, the court reviews the proposed terms of settlement and makes a preliminary determination of the fairness, reasonableness and adequacy of the settlement terms." *In re Public Offering Securities Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005) (citing Manual for Complex Litigation, Fourth § 21.632). The Court should preliminarily approve this proposed settlement because there are no "grounds to doubt its fairness" and the proposed settlement has no "other obvious

deficiencies".[5] *In re Automotive Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2004 WL 1068807, at *2 (E.D. Pa. May 11, 2004) (citations omitted); *see also Mazon*, 2011 WL 6257149, at *1 (D.N.J. Dec. 14, 2011).

In deciding whether preliminary approval is warranted, "there is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval." 2 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.41 (3d ed. 1992); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 102 (D.N.J. 2012); (D.N.J. Mar. 30, 2012); *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiating at arm's length cannot be gainsaid. Lawyers know their strengths and they know where the bones are buried.").

As set forth above, this Settlement Agreement is the product of nearly eight years of extensive litigation in the Coordinated Proceeding, including production

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[5] The second step is for the Court to decide whether the settlement is fair, reasonable and adequate after notice of the settlement's terms have been disseminated to the Settlement Class and Settlement Class Members have been allowed to exercise their rights. *See* Fed. R. Civ. P. 23(e)(2); 5 James Wm. Moore, *Moore's Federal Practice*, § 23.82[1] at 23-336.2 to 23-339 (3d ed. 2002). In this Circuit, a determination of whether a class action settlement is fair, reasonable and adequate, pursuant to Fed. R. Civ. P. 23, is measured against nine factors. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301 (3d Cir. 2005) (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)).

and review of discovery, extensive motion practice and briefing in the trial and appellate courts, and months of arms' length and often intensive negotiations between counsel with deep knowledge of the law and of the facts as it relates to the issues here. Therefore, the Settlement Agreement should be accorded a presumption of fairness.

It has long been held that "[c]ompromises of disputed claims are favored by the courts." *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910). This is especially true for class actions. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("there is an overriding public interest in settling class action litigation, and it should therefore be encouraged"); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 102 (same); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1991) ("This is especially true in light of the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.") Thus, in evaluating whether a settlement falls within the range of possible fairness, reasonableness and adequacy, the court's function is not to second-guess the settlement terms. *Walsh v. Great Atl. and Pac. Tea Co.*, 96 F.R.D. 632, 642-43 (D.N.J.), *aff'd*, 726 F.2d 956 (3d Cir. 1983). "The evaluating court must, of course, guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re General*

Motors Pick Up Truck Fuel Tank Products Liab. Litig., 55 F.3d 768, 806 (3d Cir. 1995).

Instead, the Court's focus should be on the terms of the settlement, not what might have been. *Mars Steel v. Continental Ill. Nat'l Bank & Trust Co.*, 834 F.2d 677, 684 (7th Cir. 1987) ("[r]ather than attempt to prescribe the modalities of negotiation, the district judge permissibly focused on the end result of the negotiation. . . . The proof of the pudding was indeed in the eating.") If the terms themselves are preliminarily "fair, reasonable and adequate, the district court may fairly assume that they were negotiated by competent and adequate counsel; in such cases, whether another team of negotiators might have accomplished a better settlement is a matter equally comprised of conjecture and irrelevance." *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 212 (5th Cir. 1981), *cert. denied*, 456 U.S. 998 (1982).

The terms of the Settlement Agreement in this case easily satisfy a preliminary determination of their fairness, reasonableness and adequacy. The settlement reflects the informed judgment of the Parties, based upon the eight-year history of litigation in the Coordinated Proceeding, which has involved a thorough examination and investigation of the facts and law, discovery, and extensive briefing and motion practice. Settlement Class Counsel and Defendants' Counsel have engaged in extensive arms' length settlement negotiations for several months.

Instead of the uncertainty and risk that comes with continuing litigation, the proposed settlement treats Settlement Class Members fairly, reasonably and adequately by providing prompt and certain relief. For example, all Settlement Class Members will receive the benefit of injunctive relief relating to label and advertising changes for the Eligible Coppertone Sunscreen Products. *See* Settlement Agreement § III.A; *see also Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 329 (3d Cir. 2011) (holding that a class settlement providing for monetary relief to some class members and injunctive relief to all class members was fair, reasonable and adequate), *cert. denied,* 132 S. Ct. 1876 (U.S. 2012) *reh'g denied,* 11-1111, 2012 WL 1811114, at *1 (U.S. May 21, 2012); *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 733 (E.D. Pa. 1995) (finding a settlement fair, reasonable and adequate where there was injunctive relief combined with a monetary recovery). Importantly, Merck's agreement to comply with the Final Rule as of June 22, 2012 is particularly beneficial to the Settlement Class because the Final Rule is not currently expected to be in effect until December 17, 2012. Thus, at a minimum, Settlement Class Members receive approximately six months of compliance with the Final Rule before it is in effect. Moreover, there is no guarantee that the Final Rule will actually become effective in December 2012. Based on past history, there is a possibility that implementation of the Final Rule will again be delayed for six months or longer. Thus, the Settlement Class is not

only gaining six months of compliance with the Final Rule before it is effective, but a guarantee that regardless of whether the Final Rule takes effect in December 2012, Merck will continue to be in compliance with the terms set forth in the Final Rule. Merck will also comply with any subsequent enforcement rulings under the Final Rule as they become effective.

In addition to the injunctive relief that will benefit all Settlement Class Members, Merck is paying at least $3 million and up to $10 million, consisting of refunds to Settlement Class Members who submit timely and valid claims, guaranteed *cy pres* payments and other payments.[6] *See* Settlement Agreement § III.B.

As explained above and in the Settlement Agreement, each Settlement Class Member who purchased an Eligible Coppertone Sunscreen Product since July 31, 2006 up to the date that notice is first disseminated shall be entitled to submit a Claim during the Claim Period, and the payment for each Eligible Coppertone Sunscreen Product shall be up to $1.50, subject to the adjustments and other procedures discussed in this Settlement Agreement. *See* Settlement Agreement §

[6] Notably, even if the total value of claims received by eligible Settlement Class Members is less than the $3 million minimum Settlement Fund, no funds will be returned to Merck. *See* Settlement Agreement § III.F.3.

III.C. The Claim Form is a simple form that is only a few pages long and asks a few basic questions. *See id.* § III.C.3.[7]

In addition to these refunds, Merck is also making guaranteed *cy pres* payments of $333,333.33 each to LAFLA, LSNY and $333,333.34 to LSNJ, which were selected jointly by the parties as relevant to the Settlement Class Members and/or to the issues in this litigation. *See In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 101, 117-118 (finally approving a class settlement where 85% of the settlement fund went towards claimants and 15% went towards *cy pres* payments); *see also McDonough v. Toys R Us, Inc.*, 2:06-CV-0242-AB, 2011 WL 6425116, at *1 (E.D. Pa. Dec. 21, 2011) (finally approving a class action settlement that provided for varying levels of monetary recovery based on a claimant's ability to provide proof of purchase and *cy pres* awards). "Federal courts have frequently approved [*cy pres* payments] in the settlement of class actions where the proof of

[7] Claimants may seek reimbursement for purchases of up to six (6) Eligible Coppertone Sunscreen Products without proof of purchase. *See id.* § III.C.2. Merck shall have the right to request that the Notice and Settlement Administrator request and require proof of purchase for each unit from Claimants who seek reimbursement for between seven (7) and nine (9) Eligible Coppertone Sunscreen Products. *See id.* Claimants who seek reimbursement for purchases of ten (10) or more Eligible Coppertone Sunscreen Products will be required to provide proof of purchase for each unit with the submission of the Claim. *See id.* Acceptable proof of purchase includes a photocopy of the label(s) on the tube(s), spray(s), bottle(s), and/or similar container(s), cash register receipt(s), credit card receipt(s), credit card statement(s) or similar document(s) that sufficiently indicate the purchase of Eligible Coppertone Sunscreen Products. *See id.*

individual claims would be burdensome or distribution of damages costly." *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 117 (citing *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 343 (E.D.N.Y 2010) ("A *cy pres* payment, as an adjunct to a payment by other means to some members of the class, is warranted where the amount to be distributed to the remaining class members is small relative to the administrative costs of a direct distribution.")); *see also Newberg on Class Actions* § 11.20 (4th ed. 2011) ("[C]ourts are not in disagreement that *cy pres* distributions are proper in connection with a class settlement subject to court approval of the particular application of the funds."); *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 117 (E.D. Pa. 2005) (same).

In sum, the Settlement Agreement was the product of vigorous, contested litigation in the Coordinated Proceeding and arm's length negotiations between Settlement Class Counsel and Defendants' Counsel, and provides an opportunity for each Settlement Class Member to obtain relief from the settlement. Further, the Settlement Agreement minimizes the expense and complexity inherent in litigating an individual claim and is intended to provide timely relief, something the Settlement Class Members may not otherwise realize if this case were to proceed to trial, especially in light of the amounts at issue. This Court should preliminarily approve the Settlement Agreement, which will afford substantial relief to the

Settlement Class as a whole, is not the product of fraud or collusion, and is within the preliminary range of possible fairness, reasonableness and adequacy.

B. The Court Should Schedule a Final Approval Hearing and Authorize the Dissemination of Notice

Since the settlement satisfies the preliminary standards, the Court should, pursuant to Fed. R. Civ. P. 23, authorize the dissemination of notice, approve the notice plan, approve the notices, appoint the Notice and Settlement Administrator, set the date and time for the Final Approval Hearing, and set related dates and deadlines.

As described above, the dissemination of notice, including the publication of the Publication Notice, direct mailings of the Long Form Notice to Settlement Class Members who request it, the establishment of the settlement website, www.sunscreensettlement.com, which will contain relevant settlement-related materials, the establishment of a toll-free telephone number, the use of banner ads on applicable internet websites, and the issuance of a neutral press release amount to "the best notice that is practicable under the circumstances." Settlement Agreement § IV; Fed. R. Civ. P. 23(c)(2)(B); *see In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 536-37 (upholding District Court's finding that even in the absence of any individual notice via direct mail, summary notice by publication in publications likely to be read by consumer claimants, a website with information and downloadable forms and other forms of notice, constituted the best notice

practicable under the circumstances, especially where consumers could request a copy of the notice by direct mail); *Zimmer Paper Prod., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1990) (noting that publication of notice in print media in conjunction with mailed notice is usually the best notice practicable); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 203 (D. Me. 2003) *judgment entered,* MDL 1361, 2003 WL 21685581, at *9-10 (D. Me. July 18, 2003) (finding that a notice program consisting of print, broadcast and electronic publication, which also employed a short-form and long-form notice, was the best notice practicable under the circumstances).

The Long Form Notice and Publication Notice satisfy the requirements of Fed. R. Civ. P. 23 and in particular comply with the seven subparts listed in Fed. R. Civ. P. 23(c)(2)(B) ("The notice must clearly and concisely state in plain, easily understood language" information about the settlement). The Long Form Notice and attached Claim Form were prepared by Defendants' Counsel and Settlement Class Counsel, to clearly and concisely explain to Settlement Class Members the terms of the Settlement Agreement and their rights as Settlement Class Members. Settlement Agreement § IV.

As discussed above, the Long Form Notice and Publication Notice inform the Settlement Class, in plain, easily understood language, about the nature of the Action, the Settlement Agreement and the rights and deadlines of Settlement Class

Members. *See* Settlement Agreement §§ IV.B.1.b and IV.B.1.c. Indeed, both the Long Form Notice and the Publication Notice comply with the Federal Judicial Center's illustrative notices. This plainly is sufficient notice to the Settlement Class.

Accordingly, the Court should authorize the dissemination of notice, approve the notice plan, approve the notices, appoint the Notice and Settlement Administrator, set the date and time for the Final Approval Hearing, and set related dates and deadlines, in compliance with the requirements of Fed. R. Civ. P. 23.

C. This Court Should Issue a Preliminary Injunction

It is common for most, if not all, federal courts to issue preliminary injunctions after granting preliminary approval to class action settlements and while notice is being disseminated to the Settlement Class. This Court has the authority to issue a preliminary injunction pursuant to the "necessary in aid of" exception to the Anti-Injunction Act, 28 U.S.C. § 2283, and the All Writs Act, 28 U.S.C. § 1651(a). Indeed, the Third Circuit has recognized that injunctions against filed parallel actions may be particularly appropriate in the context of complex litigation, which "makes special demands on the court that may justify an injunction otherwise prohibited." *In re Diet Drugs*, 282 F.3d 220, 235 (3d Cir. 2002) (affirming issuance of an injunction, after conditional certification and before the fairness hearing, preventing the mass opt out of class members pursuing

a parallel Texas state court action). Moreover, within the context of complex litigation, "[t]he threat to the federal court's jurisdiction posed by parallel state actions is particularly significant where there are conditional class certifications and impending settlements in federal actions." *Id.* at 236 (citing *Carlough v. Amchem Products, Inc.*, 10 F.3d 189, 203 (3d Cir. 1993)). Where, as here, substantial negotiations have progressed to the point of settlement, competing actions, if they are filed and/or allowed to proceed, and communications would jeopardize the realization of a nationwide settlement, interfere with this Court's ability to manage the settlement, and potentially confuse Settlement Class Members to the point where it would "cause havoc." *Id.* at 204.

Courts may issue a preliminary injunction pursuant to the "necessary in aid of" exception to the Anti-Injunction Act. 28 U.S.C. § 2283. This exception allows a federal court to effectively prevent its jurisdiction over the settlement from being undermined by pending parallel litigation in state courts. *See In re Asbestos School Litig.*, No. 83-0628, 1991 U.S. Dist. LEXIS 5142, at *4 (E.D. Pa. Apr. 16, 1991), *aff'd mem.*, 950 F.2d 723 (3d Cir. 1991). In addition, another exception to the Anti-Injunction Act permits courts to issue injunctions where it is necessary 'to protect or effectuate [a court's] judgment[]." *Id.* at *3. Federal courts have issued similar injunctions in other class action settlements. *See, e.g., In re Diet Drugs*, 282 F.3d at 235; *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F.

Supp. 450, 487-88 (D.N.J. 1997), *aff'd*, 148 F.3d 283 (3d Cir. 1998), *cert. denied, sub nom.*, *Johnson v. Prudential Ins. Co. of Am.*, 525 U.S. 1114 (1999); *In re Baldwin-United Corp.*, 770 F.2d 328, 338 (2d Cir. 1985); *In re Synthroid Marketing Litig.*, 197 F.R.D. 607, 610 (N.D. Ill. 2000); *In re Linerboard Antitrust Litig.*, 361 Fed. Appx. 392, 395 (3d Cir. 2010).

This Court also has the authority to issue the requested injunction under the All Writs Act, 28 U.S.C. § 1651(a). The All Writs Act permits this Court to issue "all writs necessary or appropriate in aid of [its] jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Act permits a federal district court to protect its jurisdiction by enjoining parallel actions by class members that would interfere with the court's ability to oversee a class action settlement. *In re Linerboard Antitrust Litigation*, 361 Fed. Appx. At 396; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). The Court may issue an injunction as soon as "the litigation reaches the settlement stage" in order to "effectuate a final settlement." *In re Mexico Money Transfer Litig.*, Nos. 98-C-2407 and 98-C-2408, 1999 WL 1011788, at *3 (N.D. Ill. Oct. 19, 1999).

The rights and interests of Settlement Class Members and the jurisdiction of the Court will be impaired if, during the notice period, parallel actions alleging virtually identical claims to those asserted in the instant action are allowed to be filed and then to proceed. It is imperative that Settlement Class Members be

allowed to evaluate their options under the settlement without receipt of potentially confusing competing notices or communications.

To avoid this confusion and to protect the rights and interests of Class Members, as well as the Court's own jurisdiction, the Court should issue a preliminary injunction pending final approval of the settlement, enjoining Settlement Class Members and their representatives from pursuing claims that are similar to those alleged in the Complaint.

The present circumstances warrant the Court's issuance of a preliminary injunction pursuant to the All Writs Act and the exceptions to the Anti-Injunction Act. The notice plan and notice materials will be disseminated to the Settlement Class and will discuss the terms of the proposed settlement and their rights as Settlement Class Members. Accordingly, this Court should issue a preliminary injunction to permit Settlement Class Members to review the notice materials and assess their options without any distractions engendered by the filing and prosecution of competing actions.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court preliminarily approve the proposed settlement, including the Settlement Agreement and accompanying Exhibits, and grant the relief requested herein.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STEVEN BRODY, CHAIM HIRSCHFELD, and SUZANNE GRUNSTEIN, on behalf of themselves and all others similarly situated, Plaintiffs, v. MERCK & CO., INC., f/k/a SCHERING-PLOUGH CORPORATION, MSD CONSUMER CARE, INC., f/k/a SCHERING-PLOUGH HEALTHCARE PRODUCTS, INC., MERCK SHARP & DOHME CORP., AS SUCCESSOR IN INTEREST TO SCHERING CORPORATION, SCHERING-PLOUGH HEALTHCARE PRODUCTS SALES CORPORATION, AND SCHERING-PLOUGH HEALTHCARE PRODUCTS ADVERTISING CORPORATION, Defendants.	CIVIL ACTION NO. 3:12-cv-04774-PGS-DEA *DOCUMENT ELECTRONICALLY FILED* **CERTIFICATE OF SERVICE**

I hereby certify that on this date, I caused to be filed, via electronic filing, the following document with the United States District Court for the District of New Jersey:

1. Defendants' Memorandum Of Law In Support Of The Joint Motion For Preliminary Approval Of The Nationwide Class Action Settlement And Issuance Of Related Orders

I hereby certify that on this date, I caused copies of the foregoing document to be served via ECF on:

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I further certify that on this date, I served a copy of the foregoing documents on the following by first class postage prepaid U.S. Mail and by electronic mail:

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I further hereby certify that I have provided courtesy copies of the foregoing documents by first class postage pre-paid U.S. Mail to the Honorable Peter G. Sheridan, U.S.D.J., pursuant to Local Civil Rule 5.2 and Electronic Case Filing Policies and Procedures.

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