

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

STEVEN BRODY, CHAIM HIRSCHFELD, and
SUZANNE GRUNSTEIN, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

Civil Action No. 12-cv-4774-PGS-DEA

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.

SETTLEMENT AGREEMENT

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. DEFINITIONS.....	6
III. RELIEF TO THE SETTLEMENT CLASS.....	12
IV. NOTICE TO THE SETTLEMENT CLASS.....	21
V. REQUESTS FOR EXCLUSION.....	27
VI. OBJECTIONS TO SETTLEMENT AGREEMENT.....	28
VII. RELEASE AND WAIVER OF PLAINTIFFS AND SETTLEMENT CLASS CLAIMS	30
VIII. DEFENDANTS' RELEASE OF CLAIMS	35
IX. ATTORNEYS' FEES AND EXPENSES AND INDIVIDUAL PLAINTIFFS' AWARDS	35
X. PRELIMINARY APPROVAL ORDER, FINAL APPROVAL ORDER, FINAL JUDGMENT AND RELATED ORDERS	37
XI. MODIFICATION OR TERMINATION OF THE SETTLEMENT AGREEMENT.....	40
XII. MISCELLANEOUS PROVISIONS.....	43

TABLE OF EXHIBITS

Document	Exhibit Number
Claim Form.....	1
Escrow Agreement.....	2
Final Approval Order.....	3
Final Judgment.....	4
Long Form Notice.....	5
Declaration of Notice and Settlement Administrator.....	6
Preliminary Approval Order.....	7
Publication Notice.....	8
Frequently Asked Questions.....	9
Confidentiality Agreement.....	10

The Settlement Agreement is made and entered into by and between Plaintiffs Steven Brody, Chaim Hirschfeld and Suzanne Grunstein, individually, and as representative of the Settlement Class defined below, and Defendants Merck & Co., Inc., MSD Consumer Care, Inc., and Merck Sharp & Dohme Corp. (collectively the “Parties”). The Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all released rights and claims, subject to the terms and conditions set forth herein.

I. INTRODUCTION

A. 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, as defined below.

B. 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, as defined below.

C. 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, as defined below.

D. 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.

E. On or about February 10, 2004, plaintiff Robert Gaston (“Gaston” or “Mr. 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.

F. Similar actions were filed in 2003, 2004, and 2005 in the Superior Court for the State of California, County of Los Angeles, against four other sunscreen manufacturers making similar claims.

G. On April 26, 2004, the actions set forth in Sections I.A-D above were coordinated in the Superior Court for the State of California, County of Los Angeles, 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 actions referenced in Section I.F above were added to the Coordinated Proceeding.

H. Pursuant to a Minute Order dated October 13, 2004, the Superior Court appointed Abraham, Fruchter & Twersky, LLP as lead counsel for the plaintiffs in the Coordinated Proceeding.

I. The individual claims and causes of action asserted by plaintiffs identified in

Sections I.A-D above were dismissed in summary judgment proceedings in 2008. At that time, Mr. Gaston's breach of warranty claims were also dismissed via summary adjudication but his claims for violations of California's Unfair Competition Law ("UCL"); violations of California's Consumer Legal Remedies Act ("CLRA") and common law fraud survived summary judgment.

J. 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 acknowledged its decision was the result of confusion about the impact of California's Proposition 64 on the elements of proof for UCL class action claims. The trial court stated that it did not believe that California 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.

K. 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.

L. 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.

M. On July 31, 2012, Mr. Gaston, who is also represented by Proposed Settlement Class Counsel in this Action, and Merck submitted a settlement agreement in the Coordinated Proceeding that provides injunctive relief to a California class of purchasers of Eligible Coppertone Sunscreen Products purchased in that state (the "California State Settlement"). The parties to the California State Settlement 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.

N. On July 31, 2012, Plaintiffs, Steven Brody, Chaim Hirschfeld and Suzanne Grunstein, through Proposed Settlement Class Counsel, filed the above-captioned action against Merck in which they asserted 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.

O. 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.

P. 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.

Q. 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 the Settlement Agreement.

R. 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 the Settlement 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 the Settlement Agreement promptly in order to provide effective relief to Plaintiffs and the Settlement Class.

S. 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.

T. The Parties are willing to enter into the 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.

U. Plaintiffs and Proposed Settlement Class Counsel believe that the 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.

V. Merck expressly denies all claims asserted against Merck, denies that class certification is appropriate if the Action 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 the 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.

IT IS HEREBY AGREED, by and among the Parties that certain claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice on the terms set forth below, subject to the approval of the Court.

II. DEFINITIONS

A. As used in the Settlement Agreement, the following terms have the following meanings, unless the Settlement Agreement specifically provides otherwise:

1. “Action” means the above-captioned lawsuit filed in the United States District Court for the District of New Jersey alleging substantially similar claims as asserted against Merck in the Coordinated Proceeding (defined below).

2. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court for payment to Settlement Class Counsel to compensate Plaintiffs’ counsel for their attorneys’ fees, costs, and litigation expenses in connection with the filing, negotiations, and

settlement of the Action, the filing and related procedures regarding the Settlement, and the prosecution, negotiation and settlement of the claims against Merck in the Coordinated Proceeding.

3. “Claim” means the claim of a Settlement Class Member or his or her representative submitted on a Claim Form as provided in the Settlement Agreement.

4. “Claimant” means a proposed Settlement Class Member who submits a Claim pursuant to the Settlement Agreement.

5. “Claim Form” means a document agreed to by the Parties substantially in the form attached hereto as Exhibit 1, which must be submitted by any eligible Settlement Class Member to the Notice and Settlement Administrator as part of the Claim Process.

6. “Claim Period” shall mean the time period during which Settlement Class Members may submit a Claim as part of the Claim Process. The Claim Period shall run for one hundred fifty (150) days from the date of the establishment of the Settlement Website.

7. “Claim Process” means the process for submitting Claims as described in the Settlement Agreement.

8. “Coordinated Proceeding” means the Judicial Council Coordination Proceeding styled SUNSCREEN CASES, JCCP No. 4352, pending in the Superior Court of the State of California, County of Los Angeles.

9. “Court” means the United States District Court for the District of New Jersey.

10. “Declaration of Notice and Settlement Administrator” means the Declaration of Jeanne C. Finegan, APR, Concerning Proposed Class Member Notification Program, which is attached hereto as Exhibit 6.

11. “Defendants” or “Merck” means Merck & Co., Inc., formerly known as Schering-Plough Corporation; MSD Consumer Care, Inc., formerly known as Schering-Plough Healthcare Products, Inc. and Merck Sharp & Dohme Corp., formerly known as Schering Corporation which was successor in interest to Schering-Plough Healthcare Products Sales Corporation and Schering-Plough Healthcare Products Advertising Corporation.

12. “Defendants’ Counsel” means Reed Smith LLP.

13. “Depository Bank” means JP Morgan Chase as the bank jointly selected by Settlement Class Counsel and Merck to receive, hold, invest, and disburse the Escrow Account, subject to instructions provided by the Parties to the Notice and Settlement Administrator and subject to the terms of the Escrow Agreement.

14. “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.

15. “Escrow Account” means the custodial or investment account with the Depository Bank administered by the Notice and Settlement Administrator in which the funds to be deposited will be held, invested, administered, and disbursed pursuant to the Settlement Agreement.

16. “Escrow Agreement” means the agreement by and among Settlement Class Counsel, Defendants’ Counsel and the Notice and Settlement Administrator (as defined below) with respect to the escrow of the funds to be deposited into the Escrow Account pursuant to the Settlement Agreement substantially in the form attached hereto as Exhibit 2.

17. “Final Approval Hearing” or “Final Fairness Hearing” means the hearing

at which the Court will consider and finally decide whether to approve the Settlement Agreement, enter the Final Approval Order and Final Judgment, and make such other rulings as are contemplated by the Settlement Agreement.

18. “Final Approval Order and Final Judgment” means a final order and judgment entered by the Court giving Final Approval of the Settlement Agreement and dismissing with prejudice Plaintiffs’ claims in the forms respectively attached hereto as Exhibits 3 and 4.

19. “Final Settlement Date” is the date on which the Final Approval Order and Final Judgment approving the Settlement Agreement become final. For purposes of the Settlement Agreement:

a. if no appeal has been taken from the Final Approval Order and Final Judgment, “Final Settlement Date” means the date on which the time to appeal therefrom has expired; or

b. if any appeal has been taken from the Final Approval Order and Final Judgment, “Final Settlement Date” means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing en banc and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Final Approval Order and Final Judgment; or

c. if Settlement Class Counsel and Defendants agree in writing, the “Final Settlement Date” can occur on any other agreed date.

20. “Long Form Notice” means the notice in a form substantially similar to the form attached hereto as Exhibit 5, and as approved by the Court.

21. “Named Plaintiffs” or “Plaintiffs” means Steven Brody, Chaim Hirschfeld

and Suzanne Grunstein.

22. “Notice and Settlement Administrator” shall mean GCG, Inc. which has been jointly designated by Settlement Class Counsel and Merck and is sought to be approved by the Court to administer the Settlement Agreement and the funds deposited into the Escrow Account pursuant to the terms of the Settlement Agreement and orders of the Court.

23. “Notice Plan” means the plan for disseminating notice to the Settlement Class Members as described herein and as described in the Declaration of the Notice and Settlement Administrator, which is attached hereto as Exhibit 6.

24. “Parties” means Named Plaintiffs and Merck and “Party” means any one of them.

25. “Plaintiffs’ Counsel” means Abraham, Fruchter & Twersky, LLP, Westrup Klick LLP and any and all other attorneys representing Plaintiffs in this Action.

26. “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement, conditionally certifying the Settlement Class, and issuing related orders, which is to be substantially in the form attached hereto as Exhibit 7.

27. “Proposed Settlement Class Counsel” or “Settlement Class Counsel” means Abraham, Fruchter & Twersky, LLP.

28. “Publication Notice” means the summary notice in a form substantially similar to that attached hereto as Exhibit 8.

29. “Released Defendants” means and refers to: Merck & Co., Inc., MSD Consumer Care, Inc., Merck Sharp & Dohme Corp., and their present, former and future officers, directors, partners, employees, agents, attorneys, servants, heirs, administrators, executors, members, member entities, shareholders, predecessors, successors, reorganized successors, spin-

offs, holding companies, related companies, joint-ventures, divisions, affiliates, subsidiaries, parents, representatives, trustees, principals, insurers, suppliers, sellers, resellers, distributors, vendors and assigns, authorized retailers of Eligible Coppertone Sunscreen Products, authorized wholesalers of Eligible Coppertone Sunscreen Products, as well as other third party retailers or wholesalers of Eligible Coppertone Sunscreen Products, individually, jointly, and severally.

30. “Settlement” means the Settlement Agreement between Plaintiffs, on behalf of themselves and as proposed representatives of the Settlement Class and Defendants to settle and compromise all of Plaintiffs’ and the Settlement Class’ claims fully, finally and forever, as memorialized in the Settlement Agreement.

31. “Settlement Agreement” or “Agreement” means the Settlement Agreement and all exhibits thereto.

32. “Settlement Class” and “Settlement Class Members” include 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. Provided, however, that the “Settlement Class” and “Settlement Class Members” shall exclude: (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’ Counsel; (e) Plaintiffs’ Counsel; (f) the Honorable Peter G. Sheridan 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 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.

33. "Settlement Fund" means a minimum amount of \$3 million and a maximum amount of \$10 million that Merck is obligated to pay under the Settlement Agreement for (a) payments to Claimants for timely, valid, and approved Claims from the Escrow Account; (b) claims 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, to the cy pres recipients as further specified in the Settlement Agreement.

34. "Settlement Website" means www.suncreensettlement.com, the Internet website established by the Notice and Settlement Administrator for purposes of facilitating notice to and communicating with the Settlement Class.

B. Other capitalized terms used in the Settlement Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in the Settlement Agreement.

C. The terms "he or she" and "his or her" include "it" or "its" where appropriate.

III. RELIEF TO THE SETTLEMENT CLASS

The relief provided pursuant to this Settlement shall consist of three primary components: (1) injunctive relief relating to label and advertising changes for the Eligible Coppertone Sunscreen Products for the benefit of all Settlement Class Members; (2) refunds to Settlement Class Members who submit valid and timely Claims; and (3) guaranteed cy pres awards, as discussed herein.

A. Injunctive Relief

1. Merck agrees 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. Merck further agrees 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 Drug Products for Over-the-Counter Human Use” and codified at 76 FR 35620 (“Final Rule”), except with respect to 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. Merck will also comply with any subsequent enforcement rulings under the Final Rule as they become effective.

2. No term or provision of the Settlement Agreement shall be in effect or otherwise enforceable against Merck if such term or provision is in conflict or inconsistent with the Final Rule or subsequent enforcement rulings under the Final Rule, it being understood by the Parties that in such conflicting circumstances the Final Rule shall govern and Merck shall be required to comply therewith. In the event the Parties dispute whether there is such a conflict or inconsistency, such dispute shall be resolved by the Court upon application by either Party.

3. Nothing in the Settlement Agreement shall preclude Merck from making any claim that is consistent with applicable law, regulations, or policies promulgated by the Food and Drug Administration.

B. Monetary Relief

1. Upon the attainment of the Final Settlement Date and as further specified in the Settlement Agreement regarding the timing of payments, Merck shall 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 and

associated costs; (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, to the cy pres recipients as further specified in the Settlement Agreement. 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.

Merck shall also separately pay, in addition to the Settlement Fund: (a) notice and related notice administration costs, as further specified in Section III.B.3 below (the “Notice Payment”); and (b) any Attorneys’ Fees and Expenses, as awarded by the Court, as further specified in Section IX below.

2. 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”).

3. 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. Of this \$1.5 million initial payment amount, up to \$1 million shall be used for notice and related notice administration costs and expenses, 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, with any remainder from the \$1 million Notice Payment to be used for the payment of Claims and claims administration and associated costs and credited as a payment towards the Settlement Fund. The Parties agree to appoint the Notice and Settlement

Administrator as Escrow Agent for the purpose of administering the Escrow Account and the monies deposited therein in accordance with the terms of the Settlement Agreement and the Escrow Agreement.

4. The Notice and Settlement Administrator shall pay from the Escrow Account awards to Claimants for timely, valid, and approved Claims and notice, escrow, banking, and administration costs. All notice, claims and administration costs shall be invoiced by the Notice and Settlement Administrator and paid promptly from the funds deposited into the Escrow Account after review and approval by Settlement Class Counsel and Defendants.

5. The Notice and Settlement Administrator shall be responsible for obtaining a Federal Tax Identification Number, preparing the necessary tax returns for the Escrow Account, if applicable, and paying from the Escrow Account any applicable taxes due on income generated in the Escrow Account. Neither Defendants nor Plaintiffs or their counsel, including, but not limited to, Settlement Class Counsel, shall have any responsibility for or liability whatsoever with respect to the investment, allocation or distribution of the Escrow Account, or the processing of claims, or any loss incurred by the Notice and Settlement Administrator or the Depository Bank in connection therewith.

C. Submission of Claims to the Notice and Settlement Administrator

1. A Settlement Class Member shall be eligible for monetary relief provided that the Settlement Class Member (a) purchased one or more Eligible Coppertone Sunscreen Products on or after July 31, 2006 up to the date that notice is first disseminated; (b) completes and timely submits the Claim Form during the Claim Period to the Notice and Settlement Administrator; and (c) does not opt out from the Settlement Agreement.

2. 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. The payment for each Eligible Coppertone Sunscreen Product shall be up to \$1.50, subject to the adjustments and other procedures discussed in the Settlement Agreement. 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. Claimants may seek reimbursement for purchases of up to six (6) Eligible Coppertone Sunscreen Products without proof of purchase. 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. 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. Each individual unit purchased shall constitute one (1) Eligible Coppertone Sunscreen Product. 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. Each proof of purchase submitted must be clearly and uniquely numbered and the originals of such proofs of purchase must be available for inspection upon request by the Notice and Settlement Administrator. Claimants submitting multiple proofs of purchase using a photocopy of the label(s) on the tube(s), spray(s), bottle(s), and/or similar container(s) must provide such copies on the same photocopy sheet, with at least four (4) copies to a page.

Claimants may provide less than four (4) copies to a page only if: (i) less than four (4) copies are being submitted or (ii) less than four (4) copies remain after placing all other copies on photocopy sheets with no less than four (4) to a page.

3. The electronic and hard copy Claim Form, in a form substantially similar to Exhibit 1, shall require only the Settlement Class Member's name, current postal address, current telephone number, the last four digits of the Settlement Class Member's Social Security number, information and/or documentation relating to the Eligible Coppertone Sunscreen Products, and an affirmative acknowledgement that the Claimant is submitting his or her Claim Form under penalty of perjury. Settlement Class Members may request a hard copy Claim Form from the Notice and Settlement Administrator. Once that request has been received by the Notice and Settlement Administrator, the Notice and Settlement Administrator will have no more than three (3) business days to mail the Claim Form to the requesting Settlement Class Member.

D. Claim Form Review

1. Claim Forms, whether submitted electronically via the Settlement Website or by U.S. Mail, that do not meet the requirements as set forth in the Settlement Agreement shall be rejected by the Notice and Settlement Administrator pursuant to the terms of the Settlement Agreement. The Notice and Settlement Administrator shall administer the process of receiving, handling, processing, rejecting (if warranted), and/or paying Claims in addition to the other duties identified in the Settlement Agreement and those that are usual and customary in class action settlement administration. Merck has the right to waive any of the Claim Form requirements as set forth above.

2. The Notice and Settlement Administrator shall have the authority to determine whether registration by any Settlement Class Member is complete and timely. The

Notice and Settlement Administrator's determinations in this regard shall be final and non-appealable by any Party, including, but not limited to, the Settlement Class Member.

3. Pursuant to Section III.C.2 above, for those Claims submitted by Settlement Class Members for which Merck seeks to have the Notice and Settlement Administrator request and require proof of purchase of the Eligible Coppertone Sunscreen Products, the Notice and Settlement Administrator shall mail out letters that advise Settlement Class Members that they must submit acceptable proofs of purchase of the Eligible Coppertone Sunscreen Products to validate their Claims and the failure to do so shall result in the rejection of their Claims. Settlement Class Members shall have thirty-five (35) days from the date of the postmarked letter from the Notice and Settlement Administrator to respond. If the requested proof of purchase documentation is timely provided, the Claim shall be deemed validated by the Notice and Settlement Administrator. If the requested proof of purchase documentation is not provided and/or not timely provided, and/or is not provided for all Eligible Coppertone Sunscreen Products listed, the Claim shall be deemed rejected with respect to the proof of purchase not provided and/or not timely provided.

4. The Notice and Settlement Administrator shall notify, in a timely fashion, any Claimant whose Claim has been rejected, setting forth the reasons therefore, including, but not limited to, failure to provide the requested documentation. The Notice and Settlement Administrator shall timely provide copies of all rejection notices to Settlement Class Counsel and to Defendants' Counsel.

5. Any Settlement Class Member whose claim is rejected in its entirety shall be barred from receiving any payment under the Settlement Agreement, but shall in all other respects be bound by the terms of the Settlement Agreement and by the Final Approval Order

and Final Judgment entered in the Action, unless such Settlement Class Member has submitted a timely request to opt out pursuant to Section V. Similarly, any Settlement Class Member whose Claim is approved in part and rejected in part shall be barred for that portion of the Claim that is rejected from receiving any payment under the Settlement Agreement, but shall in all other respects be bound by the terms of the Settlement Agreement and by the Final Approval Order and Final Judgment entered in the Action, unless such Settlement Class Member has submitted a timely request to opt out pursuant to Section V.

6. The Notice and Settlement Administrator shall exercise, in its reasonable discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim Process. The Notice and Settlement Administrator may, in its discretion, deny in whole or in part any Claim to prevent actual or possible fraud or abuse.

7. The Notice and Settlement Administrator shall identify any Claims that appear to seek relief on behalf of the same Claimant. The Notice and Settlement Administrator shall determine whether there is any duplication of Claims. The Notice and Settlement Administrator shall designate any such duplicative claims as rejected Claims to the extent they seek payment for the same Eligible Coppertone Sunscreen Products.

8. No person shall have any claim against Defendants, Named Plaintiffs, the Settlement Class, Settlement Class Counsel, Defendants' Counsel, or the Notice and Settlement Administrator based on any eligibility determinations made in accordance with the Settlement Agreement.

E. Payment of Claims

1. Within thirty (30) days after the occurrence of the Final Settlement Date or

within thirty (30) days of the last day of the Claim Period, whichever date is later, the Notice and Settlement Administrator will provide to Settlement Class Counsel and Defendants a detailed statement of the costs that will be incurred in generating and disbursing checks to Claimants. Within fourteen (14) days of the deadline in the prior sentence and subject to Defendants' and Settlement Class Counsel's approval, the Notice and Settlement Administrator shall request that Merck deposit funds into the Escrow Account in the amount necessary to pay timely, valid and approved Claims plus related administrative costs and Merck shall have thirty (30) days to fund the Escrow Account with the amount requested by the Notice and Settlement Administrator.

2. 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.

F. Adjustments to Payments from the Settlement Fund

1. 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.

2. 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.

3. 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.

IV. NOTICE TO THE SETTLEMENT CLASS

A. Duties of the Notice and Settlement Administrator

1. The Parties shall jointly recommend and retain GCG Inc. to be the Notice and Settlement Administrator to help implement the terms of the Settlement Agreement, the Notice Plan and the terms outlined in the Declaration of the Notice and Settlement Administrator. Following the Court's issuance of the Preliminary Approval Order and the Court's appointment of the proposed Notice and Settlement Administrator, the Notice and Settlement Administrator shall disseminate notice to the Settlement Class as provided for in the Declaration of the Notice and Settlement Administrator, to be substantially in the form attached as Exhibit 6 to the Settlement Agreement, as specified in the Preliminary Approval Order and the

Settlement Agreement, and in order to comply with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution.

2. The Notice and Settlement Administrator shall be responsible for, without limitation: (a) printing, mailing or arranging for the mailing of the Long Form Notice, if/when requested; (b) arranging for the publication of the Publication Notice; (c) handling returned mail not delivered to Settlement Class Members; (d) attempting to obtain updated address information for any Long Form Notice returned without a forwarding address; (e) making any additional mailings required under the terms of the Settlement Agreement; (f) receiving and maintaining on behalf of the Court any Settlement Class Member correspondence regarding requests for exclusion and objections to the Settlement Agreement; (g) forwarding written inquiries to Settlement Class Counsel or their designee for a response, if warranted; (h) establishing a post office box for the receipt of any correspondence; (i) responding to requests from Settlement Class Counsel and/or Defendants' Counsel; (j) establishing a Settlement Website; and (k) otherwise implementing and/or assisting with the dissemination of the notice of the Settlement. The Notice and Settlement Administrator shall be responsible for, without limitation, implementing the terms of the Claim Process and related administrative activities.

3. If the Notice and Settlement Administrator makes a material or fraudulent misrepresentation to, or conceals requested material information from, Settlement Class Counsel, Merck or Defendants' Counsel, then the Party to whom the misrepresentation is made shall, in addition to any other appropriate relief, have the right to demand that the Notice and Settlement Administrator immediately be replaced. If the Notice and Settlement Administrator fails to perform adequately on behalf of Merck or the Settlement Class, the Parties may agree to remove the Notice and Settlement Administrator. None of the Parties shall unreasonably withhold

consent to remove the Notice and Settlement Administrator, but this shall occur only after Merck and Settlement Class Counsel have attempted to resolve any disputes regarding the retention or dismissal of the Notice and Settlement Administrator in good faith, and, if they are unable to do so, the matter shall be referred to the Court for resolution.

4. The Notice and Settlement Administrator may retain one or more persons to assist in the completion of his or her responsibilities.

5. Not later than ten (10) days before the date of the Final Approval Hearing, the Notice and Settlement Administrator shall file with the Court: (a) a list of those persons who have opted out or excluded themselves from the Settlement Agreement; and (b) the details outlining the scope, methods and results of the notice program.

6. The Notice and Settlement Administrator shall promptly after receipt provide copies of any requests for exclusion, objections, and/or related correspondence to Settlement Class Counsel and Defendants' Counsel.

B. Dissemination of Notice

a. **Dissemination of the Long Form Notice:** The Long Form Notice shall be disseminated as follows:

i. The Notice and Settlement Administrator shall send the Long Form Notice 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. The Notice and Settlement Administrator shall also send the applicable documents to each appropriate State and Federal official, as specified in 28 U.S.C. § 1715. The Notice and

Settlement Administrator shall 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.

ii. The Notice and Settlement Administrator shall: (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, conduct research with respect to any such returned mail for better addresses and promptly mail copies of the Long Form Notice to the better addresses so found.

b. **Contents of the Long Form Notice and Claim Form:** The Long Form Notice and the Claim Form shall be in a form substantially similar to the documents attached to the Settlement Agreement as Exhibits 5 and 1, respectively, and shall advise Settlement Class Members of the following:

i. **General Terms:** 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.

ii. Opt-Out Rights: The Long Form Notice shall inform Settlement Class Members that they have the right to opt out of the Settlement Agreement. The Long Form Notice shall provide the deadlines and procedures for exercising this right.

iii. Objections to Settlement Agreement: 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. The Long Form Notice shall provide the deadlines and procedures for exercising these rights.

iv. Fees and Expenses: The Long Form Notice shall 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.

v. Claim Form: The Long Form Notice shall include the Claim Form. The Claim Form shall also be available to be completed and submitted electronically on the Settlement Website. The Claim Form shall 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 the Settlement Agreement.

c. The Publication Notice: The Notice and Settlement Administrator shall 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. The form of Publication Notice shall be in a form substantially similar to the one attached to the Agreement as Exhibit 8.

d. **Internet Website:** No later than ten (10) days after the entry of the Preliminary Approval Order, the Notice and Settlement Administrator shall establish 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. The Settlement Website shall include, in .pdf format, the following: (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; and (vii) as agreed, other relevant orders of the Court. Nationwide access to the Settlement Website will be ensured via the following methods: (x) the Settlement Website will be registered by the Notice and Settlement Administrator 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 the toll-free telephone number; and (z) the Long Form Notice will reference the Settlement Website and the toll-free telephone number.

e. **Press Release:** The Notice and Settlement Administrator shall 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. The Parties and their counsel shall not issue any other notice, press release, and/or similar statement relating to the Settlement of the Action, and/or the claims against Merck in the Coordinated Proceeding, unless otherwise ordered by the Court in this Action or in the Coordinated Proceeding, or as agreed to by the Parties.

f. **Notice to Counsel:** Merck shall provide to the Notice and Settlement Administrator, within ten (10) business days of the entry of the Preliminary Approval Order, a list of all counsel for anyone who has litigation against Defendants that involves claims pertaining to the Eligible Coppertone Sunscreen Products that are subject to the Plaintiffs' Release set forth in Section VII below. The Notice and Settlement Administrator shall mail copies of the Long Form Notice to all such legal counsel. Defendants will promptly direct the Notice and Settlement Administrator to serve the Long Form Notice on counsel for any Settlement Class Members who subsequently initiate litigation, arbitration, or other proceedings against Merck that involve claims pertaining to the Eligible Coppertone Sunscreen Products that are subject to Plaintiffs' Release set forth in Section VII below.

g. **Toll-Free Telephone Number:** 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, with an option for Spanish, to Settlement Class Members.

V. REQUESTS FOR EXCLUSION

A. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written request for exclusion to the Notice and Settlement Administrator at the address provided in the Long Form Notice, postmarked no later than twenty (20) days before the Final Approval Hearing, or as the Court otherwise may direct, and specifying that he or she

wants to be excluded. The Notice and Settlement Administrator shall forward copies of any written requests for exclusion to Settlement Class Counsel and Defendants' Counsel. A list reflecting all requests for exclusion shall be filed with the Court by the Notice and Settlement Administrator no later than ten (10) days before the Final Approval Hearing.

B. Any potential Settlement Class Member who does not mail a timely written request for exclusion as provided in the preceding Section V.A shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, Plaintiffs' Release in the Action, even if he or she has litigation pending or subsequently initiates litigation against Merck relating to the claims and transactions released in the Action.

VI. OBJECTIONS TO SETTLEMENT AGREEMENT

A. Any Settlement Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses, or the Named Plaintiffs' incentive awards, must deliver to the Settlement Class Counsel identified in the Long Form Notice and to Defendants' Counsel, and file with the Court, no later than twenty (20) days before the Final Approval Hearing, or as the Court otherwise may direct, a written statement of the objections, as well as the specific reason(s), if any, for each objection, including any legal support the Settlement Class Member wishes to bring to the Court's attention, any evidence or other information the Settlement Class Member wishes to introduce in support of the objections, a statement of whether the Settlement Class Member intends to appear and argue at the Final Approval Hearing, and list the Settlement Class Member's purchase(s) of the Eligible Coppertone Sunscreen Products. Settlement Class Members may do so either on their own or through an attorney retained at their own expense. The objection must include proof of purchase of the Eligible Coppertone Sunscreen Products and/or a representation and warranty, submitted

under penalty of perjury, that the objector purchased an Eligible Coppertone Sunscreen Product. 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 indicates purchase of Eligible Coppertone Sunscreen Products.

B. Any Settlement Class Member who files and serves a written objection, as described in the preceding Section VI.A, may appear at the Final Approval Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses or incentive awards to the Plaintiffs. Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must deliver a notice of intention to appear to Settlement Class Counsel identified in the Long Form Notice and to Defendants' Counsel, and file said notice with the Court, no later than twenty (20) days before the Final Approval Hearing, or as the Court may otherwise direct.

C. Any Settlement Class Member who fails to comply with the provisions of Sections VI.A and B above shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments, including, but not limited to, Plaintiffs' Release, in the Action

D. Any Settlement Class Member who objects to the proposed Settlement shall be entitled to all of the benefits of the Settlement if the Settlement Agreement and the terms contained therein are approved, as long as the objecting Settlement Class Member complies with

all requirements of the Settlement Agreement applicable to Settlement Class Members, including the timely submission of Claim Forms and other requirements discussed herein.

VII. RELEASE AND WAIVER OF PLAINTIFFS AND SETTLEMENT CLASS CLAIMS

A. The Parties agree to the following release and waiver (“Plaintiffs’ Release”), which shall take effect upon entry of the Final Approval Order and Final Judgment.

B. In consideration for the settlement benefits described in the Settlement Agreement, all Settlement Class Members who have not validly excluded themselves from the Settlement Class pursuant to Section V of the Settlement Agreement, on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and/or successors, fully, finally, and forever release, discharge, relinquish, acquit, and hold harmless the Released Defendants from any and all claims, demands, suits, petitions, liabilities, causes of action, costs, expenses, interest, obligations, reckonings, rights, judgments, contracts, agreements, executions, promises and liens, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, anticipated or unanticipated, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, derivative or direct, asserted or unasserted, concealed or hidden, whether based on federal, state or local law, Constitution, statute, ordinance, regulation, code, contract, common law, or equity or any other source, by any Settlement Class Member against any or all of the Released Defendants in the Action, the Coordinated Proceeding and/or in any other court action, tribunal, arbitration, commission, agency, or before any governmental and/or administrative body (including any action or proceeding brought on behalf of any state Attorney General or regulatory entity or organization) or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever related to, except as otherwise specified below, the marketing, promotion,

advertising, sale, distribution, and/or purchase of Eligible Coppertone Sunscreen Products and/or the claims alleged in the Action. More particularly, but without in any way limiting the generality of the foregoing, the Parties agree that Plaintiffs' Release applies to claims arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the Action, including but not limited to, in whole or in part, any and all acts, communications, affirmations, publications, omissions, impressions, disclosures, nondisclosures, facts, circumstances, matters, transactions, occurrences, oral or written statements, representations, portrayals, depictions, claims, messaging, or misrepresentations, on the internet or otherwise, that have been, may have been, could have been and/or were allegedly made, directly or indirectly, in connection with, arising out of, relating to or connected in any way with any labeling, warranties, practices, advertising, marketing, campaigning, development, packaging, promotion, displays, brochures, manufacturing, operation, performance, functionality, notification, providing, offering, dissemination, sale/resale and/or distribution of Eligible Coppertone Sunscreen Products, which have been asserted or which could have been asserted in this Action and/or the Coordinated Proceeding, including, but not limited to, the claim that Eligible Coppertone Sunscreen Products misrepresented the nature, extent, amount and/or effectiveness of UVA and/or UVB protection provided by these products. Settlement Class Members shall not now or hereafter institute, maintain, prosecute, assert or cooperate in the institution, commencement, filing, or prosecution of any suit or proceeding against the Released Defendants, either directly or indirectly, on their own behalf, on behalf of the Settlement Class or on behalf of any other person or entity with respect to the claims, causes of action and any other matters released under the Settlement Agreement.

C. Notwithstanding any other language in the Settlement Agreement, including

Section VII thereof, Plaintiffs and the other members of the Settlement Class are not, by virtue of the Agreement, releasing any claims of or relating to personal injury, including personal injury claims relating to or arising from product liability.

D. Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or values, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in their rights and interests in the Action or in any benefits, proceeds or values due them under the Action. Settlement Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or values under the Action, and that such Settlement Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in their rights and interests in the Action or in any benefits, proceeds or value due them in connection therewith.

E. Without in any way limiting its scope, Plaintiffs' Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by Settlement Class Counsel and/or any other counsel representing Plaintiffs in this Action, or by

Plaintiffs or the Settlement Class Members with respect to the claims, causes of action and any other matters released under Plaintiffs' Release, except to the extent otherwise specified in the Settlement Agreement, including without limitation, the provisions of Section IX of the Settlement Agreement.

F. Plaintiffs and all Settlement Class Members expressly agree that Plaintiffs' Release will be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by Plaintiffs' Release.

G. Plaintiffs and all Settlement Class Members expressly understand and acknowledge that certain principles of law, including, but not limited to, Section 1542 of the Civil Code of the State of California, provide that "a general release does not extend to claims which a creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." To the extent that anyone might argue that these principles of law are applicable – notwithstanding that the Settlement Class and Defendants have chosen New Jersey law to govern the Settlement Agreement – Plaintiffs and the Settlement Class Members agree that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs and the Settlement Class Members.

H. In connection with Plaintiffs' Release, Plaintiffs and the Settlement Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the released claims. Nevertheless, it is the intention of Plaintiffs and the Settlement Class Members in executing Plaintiffs' Release to fully, finally, and

forever settle, release, discharge, and hold harmless all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed that in any way relate to the Eligible Coppertone Sunscreen Products purchased prior to the date notice is first disseminated pursuant to the Notice Plan and/or the claims alleged in the Action with respect to such products (whether or not previously or currently asserted in any action or proceeding), except as otherwise specified in the Settlement Agreement, including as stated in subsection C of Section VII of the Settlement Agreement.

I. Nothing in Plaintiffs' Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed therein.

J. Plaintiffs and the Settlement Class Members hereby agree and acknowledge that the provisions of Plaintiffs' Release discussed in Section VII of the Settlement Agreement and Defendants' Release discussed in Section VIII of the Settlement Agreement together constitute essential and material terms of the Settlement Agreement and shall be included in any Final Approval Order and Final Judgment entered by the Court.

K. The Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties, neither the Settlement Agreement nor the releases given in the Settlement Agreement, nor any consideration therefor, nor any actions taken to carry out the Settlement Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any of the Released Defendants, Plaintiffs or Plaintiffs' Counsel. Defendants deny the allegations of the complaint in the Action. Neither the Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related

document, shall be used as an admission of any fault or omission by the Released Defendants, Plaintiffs or Plaintiffs' Counsel, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Defendants, Plaintiffs or Plaintiffs' in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce the Settlement Agreement.

L. Plaintiffs and Merck shall seek and obtain from the Court, as a condition of Settlement, a Final Approval Order and Final Judgment as further described in the Settlement Agreement.

VIII. DEFENDANTS' RELEASE OF CLAIMS

Upon entry of the Final Approval Order and Final Judgment, Defendants hereby fully, finally, and forever release and discharge any and all claims, whether known or unknown, which Defendants may have against Steven Brody, Chaim Hirschfeld, Suzanne Grunstein and Mr. Gaston and/or 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 (the "Defendants' Release"); and such settled claims shall be fully, finally and forever compromised, settled, discharged, dismissed with prejudice, and released pursuant to the terms and conditions set forth herein; provided however that nothing contained herein shall release any right or preclude any action to enforce the terms of the Settlement Agreement.

IX. ATTORNEYS' FEES AND EXPENSES AND INDIVIDUAL PLAINTIFFS' AWARDS

A. After agreeing to the principal terms set forth above and the settlement consideration in the Action, Settlement Class Counsel and Defendants' Counsel negotiated the amount of Attorneys' Fees and Expenses that, subject to Court approval, upon application would

be paid to Plaintiffs' Counsel. As a result of the negotiations, Settlement Class Counsel agrees to make, and Merck agrees 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 prior to the Final Approval Hearing in the Action and/or the Coordinated Proceeding with respect to claims brought against Merck prior to the Final Approval Hearing. This award shall be the sole aggregate compensation paid by Merck in the Action for all Settlement Class Counsel and/or other counsel representing Plaintiffs or the Settlement Class.

B. 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. The Attorneys' Fees and Expenses awarded by the Court and payable to Settlement Class Counsel shall not be paid from the Settlement Fund.

C. The Attorneys' Fees and Expenses paid by Merck as provided for in the Settlement Agreement shall be allocated by Settlement Class Counsel among Plaintiffs' Counsel in a manner that Settlement Class Counsel in good faith believes reflects the contributions of Plaintiffs' Counsel to the prosecution and settlement of the claims against Merck in the Action and the Coordinated Proceeding. Settlement Class Counsel agrees to make, and Merck agrees 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 prior to the Final Approval Hearing in the Action and/or the Coordinated Proceeding with respect to claims brought against Merck prior to the Final Approval Hearing.

D. Settlement Class Counsel may petition the Court for incentive awards of up to \$2,500 per Plaintiff. The purpose of such awards shall be to compensate the Plaintiffs for efforts and risks taken by them on behalf of the Settlement Class. 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.

E. Merck shall not be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with this Action or the Settlement Agreement, other than the amount or amounts expressly provided for in the Settlement Agreement.

F. Notwithstanding any other language or provision contained in the Settlement Agreement, Plaintiffs' Counsel shall not be precluded from seeking from the Superior Court for the State of California an award of attorneys' fees and expenses incurred in prosecuting the actions brought against defendants other than Merck in the Coordinated Proceeding, or an award of attorneys' fees and expenses incurred in prosecuting the claims asserted against Merck as contemplated in the California State Settlement.

X. PRELIMINARY APPROVAL ORDER, FINAL APPROVAL ORDER, FINAL JUDGMENT AND RELATED ORDERS

A. The Parties shall seek from the Court, within thirty (30) days after the execution of the Settlement Agreement, a Preliminary Approval Order in a form substantially similar to Exhibit 7. The Preliminary Approval Order shall, among other things:

1. Certify a nationwide settlement-only class, approve Named Plaintiffs as class representatives and appoint Proposed Settlement Class Counsel as counsel for the class, pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. Preliminarily approve the Settlement Agreement;
3. Require the dissemination of the notices and the taking of all necessary and appropriate steps to accomplish this task;
4. Determine that the notices and Notice Plan comply with all legal

requirements, including, but not limited to, the Due Process Clause of the United States Constitution;

5. Schedule a date and time for a Final Approval Hearing to determine whether the Preliminary Approval Order should be finally approved by the Court;

6. Require Settlement Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion as directed in the Agreement and Long Form Notice and that a failure to do so shall bind those Settlement Class Members who remain in the Settlement Class;

7. Require Settlement Class Members who wish to object to the Agreement to submit an appropriate and timely written statement as directed in the Agreement and Long Form Notice;

8. Require Settlement Class Members and/or attorneys representing Settlement Class Members, at the Settlement Class Members' expense, to file a notice of appearance as directed in the Agreement and Long Form Notice;

9. Issue a preliminary injunction;

10. Appoint the Notice and Settlement Administrator;

11. Require Merck to take all necessary and appropriate steps to establish the means necessary to implement the Agreement;

12. Issue a protective order requiring the execution of a Confidentiality Agreement, attached hereto as Exhibit 10, for those Settlement Class Members or their counsel that seek to review the documents produced in this Action; and

13. Issue other related orders to effectuate the preliminary approval of the Settlement Agreement.

B. After the Final Approval Hearing, the Parties, through their counsel, shall seek to obtain from the Court a Final Approval Order and Final Judgment in the forms substantially similar to Exhibits 3 and 4, respectively. The Final Approval Order and Final Judgment shall, among other things:

1. Find that the Court has personal jurisdiction over all Settlement Class Members, the Court has subject matter jurisdiction over the claims asserted in the complaint in the Action, and that venue is proper.
2. Finally approve the Settlement Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure;
3. Finally certify the Settlement Class for settlement purposes only;
4. Find that the notices and the notice dissemination methodology complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;
5. Dismiss the Action with prejudice;
6. Incorporate the Plaintiffs' Release and Defendants' Release set forth in the Agreement and make these releases effective as of the date of the Final Approval Order and Final Judgment;
7. Issue permanent injunctions;
8. Authorize the Parties to implement the terms of the Agreement;
9. Award Attorney's Fees and Expenses;
10. Award incentive fees to the Named Plaintiffs;
11. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Approval Order and Final Judgment,

and for any other necessary purpose; and

12. Issue related Orders to effectuate the final approval of the Agreement and its implementation.

XI. MODIFICATION OR TERMINATION OF THE SETTLEMENT AGREEMENT

A. The terms and provisions of the Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however that, after entry of the Final Approval Order and Final Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of the Settlement Agreement and its implementing documents (including all exhibits hereto) without further notice to Settlement Class Members or approval by the Court if such changes are consistent with the Court's Final Approval Order and Final Judgment and do not limit the rights of Settlement Class Members under the Settlement Agreement.

B. The Settlement Agreement shall terminate at the discretion of either Party if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of the Settlement Agreement or the proposed Settlement that the terminating Party in its (or their) sole judgment and discretion reasonably determine(s) is material, including, without limitation, the terms of relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of the Settlement Class, and/or the terms of the Plaintiffs' Release and Defendants' Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order and Final Judgment, or any of the Court's findings of fact or conclusions of law, that the terminating Party in its (or their) sole judgment and discretion reasonably determine(s) is material. The terminating Party must exercise the option to withdraw from and terminate the Settlement Agreement, as provided in this Section XI, by a signed writing served on the other Party, no later than twenty (20) days after receiving

notice of the event prompting the termination. Following a Party's exercise of this option, all Parties will be returned to their positions status quo ante, except as otherwise provided in the Settlement Agreement.

C. In addition to Defendants' termination rights under Section B, no later than twenty (20) days after receiving notice of the event prompting the termination, Defendants may unilaterally withdraw from and terminate the Settlement Agreement if:

1. prior to the Court issuing a Final Order and Final Judgment, any state attorney general, federal agency, or regulatory or administrative authority institutes a proceeding against Defendants arising out of or otherwise related to the Plaintiffs' Release and any of the terms or conditions of the Settlement Agreement; or

2. prior to the Court issuing a Final Order and Final Judgment, any federal or state regulator or agency: (a) objects either to any aspect or term of the Settlement Agreement; or (b) requires any modification to the Settlement Agreement, including without limitation, a constriction or expansion of the scope of the contemplated relief that Merck in its sole discretion deems reasonably material.

D. If an option to withdraw from and terminate the Settlement Agreement arises under Sections XI.B or XI.C above, neither Named Plaintiffs nor Defendants are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be in good faith.

E. If the Settlement Agreement is terminated pursuant to Sections XI.B or XI.C, above, then:

1. the Settlement Agreement shall be null and void and shall have no force or effect, and no Party to the Settlement Agreement shall be bound by any of its terms, except for

the terms of this Sections XI.E and the confidentiality provisions of Section XII.L;

2. the Parties will petition to have any stay orders entered pursuant to the Settlement Agreement lifted;

3. all of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Plaintiffs, Defendants or any Settlement Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of the Settlement Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that neither Party's substantive or procedural rights is prejudiced by the attempted settlement;

4. Defendants expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that the Action may not be litigated as a class action.

5. Plaintiffs and all Settlement Class Members, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, expressly and affirmatively reserve and do not waive all motions as to, and arguments in support of, all claims, causes of actions or remedies that have been or might later be asserted against Merck in the Action and/or the Coordinated Proceeding, including without limitation, any argument concerning class certification, consumer fraud, and treble or other damages;

6. neither the Settlement Agreement, the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Settlement Class Member pursuant to the Settlement Agreement shall be admissible or entered into evidence for any purpose whatsoever;

7. any Settlement-related order(s) or judgment(s) entered in this Action after

the date of execution of the Settlement Agreement shall be deemed vacated and shall be without any force or effect. All costs incurred in connection with the Settlement, including, but not limited to, notice, publication, and customer communications, will be paid by Merck as specified in the Settlement Agreement. Neither Plaintiffs nor Settlement Class Counsel shall be responsible for any of these costs or other Settlement-related costs;

8. notwithstanding the terms of this subsection, if the Settlement is not consummated, Settlement Class Counsel or any counsel representing Named Plaintiffs may include any time spent in Settlement efforts as part of any statutory fee petition filed at the conclusion of the case, and Defendants reserve the right to object to the reasonableness of such requested fees.

XII. MISCELLANEOUS PROVISIONS

A. Admissibility of Settlement Agreement

The Settlement Agreement shall not be offered or be admissible in evidence in any action or proceeding except (1) the hearings necessary to obtain and implement Court approval of the Settlement Agreement; (2) any hearing to enforce the terms of the Settlement Agreement or any related order by the Court; and/or (3) the proceedings pertaining to the settlement of the claims against Merck in the Coordinated Proceeding.

B. Successors and Assigns

The terms of the Settlement Agreement shall apply to and bind the Parties as well as their heirs, successors and assigns.

C. Communications Relating to Settlement Agreement

All notices or other formal communications under the Settlement Agreement shall be in writing and sent by e-mail or facsimile and next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service to counsel for the Party to whom the notice is directed at the

following addresses:

Defendants:

John P. Hooper
David E. Stanley
Reed Smith LLP
599 Lexington Avenue, 22nd Floor
New York, New York 10022
jhooper@reedsmith.com
Telephone: (212) 205-6125
Facsimile: (212) 521-5450

Plaintiffs:

Mitchell M.Z. Twersky
Abraham, Fruchter & Twersky, LLP
One Penn Plaza
Suite 2805
New York, NY 10119
mtwersky@aftlaw.com
Telephone: (212) 279-5050
Facsimile: (212) 279-3655

Any Party may, by written notice to all the other Parties, change its designated recipient(s) or notice address provided above.

D. Procedures for Disputes Between Parties Relating to the Settlement Agreement

To the extent any disputes or issues arise with respect to documenting or affecting the Settlement Agreement, the Parties agree to use their best efforts to informally resolve any such disputes or issues; but in the event any such dispute or issue cannot be resolved informally, to bring any such dispute or issue to the Court for resolution.

E. Extensions of Time

The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of the Settlement Agreement.

F. Entire and Voluntary Agreement

The Parties intend the Settlement Agreement to be a final and complete resolution of all disputes between them, except for those disputes relating to the Settlement. The Parties agree that the terms of the Settlement Agreement were negotiated at arm's length and in good faith and were reached voluntarily after consultation with competent legal counsel. The Settlement Agreement contains the entire agreement and understanding concerning the subject matter between the Parties, and supersedes all prior negotiations and proposals, whether written or oral. No other party or any agent or attorney of any other party has made any promise, representation or warranty whatsoever not contained in the Settlement Agreement and the other documents referred to in the Settlement Agreement to induce them to execute the same. The Parties represent that they have not executed this instrument or the other documents in reliance on any promise, representation or warranty not contained in the Settlement Agreement and the other documents referred to in the Settlement Agreement.

G. Headings for Convenience Only

The headings in the Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of the Settlement Agreement.

H. Settlement Agreement Controls

All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth. To the extent that there is any conflict between the terms of the Settlement Agreement and the exhibits attached hereto, the Settlement Agreement shall control.

I. Amendments

The Settlement Agreement may be amended or modified only by a written instrument signed by Defendants and Settlement Class Counsel, or their respective successors-in-interest.

J. Authorization of Counsel

Each attorney executing the Settlement Agreement on behalf of any Party hereto hereby warrants that such attorney has the full authority to do so.

K. Confidentiality

All agreements made between and Orders pertaining to the Parties entered during the course of the Action and the Coordinated Proceeding relating to the confidentiality of information shall survive the Settlement Agreement.

L. Confidential Information

Plaintiffs and Settlement Class Counsel agree that the confidential information made available to them solely through the Settlement process was made available, as agreed to, on the condition that neither Plaintiffs nor Settlement Class Counsel may disclose it to third parties (other than experts or consultants retained by Plaintiffs in connection with this case); that it not be the subject of public comment; that it not be used by Plaintiffs or Settlement Class Counsel in any way in this litigation should the Settlement not be achieved, and that it is to be returned if a Settlement is not concluded; provided, however, that nothing contained herein shall prohibit Plaintiffs from seeking such information through formal discovery and using information obtained from such formal discovery in litigating the Action and/or the claims against Merck in the Coordinated Proceeding or from disclosing the confidential information made available to Settlement Class Counsel through the settlement process in court filings seeking approval of the Settlement and/or an Award of Attorneys' Fees and Expenses and to the Court in any hearings in connection with the Settlement. Furthermore, Settlement Class Counsel may disclose to Settlement Class Members and/or their attorneys such information as well as documents and information obtained through discovery in this Action or the Coordinated Proceeding subject to

the execution of a Confidentiality Agreement by such persons in the form attached hereto as Exhibit 10.

M. Construction

Each of the Parties has cooperated in the drafting and preparation of the Settlement Agreement. Hence, in any construction to be made of the Settlement Agreement, the same shall not be construed against any of the Parties. Before declaring any provision of the Settlement Agreement invalid, a court should first attempt to construe the provision valid to the fullest extent possible consistent with applicable precedent so as to find all provisions of the Settlement Agreement valid and enforceable.

N. Choice of Forum

All judicial proceedings regarding the Settlement Agreement shall be brought only in the Court, except as necessary to effectuate the settlement of the claims against Merck in the Coordinated Proceeding.

O. Choice of Law

The Settlement Agreement and any amendments thereto shall be governed by and interpreted according to the law of the State of New Jersey, notwithstanding its conflict of laws provisions.

P. Counterparts

The Settlement Agreement may be executed in one or more counterparts and by facsimile. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts and a complete set of executed counterparts shall be filed with the Court.

Q. Cooperation

The Parties agree that they will cooperate to effectuate and implement all terms and conditions of the Settlement Agreement, and exercise good faith efforts to accomplish the terms and conditions of the Settlement Agreement. The parties agree to accept non-material and procedural changes to the Settlement Agreement if so required by the Court in connection with final approval of the Settlement Agreement, but are not obligated to accept any changes in the monetary amount of relief provided for herein, or any other substantive change.

R. Representations and Warranties

Named Plaintiffs represent and certify that: (1) they have agreed to serve as representatives of the Settlement Class proposed to be certified herein; (2) they are willing, able, and ready to perform all of the duties and obligations of a representative of the Settlement Class, including, but not limited to, being involved in discovery and fact finding; (3) they have read the pleadings in this Action, including the operative complaints, or have had the contents of such pleadings described to them; (4) they are familiar with the results of the fact-finding undertaken by Settlement Class Counsel; (5) they have been kept apprised of settlement negotiations among the Parties, and have either read the Settlement Agreement, including the exhibits annexed hereto, or have received a detailed description of it from Settlement Class Counsel and have agreed to its terms; (6) they have consulted with Settlement Class Counsel about the Action and the obligations imposed on the representatives of the Settlement Class; (7) they have authorized Settlement Class Counsel to execute the Settlement Agreement on their behalf; and (8) they shall remain and serve as representatives of the Settlement Class until the terms of the Settlement Agreement are effectuated, the Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that said Named Plaintiffs cannot represent the Settlement Class.

Merck represents that (1) the execution, delivery and performance by Defendants of the Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendants; and (2) the Settlement Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid and binding obligation.

S. Waiver of Breach

The waiver by one Party of any breach of the Settlement Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of the Settlement Agreement.

T. Written Notice for Alleged Breach

If one Party to the Settlement Agreement considers another Party to be in breach of its obligations under the Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under the Settlement Agreement.

U. Class Certification for Settlement Purposes Only

Merck is agreeing to certification of the proposed Settlement Class solely for purposes of facilitating the Settlement and does not, by doing so, in any way agree or concede that a litigation class would meet the requirements of Rule 23 of the Federal Rules of Civil Procedure or otherwise be appropriate for certification. Merck has previously filed an opposition to Plaintiffs' motion for class certification in the Coordinated Proceeding and does not abandon or modify its position regarding certification of a litigation class by entering into the Settlement Agreement. To the contrary, Merck reserves its rights to assert all available arguments against certification of a class in the event that the Settlement does not attain final approval and become effective. Plaintiffs and Settlement Class Counsel acknowledge that Defendants' reservation of

right to contest the propriety of class certification is of the essence to Defendants' entering into the Settlement Agreement and that Defendants would not have entered into the Settlement Agreement if it prejudiced its ability to oppose certification if the Settlement Agreement should be terminated.

V. Tax Consequences

No opinion concerning the tax consequences of the proposed Settlement to Settlement Class Members is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of the Settlement Agreement. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

W. Return of Defendants' Documents

All documents produced by Defendants to Plaintiffs during the litigation, copies thereof, and any and all handwritten notes summarizing, describing or referring to such documents shall be returned to Defendants or destroyed with verification within forty-five (45) days of the Final Settlement Date, provided, however, that this Section shall not apply to any documents made part of the record in connection with a Claim, nor to any documents made part of a filing in this Action or in the Coordinated Proceeding, nor to Settlement Class Counsel's work product.

X. PDF or Facsimile Signature

The Settlement Agreement may be signed with a pdf or facsimile signature and in counterparts, each of which shall constitute a duplicate original.

Dated: September 21, 2012

Merck & Co., Inc.
MSD Consumer Care, Inc.
Merck Sharp & Dohme Corp.

By: Bruce Koblitz
Name: Bruce Koblitz
Title: KVP and General Counsel

Dated: _____, 2012

Steven Brody

Dated: _____, 2012

Suzanne Grunstein

Dated: _____, 2012

Chaim Hirschfeld

APPROVED AS TO FORM AND CONTENT:

Dated:

ABRAHAM, FRUCHTER & TWERSKY,
LLP

By: _____
Mitchell M.Z. Twersky

Settlement Class Counsel

Dated: _____, 2012

Merck & Co., Inc.
MSD Consumer Care, Inc.
Merck Sharp & Dohme Corp.

By: _____

Name:
Title:

Dated: 9/21, 2012

Steven Brody
Steven Brody

Dated: _____, 2012

Suzanne Grunstein

Dated: _____, 2012

Chaim Hirschfeld

APPROVED AS TO FORM AND CONTENT:

Dated:

ABRAHAM, FRUCHTER & TWERSKY,
LLP

By: _____

Mitchell M.Z. Twersky

Settlement Class Counsel

Dated: _____, 2012

Merck & Co., Inc.
MSD Consumer Care, Inc.
Merck Sharp & Dohme Corp.

By: _____
Name:
Title:

Dated: _____, 2012

Steven Brody

Dated: September 21, 2012



Suzanne Grunstein

Dated: _____, 2012

Chaim Hirschfeld

APPROVED AS TO FORM AND CONTENT:

Dated:

ABRAHAM, FRUCHTER & TWERSKY,
LLP

By: _____
Mitchell M.Z. Twersky

Settlement Class Counsel

Dated: _____, 2012

Merck & Co., Inc.
MSD Consumer Care, Inc.
Merck Sharp & Dohme Corp.

By: _____

Name:

Title:

Dated: _____, 2012

Steven Brody

Dated: _____, 2012

Suzanne Grunstein

Dated: 9/21/12, 2012



Chaim Hirschfeld

APPROVED AS TO FORM AND CONTENT:

Dated:

ABRAHAM, FRUCHTER & TWERSKY,
LLP

By: _____

Mitchell M.Z. Twersky

Settlement Class Counsel

Dated: _____, 2012

Merck & Co., Inc.
MSD Consumer Care, Inc.
Merck Sharp & Dohme Corp.

By: _____

Name:
Title:

Dated: _____, 2012

Steven Brody

Dated: _____, 2012

Suzanne Grunstein

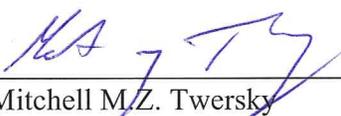
Dated: _____, 2012

Chaim Hirschfeld

APPROVED AS TO FORM AND CONTENT:

Dated: 9/21/12

ABRAHAM, FRUCHTER & TWERSKY,
LLP

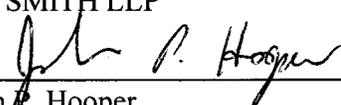
By:  _____
Mitchell M.Z. Twersky

Settlement Class Counsel

Dated: 9/21/12

REED SMITH LLP

By: _____


John P. Hooper
David E. Stanley
Eric F. Gladbach

Counsel for Defendants

Merck Sunscreen Class Action Settlement

Claim Form

Use this claim form only if you bought Eligible Coppertone Sunscreen Products from July 31, 2006 **up to [DATE]**. Eligible Coppertone Sunscreen Products are 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. You may not submit more than one claim for each Eligible Coppertone Sunscreen Product for which you are seeking payment from the Settlement Fund.

You will not be given an opportunity to cure or fix any deficiencies in this simple and easy-to-complete Claim Form. Thus, you must complete the entire Claim Form and submit any documentation, if applicable, when first submitting the Claim Form. Failure to do so will result in the denial of your Claim and you will receive no cash payment from this settlement. Pursuant to the terms of the Settlement Agreement, the Notice and Settlement Administrator's determination is final and cannot be appealed by anyone.

All claim forms must be electronically submitted or postmarked no later than [DATE]

Notice and Settlement Administrator
[Address]
[City, State, Zip Code]

CLAIM INFORMATION
SETTLEMENT CLASS MEMBER INFORMATION

Name:

Mailing Address:

Number and Street

City: State: Zip Code:

Best Telephone Number: () - E-mail Address:

Last four digits of your Social Security Number:

PURCHASE INFORMATION	
<i>Name(s) of Eligible Coppertone Sunscreen Products Purchased from July 31, 2006 to [date]</i>	<i>Quantity(ies) Purchased</i>

Payment amounts to Settlement Class Members will vary depending upon, among other factors, the number of Eligible Coppertone Sunscreen Products claimed by you and/or all Settlement Class Members, adjustments and deductions as specified in the Settlement Agreement, and the amounts required for other items for which the Settlement Fund may be used. The amount shall not exceed – and may be less than – \$1.50 for each Eligible Coppertone Sunscreen Product purchased from July 31, 2006 up to **[date]**.

Please note:

- If you submit a claim seeking reimbursement for one (1) to six (6) Eligible Coppertone Sunscreen Products, you will not need to submit proof of purchase.
- If you submit a claim seeking reimbursement for seven (7) to nine (9) Eligible Coppertone Sunscreen Products, the Notice and Settlement Administrator **MAY** request proof of purchase to validate your claim. If requested, you must provide proof of purchase for each unit or your claim will be denied, and you may not appeal the reduction or denial.
- If you submit a claim seeking reimbursement for ten (10) or more Eligible Coppertone Sunscreen Products, you **MUST** provide proof of purchase for each unit to validate your claim.

Examples of proper proof of purchase include a Xerox copy of the label(s), 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.

Claimants submitting multiple proofs of purchase using a photocopy of the label(s) on the tube(s), spray(s), bottle(s), and/or similar container(s) must provide such copies on the same photocopy sheet, with at least four (4) copies to a page. Claimants may provide less than four (4) copies to a page only if: (i) less than four (4) copies are being submitted or (ii) less than four (4) copies remain after placing all other copies on photocopy sheets with no less than four (4) to a page.

Check here if you are providing proof of purchase.

If you are providing proof of purchase, **check below** to identify the type(s) of proof of purchase(s) you are submitting (please check all that apply):

Xerox copy of the label(s), tube(s), spray(s), bottle(s), and/or similar container(s)

cash register receipt(s)

credit card receipt(s)

credit card statement(s)

other, please specify in print: _____

If you are submitting this Claim Form electronically and claiming ten (10) or more Eligible Coppertone Sunscreen Products, you must mail the proof of purchases identified above to:

Notice and Settlement Administrator

[Address]

[City, State, Zip Code]

You must include either a copy of this completed Claim Form or a cover statement providing the same information. This will allow the Notice and Settlement Administrator to process your Claim for payment, if your claim is timely and complete. Again, failure to submit the requested documentation will result in the denial of your Claim with no ability to cure or fix any deficiencies.

Merck and/or the Notice and Settlement Administrator are not responsible for any misdelivered, lost, illegible, damaged, destroyed, or otherwise not received mail, including, but not limited to, proof of purchase submissions.

AFFIRMATION

I declare or affirm, under penalty of perjury, that the information in this Claim Form is true and correct to the best of my knowledge and that I purchased the applicable product(s) claimed above between July 31, 2006 and **[DATE]**. I understand that the decision of the Notice and Settlement Administrator is final and binding. I understand that my Claim Form may be subject to audit, verification and Court review.

Signature: _____ Date: _____

Claim Forms must be electronically submitted or postmarked no later than [DATE].
Questions? Visit www.sunscreenettlement.com or call, toll-free, **[number]**.

ESCROW AGREEMENT

This Escrow Agreement ("Escrow Agreement") is entered into in connection with the pending settlement of Steven Brody, et al. vs. Merck & Co, Inc., et al., Civil Action No. 12-cv-4774(PGS) (the "Litigation"), presently pending in the United States District Court for the District of New Jersey (the "Court").

I. Recitals

- A. The parties to this Escrow Agreement are as follows:
- (1) Mitchell M.Z. Twersky of Abraham, Fruchter & Twersky, LLP, as Settlement Class Counsel on behalf of the Settlement Class (collectively, "Plaintiffs");
 - (2) The Garden City Group, Inc. ("GCG") as escrow agent for Plaintiffs and Defendants (the "Escrow Agent");
 - (3) Defendants, Merck & Co., Inc., MSD Consumer Care, Inc., and Merck Sharp & Dohme Corp. (collectively, "Defendants");
 - (4) John P. Hooper of Reed Smith LLP, as Defendants' Counsel ("Defendants' Counsel" and with Defendants, Plaintiffs, and Escrow Agent, solely for purposes of this Escrow Agreement, the "Parties").
- B. Plaintiffs and Defendants have agreed to a settlement (the "Settlement") of the Litigation, as set forth in the Settlement Agreement, attached hereto as Exhibit A (the "Stipulation"). Capitalized terms used herein, but not otherwise defined herein, shall have the respective meanings given such terms in the Stipulation.
- C. The Stipulation provides for, among other things, the establishment of an escrow fund by the Defendants. Defendants will initially deposit a total of \$1.5 million into the Escrow Account (as defined below) in accordance with the terms of this Escrow Agreement and the Stipulation, which amount shall be disbursed in accordance with the terms of this Escrow Agreement and the Stipulation. Defendants have agreed to pay or cause to be paid additional amount(s) up to the maximum amount in accordance with the terms of the Stipulation.
- D. As specified in the Stipulation, the Parties hereto have entered into this Escrow Agreement to carry out and effectuate the Settlement.

Now, therefore, in consideration of the foregoing and the mutual covenants and considerations contained herein, the Parties agree as follows:

II. Appointment of Escrow Agent and Deposits into Escrow

- A. The Parties hereto hereby appoint the Escrow Agent to act as escrow agent hereunder and the Escrow Agent hereby accepts such appointment for the purpose of receiving, safeguarding and disbursing the Escrow Account (as defined below) in accordance with the terms and conditions set forth herein.
- B. On or before twenty (20) days following the Court's execution of the Preliminary Approval Order, Defendants shall initially deposit with the Escrow Agent by wire transfer of immediately available funds the amount of one million five hundred thousand Dollars and no cents (\$1,500,000.00) in accordance with the wire transfer instructions listed below. The Escrow Agent agrees to deposit the amount discussed in the prior sentence and to further request from Defendants and deposit such

additional amounts received from Defendants, as necessary and in accordance with the terms of the Stipulation, into an interest bearing account at JP Morgan Chase in the name of the "Coppertone Sunscreen Escrow Account" (the "Escrow Account").

JP Morgan Chase
395 North Service Road, Suite 302, Melville, NY 11747
ABA #: [confidential]
Account Name: Coppertone Sunscreen Escrow Account
Account Number: [confidential]

III. Interest and Investments

- A. As promptly as possible upon receipt of available funds (or the next business day if funds become available after 12:00 noon), the Escrow Agent shall cause any funds deposited into the Escrow Account to be invested in either short term United States Agency or Treasury securities backed by the full faith and credit of the United States Government ("Debt Obligation") or in money market funds whose portfolio is composed of short-term United States Agency or Treasury securities (which are backed by the full faith and credit of the United States Government), and shall reinvest the proceeds as they mature in similar instruments and/or funds at their then current market rates. However, if bank fees exceed interest to be earned on investments or if there is the option of FDIC-like insurance, the Escrow Agent shall not invest the Escrow Account and/or shall take advantage of the FDIC-like insurance. The Escrow Agent shall have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Escrow Agreement and/or the Stipulation. The Escrow Agent shall have no liability for any loss sustained as a result of any investment or as a result of any liquidation of any investment prior to its maturity. The Escrow Agent shall not invest any portion of the Escrow Account in any Debt Obligation having a maturity in excess of thirty (30) days.
- B. The Escrow Agent may sell or present for redemption any investment described in Paragraph III(A) above whenever it shall be necessary in order to provide funds to meet any payment required pursuant to this Escrow Agreement, and the Escrow Agent shall not be liable or responsible for any loss resulting therefrom.

IV. Taxes and Related Matters

- A. If applicable, the Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Escrow Account. Such returns of this Escrow Account shall be consistent with the provisions of Paragraph IV hereof and, in all events, shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned on the Escrow Account shall be paid out of the Escrow Account as provided in Paragraph IV(B)) hereof.
- B. All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Escrow Account, including any taxes or tax detriments that may be imposed on the Parties to this Escrow Agreement or their respective counsel for any period ("Taxes") and (ii) expenses and costs incurred in connection with the operation and implementation of this Section IV (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses related to filing (or failing to file) any necessary returns) ("Tax Expenses") shall be paid solely out of the Escrow Account; in all events, no party to this Escrow Agreement, nor their respective counsel, except for the Escrow Agent, shall have liability or responsibility for the payment of Taxes from the Escrow Account and/or Tax Expenses from the Escrow Account, or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority. Plaintiffs are not responsible for Taxes or Tax Expenses, or any amounts that may be

required to be withheld. The Defendants are not responsible and shall have no liability for such Taxes and Tax Expenses, or for any reporting requirements that may relate thereto. The Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section IV.

V. Distribution of the Escrow Account

- A. The Escrow Agent shall only make disbursements from the Escrow Account in accordance with a joint written direction from Settlement Class Counsel, Defendants, and Defendants' Counsel executed and delivered to the Escrow Agent and in accordance with the terms of this Escrow Agreement, the Stipulation and/or any Court order(s).

VI. Termination of the Escrow Agreement

- A. In the event that the Final Settlement Date does not occur, or the Stipulation is terminated in accordance with its terms, or the Final Judgment or the Final Approval Order is finally reversed or modified on appeal, then upon receipt of a joint written instruction from Settlement Class Counsel and Defendants' Counsel executed and delivered to the Escrow Agent, or an order of the Court in the Litigation directing the Escrow Agent to refund the Defendants the balance of the Escrow Account, the Escrow Agent shall, within ten (10) business days and without the necessity of any further court order, refund to Defendants the entire balance of the Escrow Account (including all interest accrued or earned thereon), less any expenses or fees paid or payable from the Escrow Account. In the event that the accrued interest and earnings of the Escrow Account are not sufficient to cover the fees and expenses paid or payable from the Escrow Account, those fees and expenses shall be deducted by the Escrow Agent from the deposit amounts to be returned to the Defendants under this Paragraph VI(A).
- B. Upon the distribution of all funds in the Escrow Account in accordance with this Escrow Agreement and the Stipulation, this Escrow Agreement shall terminate.

VII. Miscellaneous Provisions

- A. Upon request in writing from either Settlement Class Counsel, Defendants, or Defendants' Counsel, the Escrow Agent shall request JP Morgan Chase to send electronically, provide online access to, or directly mail to each party periodic (monthly) account statements until the termination of this Escrow Agreement. Following termination of this Escrow Agreement, the Escrow Agent shall provide a statement of receipts and disbursements, and property on hand pertaining to the Escrow Account.
- C. The Escrow Agent's acceptance and administration of the Escrow Account shall constitute its submission to the jurisdiction of the Court in the Litigation for the purposes of carrying out this Escrow Agreement.
- D. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and in the Stipulation and no duties shall be implied. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement and the Stipulation. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and reasonably believed by it to be genuine and to have been signed or presented by the proper party or Parties. The Escrow Agent shall

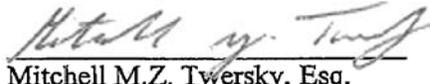
be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Escrow Agent's negligence, gross negligence or willful misconduct was the primary cause of any loss to the Plaintiffs or Defendants. The Escrow Agent may consult with counsel. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Escrow Agreement or the Stipulation, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other Parties hereto or by a final order or judgment of the Court in the Litigation. Anything in this Escrow Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

- E. No party to this Escrow Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Escrow Agreement because of acts of God, fire, war, terrorism, floods, strikes, equipment or transmission failure, or other causes reasonably beyond its control.
- F. No rights or responsibilities under this Escrow Agreement may be assigned or delegated by the Escrow Agent without prior written approval of all the Parties hereto; provided, however, that if no approval can be obtained after good faith effort, then upon thirty (30) days written notice by the Escrow Agent to the other Parties hereto, the Escrow Agent shall have the right to apply to the Court in the Litigation for instructions.
- G. All funds held by the Escrow Agent by virtue of this Escrow Agreement shall be deemed and considered to be held in custodia legis of the Court in the Litigation.
- H. This Escrow Agreement shall be governed by and interpreted according to the laws of the State of New York.
- I. This Escrow Agreement may be executed in one or more counterparts and by facsimile, each of which counterparts shall be deemed a duplicate original and all of which together shall constitute one and the same Escrow Agreement.
- J. This Escrow Agreement is deemed to have been drafted by all Parties hereto and no language contained herein shall be construed against any party hereto.
- K. All requests for acts to be taken in accordance with this Escrow Agreement and/or the Stipulation shall be made in writing by one or more of the Parties as indicated below. All written instructions for disbursements shall be served by e-mail or facsimile and followed up by next-day express delivery service and shall be effective upon receipt.
- L. Plaintiffs or their counsel are not responsible for the payment of any expenses incurred by the Escrow Agent in connection with or arising from the maintenance of the Escrow Account or the exercise of the Escrow Agent's duties and responsibilities under the Escrow Agreement or the Stipulation.

IN WITNESS WHEREOF, the Parties hereto have caused this Escrow Agreement to be executed by them or their duly authorized counsel as of the last date of execution below.

Dated: August 30, 2012

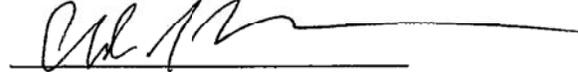
ABRAHAM, FRUCHTER & TWERSKY, LLP



Mitchell M.Z. Twersky, Esq.
One Penn Plaza
Suite 2805
New York, NY 10119
mtwersky@afflaw.com
Telephone: (212) 279-5050
Facsimile: (212) 279-3655
Settlement Class Counsel

Dated: August 28, 2012

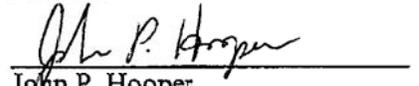
MERCK & CO., INC. on behalf of all DEFENDANTS



Alan S. Modlinger, Esq.
Legal Director
1 Merck Drive, MS WS3B-07
Whitehouse Station, NJ 08889
alan.modlinger@merck.com
Telephone: (908) 423-4262
Facsimile: (908) 423-1441

Dated: August 29, 2012

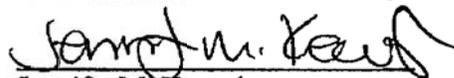
REED SMITH LLP



John P. Hooper
599 Lexington Avenue, 22nd Floor
New York, NY 10022
Jhooper@reedsmith.com
Telephone: (212) 205-6130
Facsimile: (212) 521-5450
Counsel for Defendants

Dated: August _____, 2012

THE GARDEN CITY GROUP, INC.



Jennifer M. Keough
Chief Operating Officer
815 Western Avenue, Suite 200
Seattle, WA 98104
jennifer.keough@gardencitygroup.com
Telephone: (206) 876-5276

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

STEVEN BRODY, CHAIM HIRSCHFELD, on,
and SUZANNE GRUNSTEIN, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

Civil Action No. 12-cv-4774-PGS-DEA

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.

[PROPOSED] FINAL ORDER APPROVING CLASS ACTION SETTLEMENT

This motion for final approval, having been brought before the Court jointly by the Parties, the Parties having entered into a Settlement Agreement, with its attached exhibits (collectively, the “Settlement Agreement”), signed and filed with this Court on _____, 2012, to settle the above-captioned action (the “Action”); and

The Court having entered an Order dated _____, 2012 (the “Preliminary Approval Order”), preliminarily certifying the putative settlement class in this action for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3), ordering individual and publication notice to potential Settlement Class Members, scheduling a Final Approval Hearing for _____, 2013,

providing potential Settlement Class Members with an opportunity either to exclude themselves from the settlement class or to object to the proposed settlement and issuing related Orders; and

The Court having held a Final Approval Hearing on _____, 2013 to determine whether to grant final approval of the proposed settlement and issue related relief; and

The Court having considered the papers submitted by the Parties and by all other persons who timely submitted papers in accordance with the Preliminary Approval Order, and having heard oral presentations by the Parties and all persons who complied with the Preliminary Approval Order, and based on all of the foregoing, together with this Court's familiarity with the Action, it is hereby

ORDERED AND DECREED as follows:

1. **Incorporation of Other Documents.** This Final Order Approving Class Action Settlement ("Final Approval Order") incorporates and makes a part hereof: (a) the Settlement Agreement, including all amendments and exhibits thereto, and definitions included therein, which was signed and filed with this Court on _____, 201__; (b) the briefs, affidavits, declarations, and other materials filed in support of the settlement and Settlement Class Counsel's request for an award of attorneys' fees and reimbursement of expenses; (c) the record at the Final Approval Hearing; (d) the documents listed on the docket sheet or otherwise submitted to the Court; and (e) all prior proceedings in this Action and the Coordinated Proceeding, as that term is defined in the Settlement Agreement.

2. **Jurisdiction.** Because due, adequate, and the best practicable notice has been disseminated and all potential Settlement Class Members have been given the opportunity to exclude themselves from or object to this class action settlement, the Court has personal jurisdiction over all Settlement Class Members (as defined below). The Court has subject-matter

jurisdiction over the claims asserted in the complaint and/or the Action pursuant to 28 U.S.C. §§ 1332, and 1367, including, without limitation, jurisdiction to approve the proposed settlement and the Settlement Agreement and all exhibits attached thereto, grant final certification to the Settlement Class, dismiss the Action on the merits and with prejudice and issue related orders. The Court finds that venue is proper in this district pursuant to 28 U.S.C. § 1391.

3. **Final Class Certification.** The Settlement Class preliminarily certified by this Court is hereby finally certified for settlement purposes only under Fed. R. Civ. P. 23(a), (b)(3), and (c)(2), the Court finding that the Settlement Class fully satisfies all the applicable requirements of Fed. R. Civ. P. 23 and due process. The Settlement Class shall consist of all natural persons who purchased Eligible Coppertone Sunscreen Products in the United States of America, its territories and possessions up to the date notice was first disseminated pursuant to the Notice Plan. “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. 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’ Counsel; (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 staff and immediate family; (h) the Honorable Carl West and the members of his 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.

4. **Requests for Exclusion.** The Court finds that only those natural persons listed in Exhibit ___ to the Declaration of Jeanne C. Finegan, APR, dated _____, 201___, filed with the Court, have submitted timely and valid requests for exclusion from the Settlement Class and are therefore not bound by this Final Approval Order and accompanying Final Judgment. Settlement Class Counsel and Defendants' Counsel may mutually agree to allow additional Settlement Class Members to exclude themselves or to withdraw their exclusion requests by filing an appropriate notice with the Court.

5. **Adequacy of Representation.** Settlement Class Plaintiffs Steven Brody, Chaim Hirschfeld and Suzanne Grunstein have adequately represented the Settlement Class for purposes of entering into and implementing the settlement. Abraham, Fruchter & Twersky LLP is experienced and adequate Settlement Class Counsel. Settlement Class Plaintiffs and Settlement Class Counsel have satisfied the requirements of Fed. R. Civ. P. 23(a)(3), 23(a)(4) and 23(g).

6. **Class Notice.** The Court finds that the dissemination of the Long Form Notice, the publication of the Publication Notice, the establishment of the Settlement Website containing settlement-related materials, issuance of the press release, the establishment of the toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and the Declaration of the Notice and Settlement Administrator (as defined in the Settlement Agreement) and the notice methodology implemented pursuant to the Settlement Agreement and the Declaration of Jeanne C. Finegan, APR, dated _____, 201___ and filed with the Court:

- a. constituted the best practicable notice to Settlement Class Members under the circumstances of this Action;
- b. constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of this action; (ii) the terms

of the proposed settlement; (iii) their rights under the proposed settlement; (iv) their right to exclude themselves from the Settlement Class and the proposed settlement; (v) their right to object to any aspect of the proposed settlement (including, but not limited to, final certification of the settlement class, the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of the Settlement Class's representation by Plaintiffs or Settlement Class Counsel and/or the award of attorneys' fees); (vi) their right to appear at the Final Approval Hearing – either on their own or through counsel hired at their own expense – if they did not exclude themselves from the Settlement Class; and (vii) the binding effect of the Orders and Judgment in this action, whether favorable or unfavorable, on all persons who did not request exclusion from the Settlement Class;

- c. constituted notice that was reasonable, due, adequate, and sufficient notice to all persons and entities entitled to be provided with notice; and
- d. constituted notice that met all applicable requirements of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, the Due Process Clause of the United States Constitution, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.

7. **Final Settlement Approval.** The terms and provisions of the proposed settlement and Settlement Agreement, including all exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Settlement Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness

Act (P.L. 109-2), the United States Constitution (including the Due Process Clause), and any other applicable law. The settlement is approved and all objections to the settlement, if any, are overruled as without merit. The Parties are hereby ordered to implement and consummate the Settlement Agreement according to its terms and provisions. Merck is hereby ordered to take all steps necessary and appropriate to provide Settlement Class Members with the benefits to which they are entitled under the terms of the Settlement Agreement.

8. **Early Implementation.** Merck is hereby authorized – in its sole discretion but in consultation with Settlement Class Counsel, and without requiring further approval of this Court – to implement the settlement before the Final Settlement Date (as defined in the Settlement Agreement), in which case all provisions in the Settlement Agreement specifying actions to be taken on or after the Final Settlement Date shall, to the extent necessary, be deemed to provide that those actions shall be taken on or after the date Merck elects to implement the settlement.

9. **Binding Effect.** The terms of the Settlement Agreement and of this Final Approval Order and the accompanying Final Judgment shall be forever binding on Plaintiffs, Merck and all Settlement Class Members, as well as their heirs, executors and administrators, predecessors, successors and assigns, and those terms shall have res judicata and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that are encompassed by Plaintiffs' Release or Defendants' Release.

10. **Plaintiffs' Release.** Plaintiffs' Release, which is also set forth in Section VII of the Settlement Agreement, is expressly incorporated herein in all respects, including all defined terms used therein, is effective as of the date of this Final Approval Order and the accompanying Final Judgment, and forever discharges the

Released Defendants from any claims or liabilities arising from or related to

Plaintiffs' Release:

1) A. The Parties agree to the following release and waiver ("Plaintiffs' Release"), which shall take effect upon entry of the Final Approval Order and Final Judgment.

2) In consideration for the settlement benefits described in the Settlement Agreement, all Settlement Class Members who have not validly excluded themselves from the Settlement Class pursuant to Section V of the Settlement Agreement, on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and/or successors, fully, finally, and forever release, discharge, relinquish, acquit, and hold harmless the Released Defendants from any and all claims, demands, suits, petitions, liabilities, causes of action, costs, expenses, interest, obligations, reckonings, rights, judgments, contracts, agreements, executions, promises and liens, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, anticipated or unanticipated, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, derivative or direct, asserted or unasserted, concealed or hidden, whether based on federal, state or local law, Constitution, statute, ordinance, regulation, code, contract, common law, or equity or any other source, by any Settlement Class Member against any or all of the Released Defendants in the Action, the Coordinated Proceeding and/or in any other court action, tribunal, arbitration, commission, agency, or before any governmental and/or administrative body (including any action or proceeding brought on behalf of any state Attorney General or regulatory entity or organization) or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever related to, except as otherwise specified below, the marketing, promotion, advertising, sale, distribution, and/or purchase of Eligible Coppertone Sunscreen Products and/or the claims alleged in the Action. More particularly, but without in any way limiting the generality of the foregoing, the Parties agree that Plaintiffs' Release applies to claims arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the Action, including but not limited to, in whole or in part, any and all acts, communications, affirmations, publications, omissions, impressions, disclosures, nondisclosures, facts, circumstances, matters, transactions, occurrences, oral or written statements, representations, portrayals, depictions, claims, messaging, or misrepresentations, on the internet or otherwise, that have been, may have been, could have been and/or were allegedly made, directly or indirectly, in connection with, arising out of, relating to or connected in any way with any labeling, warranties, practices, advertising, marketing, campaigning, development, packaging, promotion, displays, brochures, manufacturing, operation, performance, functionality, notification, providing, offering, dissemination, sale/resale and/or distribution of Eligible Coppertone Sunscreen Products, which have been asserted or which could have been asserted in this Action and/or the Coordinated Proceeding, including, but not limited to, the claim that Eligible Coppertone Sunscreen Products

misrepresented the nature, extent, amount and/or effectiveness of UVA and/or UVB protection provided by these products. Settlement Class Members shall not now or hereafter institute, maintain, prosecute, assert or cooperate in the institution, commencement, filing, or prosecution of any suit or proceeding against the Released Defendants, either directly or indirectly, on their own behalf, on behalf of the Settlement Class or on behalf of any other person or entity with respect to the claims, causes of action and any other matters released under the Settlement Agreement.

3) Notwithstanding any other language in this section and/or the Settlement Agreement, including Section VII thereof, Plaintiffs and the other members of the Settlement Class are not, by virtue of the Agreement, releasing any claims of or relating to personal injury, including personal injury claims relating to or arising from product liability.

4) Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or values, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in their rights and interests in the Action or in any benefits, proceeds or value due them under the Action. Settlement Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Settlement Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in their rights and interests in the Action or in any benefits, proceeds or value due them in connection therewith.

5) Without in any way limiting its scope, Plaintiffs' Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by Settlement Class Counsel and/or any other counsel representing Plaintiffs in this Action, or by Plaintiffs or the Settlement Class Members with respect to the claims, causes of action and any other matters released under Plaintiffs' Release, except to the extent otherwise specified in the Settlement Agreement, including without limitation, the provisions of Section IX of the Settlement Agreement.

6) Plaintiffs and all Settlement Class Members expressly agree that Plaintiffs' Release will be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by Plaintiffs' Release.

7) Plaintiffs and all Settlement Class Members expressly understand and acknowledge that certain principles of law, including, but not limited to, Section 1542 of the Civil Code of the State of California, provide that "a general release does not extend to claims which a creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." To the extent that anyone might argue that these principles of law are applicable – notwithstanding that the Settlement Class and Defendants have chosen New Jersey law to govern the Settlement Agreement – Plaintiffs and the Settlement Class Members agree that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs and the Settlement Class Members.

8) In connection with Plaintiffs' Release, Plaintiffs and the Settlement Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the released claims. Nevertheless, it is the intention of Plaintiffs and the Settlement Class Members in executing Plaintiffs' Release to fully, finally, and forever settle, release, discharge, and hold harmless all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed that in any way relate to the Eligible Coppertone Sunscreen Products purchased prior to the date notice is first disseminated pursuant to the Notice Plan and/or the claims alleged in the Action with respect to such products (whether or not previously or currently asserted in any action or proceeding), except as otherwise specified in the Settlement Agreement, including as stated in subsection C of Section VII of the Settlement Agreement.

9) Nothing in Plaintiffs' Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed therein.

10) Plaintiffs and the Settlement Class Members hereby agree and acknowledge that the provisions of Plaintiffs' Release discussed in Section VII of the Settlement Agreement and Defendants' Release discussed in Section VIII of the Settlement Agreement together constitute essential and material terms of the Settlement Agreement and shall be included in any Final Approval Order and Final Judgment entered by the Court.

11) The Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties, neither the Settlement Agreement nor the releases given in the Settlement Agreement, nor any consideration therefor, nor any actions taken to carry out the Settlement Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class

certification) on the part of any of the Released Defendants, Plaintiffs or Plaintiffs' Counsel. Defendants deny the allegations of the complaint in the Action. Neither the Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Defendants, Plaintiffs or Plaintiffs' Counsel, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Defendants, Plaintiffs or Plaintiffs' in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce the Settlement Agreement.

11. **Defendants' Release.** Defendants' Release, which is also set forth in Section VIII of the Settlement Agreement, is expressly incorporated herein in all respects, including all defined terms used therein, is effective as of the date of this Final Approval Order and the accompanying Final Judgment, and forever discharges Robert Gaston, Steven Brody, Chaim Hirschfeld and Suzanne Grunstein and Settlement Class Counsel from any claims or liabilities arising from or related to Plaintiffs' Release:

Upon entry of the Final Approval Order and Final Judgment, Defendants hereby fully, finally, and forever release and discharge any and all claims, whether known or unknown, which Defendants may have against Steven Brody, Chaim Hirschfeld, Suzanne Grunstein and Mr. Gaston and/or 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 (the "Defendants' Release"); and such settled claims shall be fully, finally and forever compromised, settled, discharged, dismissed with prejudice, and released pursuant to the terms and conditions set forth herein; provided however that nothing contained herein shall release any right or preclude any action to enforce the terms of the Settlement Agreement.

12. **Permanent Injunction.**

a. Merck is hereby permanently barred and enjoined from using the terms "sunblock," "waterproof," "sweatproof," "all day" and/or "all day protection" in the labeling, advertising, marketing or promotion of all Coppertone sunscreen products manufactured on or after June 22, 2012 for sale in the United States, its territories and possessions. Any Coppertone

sunscreen products manufactured on or after June 22, 2012 for sale in the United States, its territories and possessions shall comply with the requirements set forth in the Final Rule styled “Labeling and Effectiveness Testing; Sunscreen Drug Products for Over-the-Counter Human Use” and codified at 76 FR 35620 (“Final Rule”), except with respect to 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. Merck is further hereby ordered to comply with any subsequent enforcement rulings under the Final Rule as they become effective.

b. All Settlement Class Members and/or their representatives who have not been timely excluded from the Settlement Class are hereby permanently barred and enjoined from bringing, filing, commencing, prosecuting, maintaining, intervening in, participating in, continuing or receiving any benefits from, as class members or otherwise, any lawsuit (including putative class actions), arbitration, administrative, regulatory or other proceeding in any jurisdiction that is covered by Plaintiffs’ Release. All Settlement Class Members and all persons in active concert or participation with Settlement Class Members are permanently barred and enjoined from organizing or soliciting the participation of any Settlement Class Members who did not timely exclude themselves from the Settlement Class into a separate class or group for purposes of pursuing a putative class action, any claim or lawsuit in any jurisdiction that is covered by Plaintiffs’ Release. Pursuant to 28 U.S.C. §§ 1651 (a) and 2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court’s continuing jurisdiction and authority over this Action.

13. **Enforcement of Settlement.** Nothing in this Final Approval Order or in the accompanying Final Judgment shall preclude any action to enforce the terms of the Settlement

Agreement; nor shall anything in this Final Approval Order or in the accompanying Final Judgment preclude Plaintiffs or other Settlement Class Members from participating in the Claim Process described in the Settlement Agreement if they are entitled to do so under the terms of the Settlement Agreement.

14. **Attorneys' Fees and Expenses.** Settlement Class Counsel are hereby awarded attorneys' fees and expenses in the total amount of _____ which amount is approved as fair and reasonable, pursuant to Fed. R. Civ. P. 23(h) and are in accordance with the terms of the Settlement Agreement. The Court finds that the above stated award of attorneys' fees is fair and reasonable in consideration of, among other things, the efforts of Settlement Class Counsel and the settlement they achieved for the Settlement Class. The Court finds that the amount of expenses is reasonable and that the expenses were reasonably incurred in the course of the overall litigation. Settlement Class Counsel, in its discretion, shall allocate and distribute this award of attorneys' fees and expenses among Plaintiffs' Counsel. All objections, if any, to Settlement Class Counsel's request for an award of attorneys' fees and reimbursement of expenses are hereby overruled.

15. **Incentive Awards.** The Court hereby awards _____ to each of the named Plaintiffs, Steven Brody, Chaim Hirschfeld and Suzanne Grunstein, as an incentive award in their capacity as representative Plaintiffs in this Action.

16. **No Other Payments.** The preceding two paragraphs of this Final Approval Order cover, without limitation, any and all claims against the Released Defendants for attorneys' fees and expenses, costs or disbursements incurred by Settlement Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or incurred by Plaintiffs or the Settlement Class Members, or any of them, in connection with or related in any manner to

the Action, the settlement of the Action, the administration of such settlement, and/or Plaintiffs' Release, except to the extent otherwise specified in this Final Approval Order, and accompanying Final Judgment and/or the Settlement Agreement, including as specified in Section IX.F of the Settlement Agreement. Plaintiffs are not precluded from seeking attorneys' fees, expenses, costs, or disbursements from an objecting Settlement Class Member or his or her counsel (and not Merck or its counsel) in connection with an appeal filed by an objecting Settlement Class Member.

17. **Modification of Settlement Agreement.** The Parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and modifications and expansions of, the Settlement Agreement, and all exhibits attached, as are consistent with this Final Approval Order and the accompanying Final Judgment and do not limit the rights of Settlement Class Members under the Settlement Agreement.

18. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Approval Order and the accompanying Final Judgment. Without in any way affecting the finality of this Final Approval Order and/or the accompanying Final Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and of this Final Approval Order and the accompanying Final Judgment, and for any other necessary purpose, including, without limitation:

- a. enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Final Approval Order or the accompanying Final Judgment (including, without limitation, whether a person or entity is or is

not a Settlement Class Member; and whether claims or causes of action allegedly related to this case are or are not barred by this Final Approval Order and the accompanying Final Judgment);

- b. entering such additional Orders as may be necessary or appropriate to protect or effectuate this Final Approval Order and the accompanying Final Judgment, dismissing all claims on the merits and with prejudice, and permanently enjoining Settlement Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and
- c. entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of the Parties to exercise their rights under paragraphs 8 and 16 or as otherwise provided in the Settlement Agreement.

19. **No Admissions.** Neither this Final Approval Order, the accompanying Final Judgment nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to carry out this Final Approval Order or the accompanying Final Judgment) is, may be construed as, or may be used as an admission or concession by or against Merck, Released Defendants, Plaintiffs or Plaintiffs' Counsel of the validity of any claim or defense or any actual or potential fault, wrongdoing or liability whatsoever. Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to Merck's denials or defenses and shall not be offered or received in evidence in any action or proceeding against any Party hereto in any court, administrative agency or other tribunal for any purpose whatsoever,

except as evidence of the settlement or to enforce the provisions of this Final Approval Order and the accompanying Final Judgment and the Settlement Agreement; provided, however, that this Final Approval Order, the accompanying Final Judgment and the Settlement Agreement may be filed in any action against or by Merck or Released Defendants to support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim, as applicable.

20. **Dismissal of Action.** This Action (including all individual and Settlement Class claims presented therein) is hereby dismissed on the merits and with prejudice, without fees or costs to any Party except as otherwise provided in this Order and the accompanying Final Judgment and/or the Settlement Agreement.

PETER G. SHERIDAN
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

STEVEN BRODY, CHAIM HIRSCHFELD and
SUZANNE GRUNSTEIN, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

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. 12-cv-4774-PGS-DEA

[PROPOSED] FINAL JUDGMENT

IT IS on this _____ day of _____, _____, HEREBY ADJUDGED AND
DECREED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 58 THAT:

1. The settlement of this class action on the terms set forth in the Parties' Settlement Agreement, with the exhibits annexed thereto and the definitions included therein (and adopted herein by reference), signed and filed with this Court on _____, 2012 (collectively, the "Settlement Agreement"), is finally approved, ordered and adjudged, and the following settlement class is granted final certification for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3): all natural persons who purchased Eligible Coppertone Sunscreen Products in

the United States of America, including any territories and/or possessions up to the date notice was first disseminated pursuant to the Notice Plan. “Eligible Coppertone Sunscreen Products” means any and all sunscreen products sold in the United States of America and 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. 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’ Counsel; (e) Plaintiffs’ Counsel; (f) this Court and the members of this Court’s staff and immediate family; (g) the Honorable John Shepard Wiley, Jr. and the members of his staff and immediate family; and (h) any Judge to which the case is subsequently assigned and the members of his or her staff and immediate family, if applicable.

2. The claims in this Action are dismissed on the merits and with prejudice according to the terms (including Plaintiffs’ Release) set forth in the Settlement Agreement and in the Court’s Final Approval Order, without costs to any party, except as provided in the Final Approval Order.

3. All Settlement Class Members and/or their representatives who have not been timely excluded from the Settlement Class with respect to the Eligible Coppertone Sunscreen Products are permanently barred and enjoined from bringing, filing, commencing, prosecuting, maintaining, intervening in, participating (as class members or otherwise) in, or receiving any benefits from any other lawsuit (including putative class action lawsuits), arbitration, administrative, regulatory, or other proceeding, order, or cause of action in law or equity in any jurisdiction that is covered by the Release. In addition, all Settlement Class Members and all

persons in active concert or participation with Settlement Class Members are permanently barred and enjoined from organizing Settlement Class Members who have not been excluded from the Settlement Class into a separate class for purposes of pursuing, as a purported class action, any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) that is covered by the Release. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Actions.

4. Merck shall take all steps necessary and appropriate to provide Settlement Class Members with the benefits and relief to which they are entitled under the terms of the Settlement Agreement and pursuant to the Orders of the Court.

5. Merck is hereby permanently barred and enjoined from using the terms "sunblock," "waterproof," "sweatproof," "all day" and/or "all day protection" in the labeling, advertising, marketing or promotion of all Coppertone sunscreen products manufactured on or after June 22, 2012 for sale in the United States, its territories and possessions. Any Coppertone sunscreen products manufactured on or after June 22, 2012 for sale in the United States, its territories and possessions shall contain labels that comply with the requirements set forth in the Final Rule styled "Labeling and Effectiveness Testing; Sunscreen Drug Products for Over-the-Counter Human Use" and codified at 76 FR 35620 ("Final Rule"), except with respect to 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. Merck is further hereby ordered to comply with any subsequent enforcement rulings under the Final Rule as they become effective.

6. Settlement Class Counsel shall be awarded a total of _____ in attorneys' fees and costs, which amount is approved as fair and reasonable, in accordance with the terms of the Settlement Agreement.

7. The Named Plaintiffs, Steven Brody, Chaim Hirschfeld and Suzanne Grunstein, shall each be awarded _____ as an incentive award in their capacity as representative Plaintiffs in this Action.

8. The Court will retain continuing jurisdiction over this Action for the reasons and purposes set forth in this Court's accompanying Final Approval Order.

PETER G. SHERIDAN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

STEVEN BRODY, CHAIM HIRSCHFELD and
SUZANNE GRUNSTEIN, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

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. 12-cv-4774-PGS-DEA

**NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT, AND
FINAL FAIRNESS HEARING**

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE NOT BEING SUED.

If you purchased an Eligible Coppertone Sunscreen Product, as described below, the proposed settlement of a class action lawsuit may affect your rights.

Your legal rights may be affected whether you act or don't act. **Read this notice carefully because it explains decisions you must make and actions you must take now.**

**QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE
[NUMBER]**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:		
DO NOTHING	You get no payment. You give up your rights.	
SUBMIT A CLAIM FORM	This is the only way to get a payment.	The Claim Form, which is attached to this notice as Appendix B and can be found at www.sunscreensettlement.com , must be completed and electronically submitted or postmarked no later than [DATE] , subject to the qualifications and requirements addressed below.
EXCLUDE YOURSELF	You get no payment under the settlement. This is the only choice that will allow you to sue Merck on your own about the claims discussed in this notice.	An exclusion request must be in writing and postmarked on or before [DATE] .
OBJECT TO THE SETTLEMENT	You can write to the Court about why you do not agree with any aspect of the settlement.	An objection must be in writing, filed, and received on or before [DATE] .
GO TO A HEARING	You can ask to speak to the Court about the “fairness” of the settlement, after you submit your objection.	A Notice of Intention to Appear must be in writing, filed, and received on or before [DATE] <u>in addition to</u> submitting a timely objection.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court still has to decide whether to approve the settlement. Payments will be distributed if the Court approves the settlement and after appeals, if any, are resolved in favor of the settlement. Please be patient.
- If you do not exclude yourself from the Settlement Class, the proposed settlement (if finally approved) will release certain claims, which are reprinted in full in Appendix A to this notice, and will affect your right to start or continue any other lawsuit or proceeding involving Eligible Coppertone Sunscreen Products.
- *Para una notificación en Español, visitar nuestro website, www.sunscreensettlement.com, o para obtener más información, llamar a [number].*

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

WHAT THIS NOTICE CONTAINS

PART I: WHY YOU HAVE RECEIVED THIS NOTICE.....4

1. WHY DID I RECEIVE THIS NOTICE?.....4

2. WHAT IS THIS LAWSUIT ABOUT AND WHY DID IT SETTLE?4

3. WHAT DOES THE SETTLEMENT PROVIDE?.....5

PART II: DESCRIPTION OF THE SETTLEMENT CLASS.....6

4. WHY IS THIS A “CLASS ACTION”?7

5. AM I A MEMBER OF THE **SETTLEMENT CLASS**?7

6. ARE THERE EXCEPTIONS TO BEING INCLUDED?.....7

7. WHAT ARE “ELIGIBLE COPPERTONE SUNSCREEN PRODUCTS”7

8. I’M STILL NOT SURE IF I’M INCLUDED.....7

PART III: DECISIONS YOU MUST MAKE NOW.....8

9. WHAT DO I NEED TO DO NOW?8

10. WHAT DO I GIVE UP IF I CHOOSE TO STAY IN THE SETTLEMENT CLASS?8

11. DO I HAVE TO SIGN A RELEASE?.....8

12. WHAT IF I DO NOTHING?9

PART IV: SETTLEMENT BENEFITS – WHAT YOU CAN GET9

13. WHAT CAN I GET FROM THE SETTLEMENT?.....9

14. HOW CAN I MAKE A CLAIM?10

15. WHAT IS THE CLAIM PROCESS?10

16. HOW MUCH IS THE CLAIM PROCESS WORTH TO THE SETTLEMENT CLASS?11

17. WHAT HAPPENS AFTER ALL CLAIMS ARE PROCESSED AND THERE ARE FUNDS REMAINING?12

18. WHEN WILL I GET MY PAYMENT, IF ANY?.....12

PART V: FILING A LATER LAWSUIT MAKING SIMILAR CLAIMS.....12

19. CAN I FILE A LATER LAWSUIT MAKING SIMILAR CLAIMS?12

PART VI: THE LAWYERS REPRESENTING THE SETTLEMENT CLASS.....13

20. DO I HAVE A LAWYER IN THIS CASE?13

21. HOW WILL THE LAWYERS AND CLASS REPRESENTATIVES IN THESE ACTIONS BE PAID?13

PART VII: EXCLUDING YOURSELF FROM THE SETTLEMENT14

22. HOW DO I GET OUT OF OR EXCLUDE MYSELF FROM THE SETTLEMENT?14

23. WHAT HAPPENS IF I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS?15

24. IF I DON’T EXCLUDE MYSELF, CAN I SUE MERCK LATER?.....15

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

PART VIII: OBJECTING TO THE SETTLEMENT 15

 25. HOW CAN I OBJECT TO THE PROPOSED SETTLEMENT?..... 15

 26. WHAT IS THE DIFFERENCE BETWEEN “OBJECTING” AND “EXCLUDING”? 16

PART IX: THE COURT’S FINAL FAIRNESS HEARING..... 17

 27. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? 17

 28. DO I HAVE TO COME TO THE HEARING?..... 17

 29. MAY I SPEAK AT THE FINAL FAIRNESS HEARING? 17

 30. WHAT DO I HAVE TO DO TO SPEAK AT THE FINAL FAIRNESS HEARING? 17

PART X: GETTING ADDITIONAL INFORMATION 18

PART I: WHY YOU HAVE RECEIVED THIS NOTICE

1. WHY DID I RECEIVE THIS NOTICE?

You received this notice because you requested it and/or you may be a Settlement Class Member eligible to receive payment from the proposed settlement of a class action lawsuit that was brought on behalf of persons or entities who purchased Eligible Coppertone Sunscreen Products (more fully described below) from Merck, as defined in the Settlement Agreement.

You are being sent this notice because you have a right to know about the proposed settlement of this class action lawsuit, and about your rights and options, before the Court decides whether to approve the settlement. If the Court approves the class action settlement, and after any appeals are resolved in favor of the settlement, the Notice and Settlement Administrator appointed by the Court will make the payments that the settlement allows. You will be informed of the progress of this settlement and may receive payment if you are a Settlement Class Member and submit a valid, timely, and completed, including any necessary documentation, and the approved Claim Form.

This package explains: (1) this lawsuit, (2) the proposed settlement, (3) your legal rights, (4) what payments are available, (5) who is eligible for what payments under the settlement, (6) how to get a payment, and (7) other important information.

The essential terms of the settlement are summarized below. The Settlement Agreement sets forth in greater detail the rights and obligation of the parties. If there is any conflict between this notice and the Settlement Agreement, the Settlement Agreement governs.

2. WHAT IS THIS LAWSUIT ABOUT AND WHY DID IT SETTLE?

This lawsuit alleges that Merck violated certain state laws and consumer protection statutes in connection with alleged misrepresentations concerning Eligible Coppertone Sunscreen Products (as defined below). Specifically, Plaintiffs allege that Merck induced consumers to purchase Eligible Coppertone Sunscreen Products at a premium price based on the purported benefits provided,

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

including but not limited to the nature, extent, amount and/or effectiveness of UVA and/or UVB protection provided by these products.

A related lawsuit is pending in the Superior Court for the State of California, County of Los Angeles, in a Judicial Council Coordinated Proceeding styled Sunscreen Cases, JCCP No. 4352, (“Coordinated Proceeding”).

Merck denies any and all allegations of wrongdoing and does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged in this lawsuit or in any similar action. Merck denies that it made any misrepresentations about Eligible Coppertone Sunscreen Products or that purchasers of Eligible Coppertone Sunscreen Products were deceived by any of the alleged misrepresentations or paid more than they should have and denies that the class is entitled to any relief whatsoever in the lawsuit and believes it has meritorious defenses.

During the past eight years, the parties in this Action, in the Coordinated Proceeding and/or their 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. Counsel for the Parties 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 trial court’s ruling on class certification to the California Court of Appeals and California Supreme Court.

Plaintiffs have agreed to a settlement of this Action 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.

A settlement was submitted in one of the cases in the Coordinated Proceeding. The settlement submitted in the Coordinated Proceeding certified a settlement-only class of California residents and only provided injunctive relief relating to label and advertising changes in return for a release of these and related injunctive relief claims. The parties in the Coordinated Proceeding are asking the California Court to stay the non-injunctive claims in the Coordinated Proceeding until the Settlement in this Action is finally and fully addressed.

The Court has not decided whether Plaintiffs’ claims or Merck’s defenses have any merit, and it will not do so if the proposed settlement is approved. The proposed settlement does not suggest that Merck has or has not done anything wrong, or that the Plaintiffs and the Settlement Class would or would not win their case if it were to go to trial.

3. WHAT DOES THE SETTLEMENT PROVIDE?

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

The Settlement Agreement provides that Merck will create a fund of a minimum of \$3 million to a maximum of \$10 million that will be used to pay:

- (a) payments to Claimants for timely, valid, and approved Claims;
- (b) claim administration costs, including, but not limited to, escrow and banking fees and costs;
- (c) payments to Named Plaintiffs for incentive awards as ordered by the Court;
- (d) \$1 million divided up as follows to three legal services organizations, \$333,333.33 each to 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”); and
- (e) residual payments, if any funds remain of the \$3 million minimum, to LAFLA, LSNYC, and LSNJ as further discussed in the response to question 17 below.

Merck will separately pay in addition to the Settlement Fund, to Settlement Class Counsel, the Attorneys’ Fees and Expenses, as awarded by the Court, as well as notice costs. Merck shall make a \$1.5 million initial payment amount, with up to the first \$1 million to be used for notice and related notice administration costs and expenses, and not less than \$500,000 used as an advance (and credited as a payment towards the Settlement Fund) to pay claims and claims administration and associated costs.

Merck also agrees that all Coppertone sunscreen products manufactured on or after June 22, 2012 for sale in the United States 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. Merck further agrees that any Coppertone sunscreen product manufactured on or after June 22, 2012 for sale in the United States will contain labels that comply with the requirements set forth in the Final Rule styled “Labeling and Effectiveness Testing; Sunscreen Drug Products for Over-the-Counter Human Use” and codified in 76 FR 35620 (“Final Rule”), except with respect to 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. Merck will also comply with any subsequent enforcement rulings under the Final Rule as they become effective. If you are an eligible Settlement Class Member who purchased any of the Eligible Coppertone Sunscreen Products from July 31, 2006, up to and including [DATE], as further described below, you may be eligible for payment if you complete and submit a Claim Form electronically submitted or postmarked no later than [DATE], subject to certain conditions and limitations.

In return for the benefits in this settlement, and if the settlement is implemented, all Settlement Class Members (not just those Settlement Class Members who purchased Eligible Coppertone Sunscreen Products on or after July 31, 2006 will release Merck from the claims discussed in Appendix A, and this Action will be dismissed with prejudice, among other terms.

PART II: DESCRIPTION OF THE SETTLEMENT CLASS

4. WHY IS THIS A “CLASS ACTION”?

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

This case is known as *Steven Brody, et al. vs. Merck & Co., Inc., et al.* The Court in charge of this case is the United States District Court for the District of New Jersey. The named persons who sued are the Plaintiffs, and the company they sued, Merck, is a Defendant.

In a class action, one or more people, called named plaintiffs, sue on behalf of people who have similar claims. All these people constitute the Settlement Class or are Settlement Class Members. One Court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class or are otherwise not part of the Settlement Class.

5. AM I A MEMBER OF THE SETTLEMENT CLASS?

With some limited exceptions, described below, the Settlement Class includes all natural persons who purchased Eligible Coppertone Sunscreen Products in the United States of America and its territories and possessions, up to [date].

6. ARE THERE EXCEPTIONS TO BEING INCLUDED?

The Settlement Class does not include the following persons or entities:

- (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 in this Action and the Coordinated Proceeding;
- (e) Plaintiffs' attorneys in this Action and the Coordinated Proceeding;
- (f) the Honorable Peter G. Sheridan and the members of his staff and immediate family;
- (g) the Honorable Carl West and the members of his staff and immediate family;
- (h) the Honorable John Shepard Wiley, Jr. and the members of his 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.

7. WHAT ARE "ELIGIBLE COPPERTONE SUNSCREEN PRODUCTS"

"Eligible Coppertone Sunscreen Products" means any and all sunscreen products sold in the United States of America and 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.

8. I'M STILL NOT SURE IF I'M INCLUDED.

If you do not understand whether or not you are a Settlement Class Member, you can visit our web site, www.sunscreensettlement.com, or you can contact Settlement Class Counsel.

PART III: DECISIONS YOU MUST MAKE NOW

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

9. WHAT DO I NEED TO DO NOW?

FIRST, you must decide now whether you wish to remain in the Settlement Class or to exclude yourself from the Settlement Class. If you want to be excluded from the Settlement Class, you must notify the Notice and Settlement Administrator as described below in Part VII **no later than [DATE]**. If you exclude yourself:

- You will **not** be eligible for payment under the settlement.
- You will **not** be able to object to the proposed settlement and to appear at the Final Fairness Hearing.
- You will **not** be bound by any orders or judgments entered in this case, if the proposed settlement is approved.

SECOND, if you remain in the Settlement Class, you may object to any part of the proposed settlement by filing a written objection with the Court and providing a copy to Settlement Class Counsel and Merck's Counsel, as described below in Part VIII. You must **file** your objection with the Court and the Parties must **receive** your written objection **no later than [DATE]**.

Additionally, if you file an objection, you may also decide to appear and speak at the Court's Final Fairness Hearing regarding the settlement of this lawsuit. If you wish to appear and speak at the Court's Final Fairness Hearing, you must have first submitted an objection (as described in Part VIII) and, in addition, file and serve a Notice of Intention to Appear at the Final Fairness Hearing that is received by [DATE] as described in response to Question 29, below.

THIRD, if you remain a Settlement Class Member, you can complete and submit a Claim Form electronically submitted or postmarked **no later than [DATE]**.

10. WHAT DO I GIVE UP IF I CHOOSE TO STAY IN THE SETTLEMENT CLASS?

If you choose to remain in the Settlement Class, you may submit a Claim Form and, if you qualify, receive payment under the settlement, but you and all Settlement Class Members will be deemed to give Merck and the Released Parties the Release and Waiver of Plaintiff and Settlement Class Claims set forth in Appendix A, below, and you will also be bound by all orders, injunctions, and judgments entered in the Action, whether favorable or unfavorable. You will not be able to start, continue, or otherwise participate in any other claim, lawsuit, or other proceeding against Merck if those claims are included among those released in Appendix A.

11. DO I HAVE TO SIGN A RELEASE?

No. If you remain in the Settlement Class, you will automatically release Merck and the Released Parties from any claims set forth in Appendix A and will give up your rights to pursue or continue any action against Merck relating to your purchase of Eligible Coppertone Sunscreen Products and the claims at issue in this lawsuit. Settlement Class Members will release a wide range of claims in order to receive the benefits in the Settlement Agreement. A word-for-word copy of the Plaintiffs' Release section from the Settlement Agreement is attached to

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

this notice as Appendix A.

12. WHAT IF I DO NOTHING?

If you do nothing, you will not get benefits from the settlement, but, if you are a Settlement Class Member, you will be bound by the settlement's release and waiver of Plaintiff and Settlement Class claims. You must complete and submit a Claim Form on or before the deadline, which is [DATE], in order to be considered for payment under the settlement.

Unless you exclude yourself from the Settlement Class, if the settlement is approved all of the Court's orders will apply to you and you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Merck in regard to the claims in this lawsuit, ever again, regardless of whether you submit a Claim Form.

PART IV: SETTLEMENT BENEFITS – WHAT YOU CAN GET

13. WHAT CAN I GET FROM THE SETTLEMENT?

The amount of the cash payment you may be entitled to under the proposed settlement depends upon the number of Eligible Coppertone Sunscreen Products that you purchased from July 31, 2006 up to and including [DATE] and submit on the Claim Form, as well as the total of the valid, timely, completed, and approved Claims submitted by all other Settlement Class Members and other factors specified in the Settlement Agreement and in this Settlement Class Notice. The payment for each Eligible Coppertone Sunscreen Product shall be not more than \$1.50, subject to the adjustments, procedures, and other uses of the Settlement Fund discussed in the Settlement Agreement.

If the amounts required to pay (a) timely, valid and approved Claims, (b) the guaranteed cy pres awards; (c) claim administration costs, including any administrative and/or bank-related fees and costs related to the Escrow Account; and (d) payments to Named Plaintiffs for incentive awards as ordered by the Court exceed the \$10 million maximum, the payment for each timely, valid, and approved Claim shall have a pro-rata reduction as described in the Settlement Agreement.

Merck also agrees that all Coppertone sunscreen products manufactured on or after June 22, 2012 for sale in the United States 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. Merck further agrees that any Coppertone sunscreen product manufactured on or after June 22, 2012 for sale in the United States will contain labels that comply with the requirements set forth in the Final Rule styled "Labeling and Effectiveness Testing; Sunscreen Drug Products for Over-the-Counter Human Use" and codified in 76 FR 35620 ("Final Rule"), except with respect to 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. Merck will also comply with any subsequent enforcement rulings under the Final Rule as they become effective.

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

14. HOW CAN I MAKE A CLAIM?

To receive a payment under the settlement, you must send in a Claim Form. A Claim Form and directions are attached as **Appendix B** to this Settlement Class Notice. You may also obtain a Claim Form and other relevant documents by visiting www.sunscreensettlement.com. Please read the instructions and certification carefully, fill out the form completely and accurately, and submit the form and any documents, as applicable. Claim Forms must be **electronically submitted** or **postmarked** no later than [DATE].

You will not be given an opportunity to cure or fix any deficiencies in your Claim Form. Thus, you must complete the entire Claim Form and submit any documentation when first submitting the Claim Form. Failure to do so will result in the denial of your Claim and you will receive no cash payment from this settlement. Pursuant to the terms of the Settlement Agreement, the Notice and Settlement Administrator's determination is final and cannot be appealed by anyone.

15. WHAT IS THE CLAIM PROCESS?

You will be eligible for payment provided that you are a Settlement Class Member and you complete and timely submit the Claim Form and any additional documentation as applicable to the Court-appointed Notice and Settlement Administrator demonstrating the purchase of Eligible Coppertone Sunscreen Products from July 31, 2006 up to and including [DATE]. **Claim Forms must be electronically submitted or postmarked no later than [DATE]**. No Claimant may submit more than one Claim for each Eligible Coppertone Sunscreen Product for which the Claimant is seeking payment from the Settlement Fund. Claimants may seek reimbursement for purchases of **up to six (6) Eligible Coppertone Sunscreen Products** without proof of purchase. Merck shall have the right to request that the Notice and Settlement Administrator request proof of purchase for each unit from Claimants who seek reimbursement for **seven (7) to nine (9) Eligible Coppertone Sunscreen Products**. 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.

Each individual unit purchased shall constitute one (1) Eligible Coppertone Sunscreen Product. You may not submit more than one Claim for each Eligible Coppertone Sunscreen Product for which you are seeking payment from the Settlement Fund.

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 indicates the purchase of Eligible Coppertone Sunscreen Products. Claimants submitting multiple proofs of purchase using a photocopy of the label(s) on the, tube(s), spray(s), bottle(s), and/or similar container(s) must provide such copies on the same photocopy sheet, with at least four (4) copies to a page. Claimants may provide less than four (4) copies to a page only if: (i) less than four (4) copies are being submitted or (ii) less than four (4) copies remain after placing all other copies on photocopy sheets with no less than four (4) to a page.

Failure to complete the Claim Form and/or inability to timely comply with requests from the Notice

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

and Settlement Administrator will result in disqualification of your Claim(s).

Shortly after receiving your Claim Form, the Notice and Settlement Administrator will review and assess the Claim Form. If a Claim is valid, timely, completed, including any necessary documentation, and approved, the Notice and Settlement Administrator will pay that Claim in accordance with the terms of the Settlement Agreement. If a Claim is deficient, the Notice and Settlement Administrator shall reject the Claim, and you will be notified. The Notice and Settlement Administrator shall take any reasonable steps to prevent fraud and abuse in the Claim Process, including, among others, denying claims in whole or in part to prevent actual or possible fraud or abuse.

You will not be given an opportunity to cure or fix any deficiencies in the Claim Form. Thus, you must complete the entire Claim Form and submit any documentation when first submitting the Claim Form. Failure to do so will result in the denial of your Claim and you will receive no cash payment from this settlement. The Notice and Settlement Administrator's determination of a Claim is final and may not be appealed by anyone.

If you seek reimbursement for seven (7) to nine (9) Eligible Coppertone Sunscreen Products and Merck requests that the Notice and Settlement Administrator request and require proof of purchase of the Eligible Coppertone Sunscreen Products, the Notice and Settlement Administrator will mail you a letter advising you that you must submit acceptable proof of purchase of the Eligible Coppertone Sunscreen Products to validate your Claims. You will have thirty-five (35) days from the date of the postmarked letter from the Notice and Settlement Administrator to respond. If you timely provide the requested proof of purchase documentation, the Claim shall be deemed validated by the Notice and Settlement Administrator. If the requested proof of purchase documentation is not timely provided, and/or is not provided for all Eligible Coppertone Sunscreen Products listed, the Claim shall be deemed rejected in its entirety.

Within one hundred twenty (120) days after the close 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, the Notice and Settlement Administrator shall distribute the Settlement Funds to Settlement Class Members who have submitted valid, timely, and complete, including any documentation provided, as applicable, and approved Claims pursuant to the Claim Process.

16. HOW MUCH IS THE CLAIM PROCESS WORTH TO THE SETTLEMENT CLASS?

The settlement will provide a fund of a minimum of \$3 million to a maximum of \$10 million that will be used to pay:

- (a) payments to Claimants for timely, valid, and approved Claims;
- (b) claim administration costs, including, but not limited to, escrow and banking fees and costs;
- (c) payments to Named Plaintiffs for incentive awards as ordered by the Court;
- (d) \$1 million divided up as follows to three legal services organizations, \$333,333.33 each to LAFLA and LSNYC, and \$333,333.34 to LSNJ; and

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

- (e) residual payments, if any funds remain, to LAFLA, LSNYC, and LSNJ as discussed in the response to question 17 below.

Additionally, if the total amounts to pay (a)-(d) above exceed the \$10 million maximum, the payment for each timely, valid, and approved Claim shall have a pro-rata reduction as described in the Settlement Agreement.

17. WHAT HAPPENS AFTER ALL CLAIMS ARE PROCESSED AND THERE ARE FUNDS REMAINING?

If the total amounts to pay items (a)-(d) in paragraph 16 above do not equal or exceed the \$3 million minimum, any remaining funds after all claims are processed and checks sent, but uncashed, by Settlement Class Members, shall be paid equally to LAFLA, LSNYC, and LSNJ, as indicated in item (e) above. No remaining funds will be returned to Merck.

18. WHEN WILL I GET MY PAYMENT, IF ANY?

The Court will hold a Final Fairness Hearing on [DATE] at [TIME] to decide whether or not to approve the proposed settlement. The Court must finally approve the proposed settlement before any payments can be made. The Court will grant its approval only if it finds that the proposed settlement is fair, reasonable and adequate. In addition, the Court's order may be subject to appeals. It is always uncertain whether these appeals can be resolved, and resolving them takes time, sometimes more than a year. Finally, there remains a possibility that this settlement may be terminated for other reasons. Everyone who sends in a Claim Form will be informed of the progress of the settlement. Please be patient.

Within one hundred twenty (120) days after the close of the Claim Period, but no earlier than forty five (45) days from the Final Settlement Date, the Notice and Settlement Administrator shall distribute the Settlement Funds to Settlement Class Members who have submitted timely, valid and approved Claims pursuant to the Claim Process.

PART V: FILING A LATER LAWSUIT MAKING SIMILAR CLAIMS

19. CAN I FILE A LATER LAWSUIT MAKING SIMILAR CLAIMS?

No. If you remain a member of the Settlement Class and the settlement is finally approved, you will be automatically enjoined and barred from initiating or continuing any lawsuit or other proceeding against Merck if those claims are included among those released in Appendix A.

As part of this settlement, the Court has preliminary enjoined all Settlement Class Members and/or their representatives (who do not timely exclude themselves from the Settlement Class) from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing litigation as Settlement Class Members or otherwise against Merck (or against any of its related parties or affiliates), and/or from receiving any benefits from, any lawsuit, administrative, or

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

regulatory proceeding or order in any jurisdiction, based on or relating to the claims or causes of actions or the facts, and circumstances relating thereto, in the class action.

The Court has also preliminarily enjoined all persons from filing, commencing, or prosecuting a lawsuit against Merck (or against any of its related parties or affiliates) as a class action, a separate class, or group for purposes of pursuing a putative class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who do not timely exclude themselves from the Settlement Class, arising out of, based on or relating to the claims, causes of action, facts and/or circumstances relating thereto, in the class action.

Upon final approval of the settlement, Plaintiffs and Merck will ask the Court to enter a permanent injunction enjoining all Settlement Class Members and/or their representatives and/or personnel from engaging in the activities described above. All Settlement Class Members will be bound by this permanent injunction.

PART VI: THE LAWYERS REPRESENTING THE SETTLEMENT CLASS

20. DO I HAVE A LAWYER IN THIS CASE?

The Court has designated attorneys at the law firm of **Abraham, Fruchter & Twersky, LLP** to represent you and the other Settlement Class Members in this lawsuit. The lawyers representing you and the Settlement Class Members are called “Settlement Class Counsel.” **You will not be charged for the services of Settlement Class Counsel. Merck shall pay the entire Attorneys’ Fees and Expenses awarded by the Court, not to exceed \$2 million, not later than twenty (20) days after the occurrence of the Final Settlement Date.**

You may contact Settlement Class Counsel about this lawsuit and proposed settlement at the following address:

Mitchell Twersky
Abraham, Fruchter & Twersky, LLP
One Penn Plaza
Suite 2805
New York, NY 10119
Telephone: (212) 279-5050
Facsimile: (212) 279-3655

You have the right to retain your own lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer.

21. HOW WILL THE LAWYERS AND CLASS REPRESENTATIVES IN THESE ACTIONS BE PAID?

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

Settlement Class Counsel have prosecuted this case on a completely contingent fee basis and have not been paid anything to date for their services. Settlement Class Counsel will make an application for an award of Attorneys' Fees and Expenses that will not exceed \$2 million, which shall be the sole aggregate compensation from Merck for all attorneys representing Plaintiffs and the Settlement Class.

Settlement Class Counsel will petition the Court for incentive awards of up to \$2,500 for each of the Named Plaintiffs, Steven Brody, Chaim Hirschfeld and Suzanne Grunstein. The purpose of such awards, if any, shall be to compensate the named plaintiffs/class representatives for efforts and risks taken by them on behalf of the Settlement Class.

Merck shall pay the Named Plaintiffs incentive awards identified above from the Settlement Fund not later than thirty (30) days after the Final Settlement Date. Merck shall separately pay the Attorneys' Fees and Expenses identified above not later than twenty (20) days after the Final Settlement Date. Merck shall not be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with the Settlement Agreement, other than the amount or amounts expressly provided for in the Settlement Agreement.

PART VII: EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue Merck on your own with regard to the legal issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself or "opting out" of the Settlement Class.

22. HOW DO I GET OUT OF OR EXCLUDE MYSELF FROM THE SETTLEMENT?

If you want to be excluded from the Settlement Class, you must notify the Notice and Settlement Administrator. To exclude yourself from the settlement, you must send a letter by mail. Your exclusion request letter must be **postmarked** no later than **[DATE]**. Send your letter to:

Notice and Settlement Administrator
[ADDRESS]

Your letter requesting exclusion does not need to be in any particular form, but it shall include the following information in order to be effective:

- (1) your name;
- (2) your address;
- (3) your telephone number;
- (4) a statement that you purchased Eligible Coppertone Sunscreen Products;
- (5) a statement that you wish to be excluded from the Settlement Class;
- (6) your signature; and

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

(7) the case name and number: *Steven Brody, et al. vs. Merck & Co., Inc., et al.*, Case No. 12-cv-4774(PGS).

Please write “EXCLUSION REQUEST” on the lower left-hand corner of the *front* of the envelope.

23. WHAT HAPPENS IF I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS?

If you request exclusion from the Settlement Class, then for each of the excluded Eligible Coppertone Sunscreen Products:

- You will **not** be eligible for payment under the proposed settlement;
- You will **not** be allowed to object to the terms of the proposed settlement, and
- You will **not** be bound by any subsequent rulings entered in this case if the proposed settlement is finally approved.

However, if your request for exclusion is late or deficient, you will still be a part of the Settlement Class, you will be bound by the settlement and by all other orders and judgments in this lawsuit, and you will not be able to participate in any other lawsuits based on the claims in this case.

24. IF I DON’T EXCLUDE MYSELF, CAN I SUE MERCK LATER?

No. If the Court approves the proposed settlement and you do not exclude yourself from the Settlement Class, you release (give up) all claims released in Appendix A.

PART VIII: OBJECTING TO THE SETTLEMENT

You have the right to tell the Court that you do not agree with the settlement or any or all of its terms.

25. HOW CAN I OBJECT TO THE PROPOSED SETTLEMENT?

If you choose to remain a Settlement Class Member, you have a right to object to any parts of the proposed settlement. The Court will consider your views.

To object, you must send a letter saying that you object to *Steven Brody, et al. vs. Merck & Co., Inc., et al.*, Case No. 12-cv-4774-PGS-DEA. Your written objection must include:

- (1) your name;
- (2) your address;
- (3) your telephone number;
- (4) proof of purchase of Eligible Coppertone Sunscreen Products, as identified in the answer to question 15 above, that sufficiently indicates the purchase of the Eligible Coppertone Sunscreen Products OR, alternatively, a representation and warranty, submitted under

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

- penalty of perjury, that you purchased an Eligible Coppertone Sunscreen Product;
- (5) a written statement of your objection(s), including any legal support and/or any supporting evidence you wish to introduce;
- (6) a statement of whether you intend to appear and argue at the Final Fairness Hearing;
- (7) your signature; and
- (8) the case name and number: *Steven Brody, et al. vs. Merck & Co., Inc., et al.*, Case No. 12-cv-4774(PGS).

If you choose to object, in order to be considered by the Court, your written objections must be **filed with the Court, and copies must be received by all of the following recipients no later than [DATE]**:

COURT	SETTLEMENT CLASS COUNSEL	MERCK'S COUNSEL
Clerk of the Court United States District Court District of New Jersey Clarkson S. Fisher Building & U.S. Courthouse 402 East State Street Trenton, NJ 08608	Mitchell Twersky Abraham, Fruchter & Twersky, LLP One Penn Plaza Suite 2805 New York, NY 10119	John P. Hooper David E. Stanley Reed Smith LLP 599 Lexington Avenue New York, NY 10022

You (and/or your attorney) may, at your own expense, review materials applicable to this Action. Those documents will be made available by appointment with Settlement Class Counsel during regular business hours at a place designated by Settlement Class Counsel. To obtain access to certain materials you (and/or your attorney) must first sign a Confidentiality Agreement, which Settlement Class Counsel will provide.

If you file objections, but the Court approves the settlement as proposed, you can still complete a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions discussed in this Notice and in the Settlement Agreement.

26. WHAT IS THE DIFFERENCE BETWEEN “OBJECTING” AND “EXCLUDING”?

Objecting is simply a way of telling the Court that you don't like something about the settlement. You can only object if you stay in the Settlement Class.

If you object to the settlement, you still remain a member of the Settlement Class and you will still be eligible to submit a Claim Form. You will also be bound by any subsequent rulings in this case and you will not be able to file or participate in any other lawsuit or proceeding based upon or relating to the claims, causes of action, facts or circumstances of this case. Excluding yourself is telling the Court that you don't want to be a part of the Settlement Class. If you exclude yourself, you have no basis to object to the settlement and appear at the Final Fairness Hearing because it no longer affects you.

PART IX: THE COURT'S FINAL FAIRNESS HEARING

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

The Court will hold a final hearing (called a Final Fairness Hearing or a Final Approval Hearing) to decide whether to finally approve the settlement.

27. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

On [DATE], at [TIME], the Court will hold a Final Fairness Hearing at the United States District Court for the District of New Jersey, before the Honorable Peter G. Sheridan, in Courtroom 4E, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608.

At the hearing, the Court will consider whether to grant final certification to the Settlement Class for settlement purposes, whether to approve the proposed settlement as fair, reasonable and adequate, whether to award attorneys' fees and costs, whether to award the Named Plaintiffs an award for their help, whether to issue a permanent injunction, and consider related settlement issues.

28. DO I HAVE TO COME TO THE HEARING?

No. Settlement Class Counsel will answer questions the Court may have at the Final Fairness Hearing. But you are welcome to come at your own expense. Please note that the Court has the right to change the date and/or time of the Final Fairness Hearing without further notice. If you are planning to attend the hearing, you should confirm the date and time before going to the Court.

29. MAY I SPEAK AT THE FINAL FAIRNESS HEARING?

Yes, if you have filed an objection, you may ask the Court for permission to speak at the hearing. To do so, you must submit an objection and also file a document called a "Notice of Intention to Appear."

30. WHAT DO I HAVE TO DO TO SPEAK AT THE FINAL FAIRNESS HEARING?

If you are a member of the Settlement Class, and you (or your attorney) want to appear and speak at the Final Fairness Hearing, you (or your attorney) must have submitted an objection and must file a **Notice of Intention to Appear at the Final Fairness Hearing** with the Clerk of the Court, and deliver that Notice to the attorneys for both sides, at the addresses listed above. **Your Notice of Intention to Appear at the Final Fairness Hearing must be filed and received by the Court, Merck's Counsel and Settlement Class Counsel, at the addresses specified in Part VIII, question number 25 no later than [DATE].**

If you file objections and appear at the Final Fairness Hearing, but the Court approves the settlement as proposed, you can still complete a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions discussed in this Notice and in the Settlement Agreement.

PART X: GETTING ADDITIONAL INFORMATION

This Notice and the accompanying documents summarize the proposed settlement. More details are

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

contained in the Settlement Agreement. The full Settlement Agreement is on file with the Clerk of the Court and is also available at www.sunscreensettlement.com. For a more detailed statement of the matters involved in this case, you may review the complaint and the other papers and Court orders on file in the Clerk's office at any time during normal business hours, Monday through Friday, 9:00 a.m. to 4:00 p.m. Eastern Time.

If you have questions after reading this notice, you can visit www.sunscreensettlement.com to obtain additional information about the proposed settlement and to request a Claim Form. If you have questions, you may call toll-free **[number]**, where responses to common questions are available. You may also direct your questions about the settlement to Settlement Class Counsel, whose name and address is listed in Part VI, question number 20 of this Notice.

PLEASE DO NOT CALL THE COURT OR THE CLERK OF THE COURT

Dated: **[DATE]**, 2012

Clerk of the Court for the United States
District Court for the District of New Jersey

**QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE
[NUMBER]**

APPENDIX A

RELEASE AND WAIVER OF PLAINTIFF AND SETTLEMENT CLASS CLAIMS

1) The Parties agree to the following release and waiver (“Plaintiffs’ Release”), which shall take effect upon entry of the Final Approval Order and Final Judgment.

2) In consideration for the settlement benefits described in the Settlement Agreement, all Settlement Class Members who have not validly excluded themselves from the Settlement Class pursuant to Section V of the Settlement Agreement, on behalf of themselves, their heirs, guardians, assigns, executors, administrators, predecessors, and/or successors, fully, finally, and forever release, discharge, relinquish, acquit, and hold harmless the Released Defendants from any and all claims, demands, suits, petitions, liabilities, causes of action, costs, expenses, interest, obligations, reckonings, rights, judgments, contracts, agreements, executions, promises and liens, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, anticipated or unanticipated, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, derivative or direct, asserted or unasserted, concealed or hidden, whether based on federal, state or local law, Constitution, statute, ordinance, regulation, code, contract, common law, or equity or any other source, by any Settlement Class Member against any or all of the Released Defendants in the Action, the Coordinated Proceeding and/or in any other court action, tribunal, arbitration, commission, agency, or before any governmental and/or administrative body (including any action or proceeding brought on behalf of any state Attorney General or regulatory entity or organization) or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever related to, except as otherwise specified below, the marketing, promotion, advertising, sale, distribution, and/or purchase of Eligible Coppertone Sunscreen Products and/or the claims alleged in the Action. More particularly, but without in any way limiting the generality of the foregoing, the Parties agree that Plaintiffs’ Release applies to claims arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the Action, including but not limited to, in whole or in part, any and all acts, communications, affirmations, publications, omissions, impressions, disclosures, nondisclosures, facts, circumstances, matters, transactions, occurrences, oral or written statements, representations, portrayals, depictions, claims, messaging, or misrepresentations, on the internet or otherwise, that have been, may have been, could have been and/or were allegedly made, directly or indirectly, in connection with, arising out of, relating to or connected in any way with any labeling, warranties, practices, advertising, marketing, campaigning, development, packaging, promotion, displays, brochures, manufacturing, operation, performance, functionality, notification, providing, offering, dissemination, sale/resale and/or distribution of Eligible Coppertone Sunscreen Products, which have been asserted or which could have been asserted in this Action and/or the Coordinated Proceeding, including, but not limited to, the claim that Eligible Coppertone Sunscreen Products misrepresented the nature, extent, amount and/or effectiveness of UVA and/or UVB protection provided by these products. Settlement Class Members shall not now or hereafter institute, maintain, prosecute, assert or cooperate in the institution, commencement, filing, or prosecution of any suit or proceeding against the Released Defendants, either directly or indirectly, on their own behalf, on behalf of the

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE [NUMBER]

Settlement Class or on behalf of any other person or entity with respect to the claims, causes of action and any other matters released under the Settlement Agreement.

3) Notwithstanding any other language in this section and/or the Settlement Agreement, including Section VII thereof, Plaintiffs and the other members of the Settlement Class are not, by virtue of the Agreement, releasing any claims of or relating to personal injury, including personal injury claims relating to or arising from product liability.

4) Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under the Settlement Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or values, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in their rights and interests in the Action or in any benefits, proceeds or values due them under the Action. Settlement Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or values under the Action, and that such Settlement Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in their rights and interests in the Action or in any benefits, proceeds or value due them in connection therewith.

5) Without in any way limiting its scope, Plaintiffs' Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by Settlement Class Counsel and/or any other counsel representing Plaintiffs in this Action, or by Plaintiffs or the Settlement Class Members with respect to the claims, causes of action and any other matters released under Plaintiffs' Release, except to the extent otherwise specified in the Settlement Agreement, including without limitation, the provisions of Section IX of the Settlement Agreement.

6) Plaintiffs and all Settlement Class Members expressly agree that Plaintiffs' Release will be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by Plaintiffs' Release.

7) Plaintiffs and all Settlement Class Members expressly understand and acknowledge that certain principles of law, including, but not limited to, Section 1542 of the Civil Code of the State of California, provide that "a general release does not extend to claims which a creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." To the extent that anyone might argue that these principles of law are applicable – notwithstanding that the Settlement Class and Defendants have chosen New Jersey law to govern the Settlement Agreement – Plaintiffs and the Settlement Class Members agree that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE

[NUMBER]

herein, are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs and the Settlement Class Members.

8) In connection with Plaintiffs' Release, Plaintiffs and the Settlement Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the released claims. Nevertheless, it is the intention of Plaintiffs and the Settlement Class Members in executing Plaintiffs' Release to fully, finally, and forever settle, release, discharge, and hold harmless all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed that in any way relate to the Eligible Coppertone Sunscreen Products purchased prior to the date notice is first disseminated pursuant to the Notice Plan and/or the claims alleged in the Action with respect to such products (whether or not previously or currently asserted in any action or proceeding), except as otherwise specified in the Settlement Agreement, including as stated in subsection C of Section VII of the Settlement Agreement.

9) Nothing in Plaintiffs' Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed therein.

10) Plaintiffs and the Settlement Class Members hereby agree and acknowledge that the provisions of Plaintiffs' Release discussed in Section VII of the Settlement Agreement and Defendants' Release discussed in Section VIII of the Settlement Agreement together constitute essential and material terms of the Settlement Agreement and shall be included in any Final Approval Order and Final Judgment entered by the Court.

11) The Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties, neither the Settlement Agreement nor the releases given in the Settlement Agreement, nor any consideration therefor, nor any actions taken to carry out the Settlement Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any of the Released Defendants, Plaintiffs or Plaintiffs' Counsel. Defendants deny the allegations of the complaint in the Action. Neither the Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Defendants, Plaintiffs or Plaintiffs' Counsel, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Defendants, Plaintiffs or Plaintiffs' in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce the Settlement Agreement.

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[NUMBER]

APPENDIX B

Claim Form

QUESTIONS? VISIT WWW.SUNSCREENSETTLEMENT.COM OR CALL TOLL-FREE

[NUMBER]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

STEVEN BRODY, CHAIM HIRSCHFELD,
and SUZANNE GRUNSTEIN, on behalf of
themselves and all others similarly situated,

Case No. 12-cv-4774-PGS-DEA

Plaintiffs,

vs.

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 SCHERINGPLOUGH
HEALTHCARE PRODUCTS
ADVERTISING CORPORATION,
Defendants.

DECLARATION OF
JEANNE C. FINEGAN

**DECLARATION OF JEANNE C. FINEGAN, APR, CONCERNING
PROPOSED SETTLEMENT CLASS MEMBER NOTIFICATION
PROGRAM**

I, JEANNE C. FINEGAN declare as follows:

INTRODUCTION

1. I am a Senior Vice President of The Garden City Group, Inc. (“GCG”) and of GCG Communications, a division of GCG. This Declaration is based upon my personal

knowledge, as well as on information provided to me by Settlement Class Counsel, my associates and staff and including information reasonably relied upon in the fields of advertising, media and communications.

2. Pursuant to the Settlement Agreement, paragraph 21, GCG, was engaged by the Parties, as defined in the Settlement Agreement, as the Notice and Settlement Administrator to develop and implement a proposed legal notice program (the “Notice Plan”). The program is designed with a modern approach to notice, taking into consideration both traditional and online media, and complies with class action notice requirements under the Federal Rules of Civil Procedure.

3. The Notice Plan is designed to inform class members of the proposed class action Settlement between Plaintiffs and Defendants as described in the Settlement Agreement. The Class is defined, with certain limited exceptions in the Settlement Agreement, Section II, Paragraph 32, as follows:

“All natural persons who purchased Eligible Coppertone Sunscreen Products in the United States of America including any territories and/or possessions, up to the date notice is first disseminated pursuant to the Notice Plan, which were labeled and/or advertised to provide protection against the sun’s UVA and/or UVB rays.”

4. This Declaration describes and details the proposed Notice Plan.

QUALIFICATIONS

5. I have more than 20 years of communications and advertising experience and I am the only Notice Expert accredited in Public Relations (APR) by the Universal Accreditation Board, a program administered by the Public Relations Society of America. Further, I have provided testimony before Congress on issues of notice. Also, I have lectured, published and been cited extensively on various aspects of legal noticing, product recall and crisis communications and have served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns.

6. I have served as an expert, directly responsible for the design and implementation of hundreds of class action notice programs, some of which are the largest and most complex programs ever implemented in both the United States and in Canada. I have been at the

forefront of modern notice, integrating new media and social media into court approved legal notice programs such as *In re: Reebok Easytone Litigation*, No. 10-CV-11977 (D. MA.).

7. I have designed, implemented or consulted on many of the largest and highest profile national and international legal notice communication programs for a wide range of class actions and regulatory and consumer matters that include product liability, construction defect, antitrust, asbestos, medical pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance and bankruptcy.

8. GCG was established in January 1984 to administer settlements of class actions, mass tort litigations, SEC and FTC disgorgement actions, bankruptcies, and other major litigations. GCG has a considerable amount of experience in class action administration and the development of notice programs. For over 25 years, our team has served as administrator for over 2,500 cases. In the course of our history, GCG has mailed over 287 million notices, disseminated over 700 million emails, handled over 28 million phone calls, processed over 50 million claims, and distributed over \$33 billion in benefits. GCG's legal notices have appeared in more than 40 languages in approximately 170 countries.

9. In evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly recognized my work as an expert. For example, in *DeHoyos, et al. v. Allstate Ins. Co.*, No. 01-CA-1010 (W.D.Tx.). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. ... This program was vigorous and specifically structured to reach the African-American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts.

And recently in

Stern v. AT&T Mobility Wireless, No. 09-cv-1112 CAS-AGR (C.D.Cal.). In the Final Approval Order, the Honorable Christina A. Snyder stated:

[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact,

have achieved better results than anticipated or required by the Preliminary Approval Order.

Other examples include:

a. ***Gemelas v. The Dannon Company***, No. 1:08-cv-00236 (N.D. Ohio, E. Div.). In the Judgment, Final Order, and Decree, Judge Dan Aaron Polster approved the notice program, stating:

In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, the Class Action Settlement Administrator caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. In addition, the Settlement was widely publicized using Internet banner ads, press releases, audio news releases, via a Settlement Website, and through a toll-free number. ... The Declaration of Jeanne C. Finegan [sic], attesting to the dissemination of the Class Notice, demonstrates compliance with this Court's Preliminary Approval Order. ... The distribution of the Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.

b. ***In re Expedia Hotel Taxes and Fees Litigation***, Case No. 05-2-02060-1 SEA, Superior Court of Washington in and for King County (2009). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

The Notice of the Settlement given to the Class ... was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.

c. ***Stefanyshyn v. Consolidated Industries***, Case No. 79 D 01-9712-CT-59, Tippecanoe County Sup. Ct. (Ind.) (May 28, 2009). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

The long and short form notices provided a neutral, informative, and clear explanation of the Settlement... The proposed notice program was properly designed, recommended, and implemented ... and constitutes the “best practicable” notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements... The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.

d. *Berger, et al., v. Property ID Corporation, et al.*, CV 05-5373-GHK (CWx) (C.D.Cal.). The Court stated in the Final Order:

The notice of the proposed Settlements provided to the Classes satisfies the requirements of Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure and the requirements of due process.

e. *McGee v. Continental Tire North America, Inc. et al*, Civ. No. 06-6234-(GEB) (D.N.J.). The Court noted:

The Class Notice, the Summary Settlement Notice, the website, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the Settlement and their rights under the Settlement, including, but not limited to, their right to object to or exclude themselves from the proposed Settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center’s illustrative class action notices.

f. *In re: Canadian Air Cargo Shipping Class Actions* (Ontario Superior Court of Justice, Court File No. 50389CP, Supreme Court of British Columbia, Quebec Superior Court). In the Endorsement of Settlement, Ontario Superior Court of Justice Regional Senior Justice Lynne C. Leitch stated:

I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate.

g. *In re: Nortel Network Corp., Sec. Litig.*, Civil Action No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). *See slip op.* at 4 (S.D.N.Y. Dec. 26, 2006). Regarding the B.C. Canadian notification effort: *Jeffery v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honorable Mr. Justice Groberman said:

The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed Settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages have been available through the worldwide web site www.nortelsecuritieslitigation.com on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.

And of the U.S. notice program, the Honorable Loretta A. Preska stated:

The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement ... constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

h. *Lucas v. KMART Corporation*, Civil Action No 99-CV-01923 (JLK) (D. Colo. 2006). The Court noted:

[T]he Court finds this extensive notice program to be more than adequate and approves it as the ‘best notice practicable under the circumstances’ and consistent with the requirements of F.R.C.P. 23 and due process.

i. *Varacallo v. Massachusetts Mutual Life Insurance Company*, Civil Action No. 04-2702 (JLL) (D.N.J. 2004). The Court noted:

[A]ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center’s illustrative class action notices.

j. ***Wilson v. Massachusetts Mutual Life Insurance Company***, Case No. D-101-CV 98-02814 (First Judicial District Court County of Santa Fe State of New Mexico 2002). The Court stated:

The Notice Plan was the best practicable and reasonably calculated, under the circumstances of the action . . . [and] that the notice meets or exceeds all applicable requirements of law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.

k. ***Thomas A. Foster and Linda E. Foster v. ABTco Siding***, Case No. 95-151-M (Circuit Court of Choctaw County, Alabama 2000). The Court stated:

The notice program constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program.

l. ***Sparks v. AT&T Corporation***, Case No. 96-LM-983 (Third Judicial Circuit Madison County, Illinois 2001). In granting final approval to the Settlement, the Court commented on the notification program as follows:

The Court further finds that the notice of the proposed Settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed Settlement. The Court therefore concludes that the notice of the proposed Settlement met all requirements required by law, including all Constitutional requirements.

m. ***In re: Louisiana-Pacific Inner-Seal Siding***, Civil Action Nos. 879-JE, and 1453-JE (D. Or. 1995, 1999). The Court stated:

[T]he notice given to the members of the Class fully and accurately informed the Class members of all material elements of the Settlement...[through] a broad and extensive multi-media notice campaign. . . .

10. Additionally, I have published extensively on various aspects of legal noticing, including the following publications and articles:

(a) Co-Author, “New Media Creates New Expectations for Bankruptcy Notice Programs,” ABI Journal, Vol. XXX, No 9, November 2011.

(b) Quoted Expert, “Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist,” *Canadian Supreme Court Law Review*, (2011), 53 S.C.L.R. (2d).

(c) Co-Author, with Hon. Dickran Tevrizian, “*Expert Opinion: It’s More Than Just a Report...Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape*,” *BNA Class Action Litigation Report*, 12 CLASS 464, 5/27/11.

(d) Co-Author, with Hon. Dickran Tevrizian, “*Your Insight: It’s More Than Just a Report...Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape*,” *TXLR*, Vol. 26, No. 21, 5/26/2011.

(e) Author, *Five Key Considerations for a Successful International Notice Program*, *BNA Class Action Litigation Report*, 4/9/10 Vol. 11, No. 7 p. 343.

(f) Quoted: *Technology Trends Pose Novel Notification Issues for Class Litigators*, *BNA Electronic Commerce and Law Report*, 15, ECLR 109, 1/27/10.

(g) Author, *Legal Notice: R U ready 2 adapt?* *BNA Class Action Litigation Report*, Vol. 10, No. 14, 7/24/2009, pp. 702-703.

(h) Author, *On Demand Media Could Change the Future of Best Practicable Notice*, *BNA Class Action Litigation Report*, Vol. 9, No. 7, 4/11/2008, pp. 307-310.

(i) Quoted in, *Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty*, *Warranty Week*, February 28, 2007, available at www.warrantyweek.com/archive/ww20070228.html.

(j) Co-Author, *Approaches to Notice in State Court Class Actions*, *For The Defense*, Vol. 45, No. 11, November, 2003.

(k) Author, *The Web Offers Near, Real-Time Cost Efficient Notice*, *American Bankruptcy Institute Journal*, Vol. XXII, No. 5, 2003.

(l) Author, *Determining Adequate Notice in Rule 23 Actions*, *For The Defense*, Vol. 44, No. 9, September, 2002.

(m) Co-Author, *The Electronic Nature of Legal Noticing*, American Bankruptcy Institute Journal, Vol. XXI, No. 3, April, 2002.

(n) Author, *Three Important Mantras for CEO's and Risk Managers in 2002*, International Risk Management Institute, irmi.com/, January, 2002.

(o) Co-Author, *Used the Bat Signal Lately*, The National Law Journal, Special Litigation Section, February 19, 2001.

(p) Author, *How Much is Enough Notice*, Dispute Resolution Alert, Vol. 1, No. 6, March, 2001.

(q) Author, *Monitoring the Internet Buzz*, The Risk Report, Vol. XXIII, No. 5, January, 2001.

(r) Author, *High-Profile Product Recalls Need More Than the Bat Signal*, International Risk Management Institute, irmi.com/, July 2001.

(s) Author, *The Great Debate - How Much is Enough Legal Notice?* American Bar Association -- Class Actions and Derivatives Suits Newsletter, Winter 1999.

(t) Author, *What are the best practicable methods to give notice?* Georgetown University Law Center Mass Tort Litigation Institute, CLE White Paper: Dispelling the communications myth -- A notice disseminated is a notice communicated, November 1, 2001.

11. In addition, I have lectured or presented extensively on various aspects of legal noticing. A sample list includes the following:

a. Law Seminars International, Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable... What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011.

b. CLE International, Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.

c. Consumer Attorneys of San Diego (CASD), Faculty Panelist, “21st Century Class Notice and Outreach,” 2nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.

d. Consumer Attorneys of San Diego (CASD), Faculty Panelist, “The Future of Notice,” 2nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2009.

e. American Bar Association, Speaker, 2008 Annual Meeting, “Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard.”

f. American Bar Association, Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.

g. Faculty Panelist, Women Lawyers Association of Los Angeles (WLALA) CLE Presentation, “The Anatomy of a Class Action.” Los Angeles, CA, February 2008.

h. Faculty Panelist, Practising Law Institute (PLI) CLE Presentation, 11th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures -- “Evolving Notice Standards in the Internet Age.” *New York/Boston* (simulcast) March, 2006; *Chicago*, April, 2006; and *San Francisco*, May 2006.

i. Expert Panelist, U.S. Consumer Product Safety Commission. I was the only legal notice expert invited to participate as an expert to the Consumer Product Safety Commission to discuss ways in which the CPSC could enhance and measure the recall process. As an expert panelist, I discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.

j. Expert Speaker, American Bar Association. Presentation: “How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice,” ABA Litigation Section Committee on Class Actions & Derivative Suits, Chicago, August 6, 2001.

12. A comprehensive description of my credentials and experience that qualify me to provide expert opinions on the adequacy of class action notice programs is attached as Exhibit A.

NOTICE PROGRAM CONSIDERATIONS

13. It is our understanding that these products are widely distributed through various retail outlets. Further, I understand from Defendants’ Counsel that there are no available names and addresses for class members. Therefore, the Notice Plan will rely on a paid media program, which incorporates traditional and online media outlets, along with the creation of a Settlement website where class members can obtain information about the proposed Settlement, find important Court documents including the Settlement class notice and claim form, as well as request that a Long Form Notice be mailed to them, or seek other assistance. Specifically, the proposed Notice Plan includes the following components:

- CAFA Notice to appropriate state and federal government officials
- Publication of a short-form notice (“Publication Notice”) in nationally circulated consumer magazines
- Publication in U.S. Territorial Newspapers
- Banner advertising in English and Spanish on highly trafficked websites
- A neutral press release in both English and Spanish over PR Newswire within the United States and its territories, as well as a social networking post
- A toll-free information line (877) 302-3668.
- An informational website (www.sunscreensettlement.com) on which the notices and other important Court documents are posted.

CAFA NOTICE

14. At the Parties direction, the Notice and Settlement Administrator will provide notice of the proposed Settlement under CAFA 28 U.S.C. §1715(b) to appropriate state and federal government officials.

NOTICE PROGRAM TIMING

15. Pursuant to the Proposed Settlement Agreement, paragraph 26, the program will commence, with the live website no later than ten (10) days after entry of the Preliminary Approval Order. The media component of the Notice Plan will run over a period of approximately 77 days. Attached as Exhibit B is a graphical display of the timeline and an example of when proposed Notice Program elements may be published.

NOTICE PUBLICATION

16. Utilizing nationally syndicated media research data, we have designed the notice publication component described below to reach an estimated 72 percent of potential class members, who for the purpose of targeting media for this notice program are described as, “Adults who have used any skincare product.”

METHODOLOGY

17. To appropriately design and target the notice publication component of the Notice Plan, we have used a scientific methodology that is used throughout the advertising industry and that has been embraced by courts in the United States. See Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993) (experts must apply a technique that may be tested by peers and use industry accepted methodology); Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999) (same). The methodology discussed in this declaration has been accepted by numerous courts, including those listed in paragraph 9, above.

18. Media is typically purchased based on both demographic (i.e., age, gender, ethnicity, income, education) and psychographic (i.e., lifestyle, product and brand preference,

media usage, and media definition) characteristics. Based on these characteristics, populations will tend to use media in differing ways.

19. In order to determine the most appropriate media to employ in this notice publication program, my staff and I have studied data provided by nationally syndicated media research bureaus, including GfK Mediamark Research and Intelligence, LLC (“GfK MRI”) and comScore.¹ Media research bureaus scientifically characterize populations in clusters by demographic factors including age, ethnicity, income, geographical distribution, income, gender, and profession. Once the demographic profile has been established, research continues to include a target audience’s psychographic characteristics, such as their choice of media. A media study can define a target audience by product, service, and brand usage habits. The study can identify which media channels are favored by the target audience (i.e., the potential class members). For instance, what magazines are they reading, how frequently, and whether they are reading the daily newspaper or visiting a favored website.

20. In order to select media channels preferred by audiences targeted in a notice program, it’s important to conduct a quintile analysis of each medium to measure the sample respondents’ usage of a medium. The data is segmented into five equally sized groups (by population), each of which is called a quintile, and then arranged by heaviest to lightest consumption of a medium. For our purposes, as set forth in the chart below, we are looking at the top three quintiles, which are the heaviest users of a given medium, e.g., in this case, medium to heavy users of magazines and the Internet. Anything over 60 percent, suggests that our target is more likely to be using that medium than the average adult. In this particular case, we see that sunscreen users are very likely to be reading both magazines and Internet.

¹ **GfK MRI** is a nationally syndicated research tool. It is the leading supplier of multi-media audience research, and provides comprehensive reports on demographic, lifestyle, product usage and media exposure. GfK MRI conducts more than 26,000 personal interviews annually to gather their information, and is used by more than 450 advertising agencies as the basis for the majority of media and marketing campaigns. **comScore** is a global Internet information provider on which leading companies and advertising agencies rely for consumer behavior insight and Internet usage data. comScore maintains a proprietary database of more than 2 million consumers who have given comScore permission to monitor their browsing and transaction behavior, including online and offline purchasing. comScore panelists also participate in survey research that captures and integrates their attitudes and intentions.

Media	Suntan Lotion or Sunscreen Users	Users of any Skincare Product
Magazine	65%	61%
Internet	70%	61%

Source: GfK MRI Doublebase 2011

TARGET AUDIENCE MEDIA DEFINITION

21. Once the demographic profiles have been established, then media may be selected based on qualitative data, segmented by product or brand preference. While we relied on both GfK MRI and comScore data to build a demographic profile of this target audience, we also looked to GfK MRI to report on the target audience's media preference by product use, i.e., suntan lotion/sunscreen.

22. In order to combine the media delivery of both print and online forms of media, it is essential to be able to match target audience definitions in data provided by print and online sources. While GfK MRI provides a specific definition of "Adults who have used suntan lotion or sunscreen," comScore does not provide a definition specific to suntan lotion or sunscreen. While we were careful to use the specific GfK MRI definition as a guide to select the most appropriate media, in combination, we selected a slightly more broad definition found in both databases: "Adults who have used any skincare product." Therefore, the final media delivery analysis is calculated based on "Adults who have used any skincare product."

23. Based on all the steps described above, we are then able to measure and report to the Court the percentage of the target Class that will be reached by the notice publication component and how many times the target audience had the opportunity to see the message. In advertising, this is commonly referred to as a "Reach and Frequency" analysis, where "Reach" refers to the estimated percentage of the unduplicated audience exposed to the campaign, and "Frequency" refers to how many times, on average, the target audience had the opportunity to see the message. The calculations are used by advertising and communications firms worldwide, and have become a critical element to help provide the basis for determining adequacy of notice in class actions.

NOTICE PROGRAM ELEMENTS: MAGAZINE

24. For this Notice Plan, a summary notice will be published **two (2)** times in People Magazine and **one (1) time each** in Better Homes & Gardens and Newsweek.

- People Magazine is a widely circulated weekly entertainment news publication. People Magazine's circulation is 3,556,753, it reports one of the largest pass-along rates, or readers per copy (RPC), of any magazine at approximately 12.69 RPC, for a total readership of approximately 45,135,196.
- Better Homes & Gardens is a monthly magazine that provides information and ideas across a number of topics, including: home design and decorating, food and appliances, family health, personal style and entertaining. It reports a circulation of 7,617,844 million, and a pass along rage of 5.22, with 39,765,146 readers.
- Newsweek delivers national and international news and perspectives every week. With a total circulation of 1.5 million and a pass-along rate of 7.39, the magazine reaches over 11 million people each week.

MAGAZINE CIRCULATION AND READERSHIP				
Title	Circulation	Unit Size	Published Legal Ads	Total Readership
People Magazine	3,556,753	Half Page	2 times	45,135,196
Better Homes & Gardens	7,617,844	Half Page	1 time	39,765,146
Newsweek	1,500,000	Half Page	1 time	11,085,000
Total	12,674,597		4	95,985,342

TERRITORY NEWSPAPERS

25. Pursuant to the class definition found in the Settlement Agreement, the Class includes residents of the U.S. Territories. Therefore, publication of the summary notice will appear as a one time legal notice in each of the U.S. Territorial newspapers below.

TITLE	CIRCULATION	Published Legal Ads
El Nueva Dia-Puerto Rico	186,086	1
Pacific Daily News-Guam	26,500	1
Saipan Tribune-M.P.	2,600	1
Samoa News	45,000	1
St. Croix Avis-Virgin Islands	14,500	1
Virgin Islands Daily News	15,000	1

INTERNET

26. Internet advertising is a helpful method of providing notice in this case, given that, according to GfK MRI, nearly 87 percent of suntan lotion or sunscreen users are online and 70 percent of those are medium to heavy users, as discussed above. Internet banner ads will be posted on the sites identified below for approximately 8 weeks in order to deliver approximately 335,000,000 impressions. The banner ads will be served (appear) in the 50 United States, the District of Columbia and the U.S. territories.

WEBSITES
Yahoo! RON
Yahoo! Mail
24/7 (Real Media Group)
AOL
MSN RON
MSN Hotmail
Batanga Hispanic Network
Estimated Total Estimated Impressions: 335,000,000

27. Banner Ad Delivery - Internet campaigns are planned so that an even distribution of banner advertising appears throughout a “flight,” or notice period. For example, if a legal notice program plans to deliver 100,000 impressions, on a given web site over 10 days, then

approximately 10,000 impressions will be served throughout the website's web server system each day.

28. Banner ads rotate within a given website based on the number of impressions contracted and the number of other advertisers scheduled. For this Notice Plan, the Internet banner advertising will run for the duration contracted, which is approximately 8 weeks.

29. Banner ads will allow users to self-identify themselves as potential Class Members, where they may then "click" on the banner and then link directly to the official website for more information. A comprehensive description of the Internet websites is attached as Exhibit C.

PRESS RELEASE

30. A neutral press release will be issued broadly over PR Newswire's US1 English and Hispanic newlines. PR Newswire is a world-recognized newswire with a wire, Internet, satellite and fax network that is capable of the immediate distribution of news releases to the media, financial community and consumers. The US1 newline distributes broadly to thousands of media outlets, including newspapers, magazines, national wire services, television and radio broadcast media, websites, Internet networks and social networking media in all 50 states and the Territories. The Hispanic newline reaches hundreds of media outlets nationally. In addition, a 100 character social networking post will be released.

MONITORING

31. An important component to any notice program is monitoring how many news articles appear as a result of the outreach efforts. GCG will monitor for mentions of the Settlement in the various press.

TOLL-FREE TELEPHONE HELPLINE

32. Within 10 days of the entry of the Preliminary Approval Order, GCG will establish and maintain a 24-hour toll-free telephone line (877) 302-3668 where callers may obtain information about the class action Settlement. Once a caller connects to the helpline, he or she will hear an Interactive Voice Recording ("IVR"). The IVR will provide detailed information to

callers regarding their options, answer frequently asked questions about this Settlement, including relevant information about the Settlement and direct members of the Settlement Class to request a claim form either online, or by U.S. Mail. The IVR will also provide an option to hear the aforementioned information in Spanish. The telephone number will be displayed in the Long Form Notice, the FAQ's, the publication Notice, and on the website.

OFFICIAL SETTLEMENT WEBSITE

33. Importantly, this Notice Plan includes an official website, www.sunscreensettlement.com, which will be maintained pursuant to the Settlement Agreement, by the Notice and Settlement Administrator. This website will serve as a "landing page for the banner advertising," where Class Members may obtain further information about the class action, their rights, dates and deadlines and related information. A Spanish translation of the Long Form Notice and Claim Form will be available on the website. The website address will be prominently displayed in the Publication Notice. The website established and maintained by the Notice and Settlement Administrator will be accessible 24-hours a day, 7-days a week.

CONCLUSION

34. Using tools and methods accepted within the advertising industry, the media outreach effort alone described in this Notice Plan has been reasonably calculated to reach an estimated 72 percent of the target audience, with an average frequency of 2.8 times to the Settlement Class, and is consistent with other court approved notice programs in similar matters.

35. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 20, 2012, in Lake Oswego, Oregon.


JEANNE C. FINEGAN

Exhibit A

Jeanne C. Finegan, APR

Biography

JEANNE C. FINEGAN, APR

BIOGRAPHY

Jeanne Finegan is Senior Vice President of The Garden City Group, Inc. (“GCG”), and GCG Communications, a division of GCG. She has more than 20 years of communications and advertising experience and is a distinguished legal notice and communications expert. Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America. She is also recognized by the Canadian Public Relations Society.

Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has also conducted media audits of proposed notice programs to assess their adequacy under Fed R. Civ. P. 23(c)(2) and similar state class action statutes. Ms. Finegan is also recognized as a legal notice expert by Canadian courts.

Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications and has served the Consumer Product Safety Commission as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns.

Further setting the legal notice standard, Ms. Finegan has been the first legal notice expert to integrate new media and social media into court approved legal notice programs. Additionally she was one of the first notice experts to write legal notices in “plain language” as noted by a RAND study.¹ Ms. Finegan has also developed and implemented many of the nation’s largest and most high profile legal notice communication and advertising programs. In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, anti-trust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.

JUDICIAL COMMENTS AND LEGAL NOTICE CASES

In evaluating the adequacy and effectiveness of Ms. Finegan’s notice campaigns, courts have repeatedly recognized Ms. Finegan’s excellent work. The following excerpts provide some examples of such judicial approval.

In re: Skechers Toning Shoes Products Liability Litigation, No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his order granting the Motion for Settlement, the Honorable Thomas B. Russell stated:

... The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.

¹ Deborah R. Hensler et al., CLASS ACTION DILEMMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).

Stern v. AT&T Mobility Wireless, No. 09-cv-1112 CAS-AGR (C.D.Cal.). In the Final Approval Order, the Honorable Christina A. Snyder stated:

[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.

DeHoyos, et al. v. Allstate Ins. Co., No. SA-01-CA-1010 (W.D.Tx.). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. ... This program was vigorous and specifically structured to reach the African-American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.

In re: Processed Egg Prods. Antitrust Litig., MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement, Judge Gene E.K. Pratter stated:

The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.... Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.

Stefanyshyn v. Consolidated Industries, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. ... The proposed notice program was properly designed, recommended, and implemented ... and constitutes the "best practicable" notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. ... The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.

McGee v. Continental Tire North America, Inc. et al, No. 06-6234-(GEB) (D.N.J.).

The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.

In re: Reebok Easytone Litigation, No. 10-CV-11977 (D. MA.). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Preliminary Approval Order... constituted the best practicable notice to Class Members under the circumstances of the Actions.

Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al., No. 04-2702 (JLL) (D.N.J.). The Court stated that:

[A]ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. ... By working with a nationally syndicated media research firm, [Finegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). . . . The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).

In re: Nortel Network Corp., Sec. Litig., No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. See www.nortelsecuritieslitigation.com. Of the U.S. notice program, the Honorable Loretta A. Preska stated:

The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement ... constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages have been available through the worldwide web site nortelsecuritieslitigation.com on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.

Mayo v. Walmart Stores and Sam's Club, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail. The Settlement Administrator ... has classified

the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.'... The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.

Lucas, et al. v. Kmart Corp., No. 99-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).

In re: Johns-Manville Corp. (Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement), No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. . . . The results simply speak for themselves.

Pigford v. Glickman and U.S. Department of Agriculture, No. 97-1978. 98-1693 (PLF) (D.D.C.). This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations. . . . The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.

In re: Louisiana-Pacific Inner-Seal Siding Litig., Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement...[through] a broad and extensive multi-media notice campaign.

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

...well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).

In re: Expedia Hotel Taxes and Fees Litigation, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

The Notice of the Settlement given to the Class ... was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.

Rene Rosales v. Fortune Ins. Co., No. 99-04588 CA (41) (11th Judicial Dist. Ct. of Miami-Dade County, Fla.). Ms. Finegan provided expert testimony in this matter. She conducted an audit on behalf of intervening attorneys for the proposed notification to individuals insured with personal injury insurance. Based upon the audit, Ms. Finegan testified that the proposed notice program was inadequate. The Court agreed and signed an Order Granting Intervenors' Objections to Class Action Settlement, stating:

The Court finds that Ms. Finegan is qualified as an expert on class notice and effective media campaigns. The Court finds that her testimony is credible and reliable.

Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

*The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. ... The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see *id.* ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.*

Wilson v. Massachusetts Mut. Life Ins. Co., No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. www.insuranceclassclaims.com. In granting preliminary approval to the settlement, the Honorable Art Encinias found:

[T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. ...[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.

Sparks v. AT&T Corp., No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court found:

The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.

In re: Georgia-Pacific Toxic Explosion Litig., No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-born toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).

In re: American Cyanamid, No. CV-97-0581-BH-M (S.D.Al.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.

In re: First Alert Smoke Alarm Litig., No. CV-98-C-1546-W (UWC) (N.D.Al.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

...constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.

In re: James Hardie Roofing Litig., No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:

The notice program required by the Preliminary Order has been fully carried out... [and was] extensive. The notice provided fully and accurately informed the Class Members of all

material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.

Barden v. Hurd Millwork Co. Inc., et al, No. 2:6-cv-00046 (LA) (E.D.Wis.) ("*The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1).*")

Altieri v. Reebok, No. 4:10-cv-11977 (FDS) (D.C.Mass.) ("*The Court finds that the notices ... constitute the best practicable notice..... The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices.*")

Marenco v. Visa Inc., No. CV 10-08022 (DMG) (C.D.Cal.) ("*[T]he Court finds that the notice plan...meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law.*")

Palmer v. Sprint Solutions, Inc., No. 09-cv-01211 (JLR) (W.D.Wa.) ("*The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide3d with notice.*")

In re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation, No. 1:08-md-01982 RDB (D. Md. N. Div.) ("*The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement.*")

Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara) ("*Notice provided was the best practicable under the circumstances.*").

Deke, et al. v. Cardservice Internat'l, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles) ("*The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances.*").

Levine, et al. v. Dr. Philip C. McGraw, et al., Case No. BC 312830 (Los Angeles County Super. Ct., Cal.) ("*[T]he plan for notice to the Settlement Class ... constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class ... and satisfies the requirements of California law and federal due process of law.*").

In re: Canadian Air Cargo Shipping Class Actions, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court ("*I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate.*").

Fischer et al v. IG Investment Management, Ltd. et al, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

In re: Vivendi Universal, S.A. Securities Litigation, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

In re: Air Cargo Shipping Services Antitrust Litigation, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

Berger, et al., v. Property ID Corporation, et al., No. CV 05-5373-GHK (CWx) (C.D.Cal.).

Hartless v. Clorox Company, No. 06-CV-2705 (CAB) (S.D.Cal.).

Lozano v. AT&T Mobility Wireless, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

In re: Processed Egg Products Antitrust Litigation, MDL 08-md-02002 (E.D.Pa.).

Howard A. Engle, M.D., et al., v. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp., No. 94-08273 CA (22) (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Royal Dutch/Shell Transport Securities Litigation, No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).

In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding, No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

UAW v. General Motors Corporation, No: 05-73991 (E.D.MI).

Wicon, Inc. v. Cardservice Intern'l, Inc., BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

In re: SmithKline Beecham Clinical Billing Litig., No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.). Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

MacGregor v. Schering-Plough Corp., No. EC248041 (Sup. Ct. Cal., County of Los Angeles). This nationwide notification program was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

In re: Swiss Banks Holocaust Victim Asset Litig., No. CV-96-4849 (E.D.N.Y.). Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors. www.swissbankclaims.com.

In re: Exxon Valdez Oil Spill Litig., No. A89-095-CV (HRH) (Consolidated) (D. Alaska). Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

In re: Johns-Manville Phenolic Foam Litig., No. CV 96-10069 (D. Mass). The nationwide multi-media legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

Bristow v Fleetwood Enters Litig., No Civ 00-0082-S-EJL (D. Id). Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer,

or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

In re: New Orleans Tank Car Leakage Fire Litig., No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000). This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

Garria Spencer v. Shell Oil Co., No. CV 94-074(Dist. Ct., Harris County, Tex.). The nationwide notification program was designed to reach individuals who owned real property or structures in the United States which contained polybutylene plumbing with acetyl insert or metal insert fittings.

In re: Hurd Millwork Heat Mirror™ Litig., No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara). This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc, No. CV-97-C-629-W (N.D. Ala.). Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

In re: StarLink Corn Prods. Liab. Litig., No. 01-C-1181 (N.D. Ill).. Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

In re: MCI Non-Subscriber RatePayers Litig., MDL Docket No. 1275, 3:99-cv-01275 (S.D.Ill.). The advertising and media notice program, found to be “more than adequate” by the Court, was designed with the understanding that the litigation affected all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. www.rateclaims.com.

In re: Albertson’s Back Pay Litig., No. 97-0159-S-BLW (D.Id.). Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

In re: Georgia Pacific Hardboard Siding Recovering Program, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.). Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

In re: Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig., Nos. 1203, 99-20593. Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court’s Memorandum and Pretrial Order 1415, approving the settlement,

In re: Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig., 2000 WL 1222042, Nos. 1203, 99-20593 (E.D.Pa. Aug. 28, 2002).

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal

notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

In re: Florida Microsoft Antitrust Litig. Settlement, No. 99-27340 CA 11 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Montana Microsoft Antitrust Litig. Settlement, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

In re: South Dakota Microsoft Antitrust Litig. Settlement, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).

In re: Kansas Microsoft Antitrust Litig. Settlement, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.) (“The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3.”).

In re: North Carolina Microsoft Antitrust Litig. Settlement, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).

In re: ABS II Pipes Litig., No. 3126 (Sup. Ct. of Cal., Contra Costa County). The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

In re: Avenue A Inc. Internet Privacy Litig., No: C00-1964C (W.D. Wash.).

In re: Lorazepam and Clorazepate Antitrust Litig., No. 1290 (TFH) (D.C.C.).

In re: Providian Fin. Corp. ERISA Litig., No C-01-5027 (N.D. Cal.).

In re: H & R Block., et al Tax Refund Litig., No. 97195023/CC4111 (Maryland Cir. Ct., Baltimore City).

In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp., No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

In re: Sprint Corp. Optical Fiber Litig., No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

In re: Shelter Mutual Ins. Co. Litig., No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

In re: Conseco, Inc. Sec. Litig., No: IP-00-0585-C Y/S CA (S.D. Ind.).

In re: Nat'l Treasury Employees Union, et al., 54 Fed. Cl. 791 (2002).

In re: City of Miami Parking Litig., Nos. 99-21456 CA-10, 99-23765 – CA-10 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm., No. L 1:01CV658 (E.D. Tx.).

Alsea Veneer v. State of Oregon A.A., No. 88C-11289-88C-11300.

SEC ENFORCEMENT NOTICE PROGRAM EXPERIENCE

SEC v. Vivendi Universal, S.A., et al., Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.).

GCG was engaged by a distribution agent, who was appointed by the SEC to perform the Notice and administration work related to the settlement. The Notice program included publication in 11 different countries and eight different languages. The engagement involved a full range of services, from design and printing of the notice and claim packets through claims processing, and ultimately distribution.

SEC v. Royal Dutch Petroleum Company, No.04-3359 (S.D. Tex.)

SEC v. Zurich Financial Services, No. 08 Civ. 10760 (S.D. N.Y.)

FEDERAL TRADE COMMISSION NOTICE PROGRAM EXPERIENCE

FTC v. Reebok International Ltd., No. 11-cv-02046 (N.D. Ohio)

FTC v. Chanery and RTC Research and Development LLC [Nutraquest], No :05-cv-03460 (D.N.J.)

BANKRUPTCY EXPERIENCE

Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

In re AMR Corporation [American Airlines], et al., No. 11-15463 (SHL) (Bankr. S.D.N.Y.) ("*due and proper notice [was] provided, and ... no other or further notice need be provided.*")

In re Jackson Hewitt Tax Service Inc., et al., No 11-11587 (Bankr. D.Del.) (2011). The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and GCG, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The *Jackson Hewitt* notice program constituted one of the first large chapter 11 cases to incorporate online advertising.

In re: Nutraquest Inc., No. 03-44147 (Bankr. D.N.J.)

In re: General Motors Corp. et al., No. 09-50026 (Bankr. S.D.N.Y.). This case is the 4th largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

In re: ACandS, Inc., No. 0212687 (Bankr. D.Del.) (2007) ("*Adequate notice of the Motion and of the hearing on the Motion was given.*").

In re: United Airlines, No. 02-B-48191 (Bankr. N.D Ill.). Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published

in 11 countries and translated into 6 languages. Ms. Finegan worked closely with legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. www.pd-ual.com.

In re: Enron, No. 01-16034 (Bankr. S.D.N.Y.). Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

In re: Dow Corning, No. 95-20512 (Bankr. E.D. Mich.). Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

In re: Harnischfeger Inds., No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.). Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

In re: Keene Corp., No. 93B 46090 (SMB), (Bankr. E.D. MO.). Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

In re: Lamonts, No. 00-00045 (Bankr. W.D. Wash.). Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Monet Group Holdings, Nos. 00-1936 (MFW) (Bankr. D. Del.). Ms. Finegan designed and implemented a bar date notice.

In re: Laclede Steel Co., No. 98-53121-399 (Bankr. E.D. MO.). Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Columbia Gas Transmission Corp., No. 91-804 (Bankr. S.D.N.Y.). Ms. Finegan developed multiple nationwide legal notice notification programs for this case.

In re: U.S.H. Corp. of New York, et al. (Bankr. S.D.N.Y.). Ms. Finegan designed and implemented a bar date advertising notification campaign.

In re: Best Prods. Co., Inc., No. 96-35267-T, (Bankr. E.D. Va.). Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

In re: Lodgian, Inc., et al., No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y.).

In re: Internat'l Total Servs, Inc., et al., Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y.).

In re: Decora Inds., Inc. and Decora, Incorp., Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.).

In re: Genesis Health Ventures, Inc., et al., No. 002692 (PJW) (Bankr. D. Del.).

In re: Tel. Warehouse, Inc., et al., No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.).

In re: United Cos. Fin. Corp., et al., No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.).

In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et al., No. 95-B44080 (JLG) (Bankr. S.D.N.Y.).

In re: Physicians Health Corp., et al., No. 00-4482 (MFW) (Bankr. D. Del.).

In re: GC Cos., et al., Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.).

In re: Heilig-Meyers Co., et al., Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

PRODUCT RECALL AND CRISIS COMMUNICATION EXPERIENCE

Reser's Fine Foods. Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

Gulf Coast Claims Facility Notice Campaign. Finegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign includes extensive advertising in newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) is an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

City of New Orleans Tax Revisions, Post-Hurricane Katrina. In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. GCG served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.

ARTICLES

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Quoted Expert, "Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist," Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

Co-Author, with Hon. Dickran Tevrizian – "Expert Opinion: It's More Than Just a Report...Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," BNA Class Action Litigation Report, 12 CLASS 464, 5/27/11.

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Quoted Expert, "Analysis of the FJC's 2010 Judges' Class Action Notice and Claims Process Checklist and Guide: A New Roadmap to Adequate Notice and Beyond," BNA Class Action Litigation Report, 12 CLASS 165, 2/25/11.

Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, 4/9/10 Vol. 11, No. 7 p. 343.

Quoted Expert, "Communication Technology Trends Pose Novel Notification Issues for Class Litigators," BNA Electronic Commerce and Law, 15 ECLR 109 1/27/2010.

Author, "Legal Notice: R U ready 2 adapt?" BNA Class Action Report, Vol. 10 Class 702, 7/24/2009.

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Quoted Expert, "Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty," Warranty Week, warrantyweek.com/archive/ww20070228.html/ February 28, 2007.

Co-Author, "Approaches to Notice in State Court Class Actions," For The Defense, Vol. 45, No. 11, November, 2003.

Citation, "Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior," U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

Author, "The Web Offers Near, Real-Time Cost Efficient Notice," American Bankruptcy Institute, ABI Journal, Vol. XXII, No. 5., 2003.

Author, "Determining Adequate Notice in Rule 23 Actions," For The Defense, Vol. 44, No. 9 September, 2002.

Author, "Legal Notice, What You Need To Know and Why," Monograph, July 2002.

Co-Author, "The Electronic Nature of Legal Noticing," The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, "Three Important Mantras for CEO's and Risk Managers," - International Risk Management Institute, irmi.com, January 2002.

Co-Author, "Used the Bat Signal Lately," The National Law Journal, Special Litigation Section, February 19, 2001.

Author, "How Much is Enough Notice," Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, "Monitoring the Internet Buzz," The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, "High-Profile Product Recalls Need More Than the Bat Signal," - International Risk Management Institute, irmi.com, July 2001.

Co-Author, "Do You Know What 100 Million People are Buzzing About Today?" Risk and Insurance Management, March 2001.

Quoted Article, "Keep Up with Class Action," Kentucky Courier Journal, March 13, 2000.

Author, "The Great Debate - How Much is Enough Legal Notice?" American Bar Association – Class Actions and Derivatives Suits Newsletter, winter edition 1999.

SPEAKER/EXPERT PANELIST/PRESENTER

Law Seminars International	Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable... What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011. <i>*Voted by attendees as one of the best presentations given.</i>
CASD 4 th Annual	Faculty Panelist, "Reasonable Notice - Insight for practitioners on the FJC's <i>Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide</i> . Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, October 2011.
CLE International	Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.
Consumer Attorneys of San Diego (CASD)	Faculty Panelist, "21 st Century Class Notice and Outreach." 3 rd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.
Consumer Attorneys of San Diego (CASD)	Faculty Panelist, "The Future of Notice." 2 nd Annual Class Action Symposium CASD Symposium, San Diego California, October 2009.
American Bar Association	Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard." Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
Women Lawyers Association of Los Angeles	Faculty Panelist, Women Lawyers Association of Los Angeles (WLALA) CLE Presentation, "The Anatomy of a Class Action." Los Angeles, CA, February, 2008.
Warranty Chain Management	Faculty Panelist, Presentation Product Recall Simulation. Tampa, Florida, March 2007.
Practicing Law Institute (PLI)	Faculty Panelist, CLE Presentation, 11 th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.
U.S. Consumer Product Safety Commission	Ms. Finegan participated as an expert panelist to the Consumer Product Safety Commission to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda MD, September 2003.

Weil, Gotshal & Manges	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." New York, June 2003.
Sidley & Austin	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." Los Angeles, May 2003.
Kirkland & Ellis	Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April 2002.
Georgetown University Law Center Mass Tort Litigation Institute	Faculty, CLE White Paper: "What are the best practicable methods to give notice? Dispelling the communications myth – A notice disseminated is a notice communicated," Mass Tort Litigation Institute. Washington D.C., November, 2001.
American Bar Association	Presenter, "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.
McCutchin, Doyle, Brown & Enerson	Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.
Marylhurst University	Guest lecturer on public relations research methods. Portland, OR, February 2001.
University of Oregon	Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.
Judicial Arbitration & Mediation Services (JAMS)	Speaker on the definition of effective notice. San Francisco and Los Angeles, CA, June 2000.
International Risk Management Institute	Past Expert Commentator on Crisis and Litigation Communications. www.irmi.com .
The American Bankruptcy Institute Journal (ABI)	Past Contributing Editor – Beyond the Quill. www.abi.org .

BACKGROUND

Prior to joining The Garden City Group, Inc., Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland

Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing \$50 million in programming. She was also the program/promotion manager at and KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

MEMBERSHIPS, PROFESSIONAL CREDENTIALS

APR - The Universal Board of Accreditation Public Relations Society of America – Accredited.

Member of the Public Relations Society of America

Member Canadian Public Relations Society

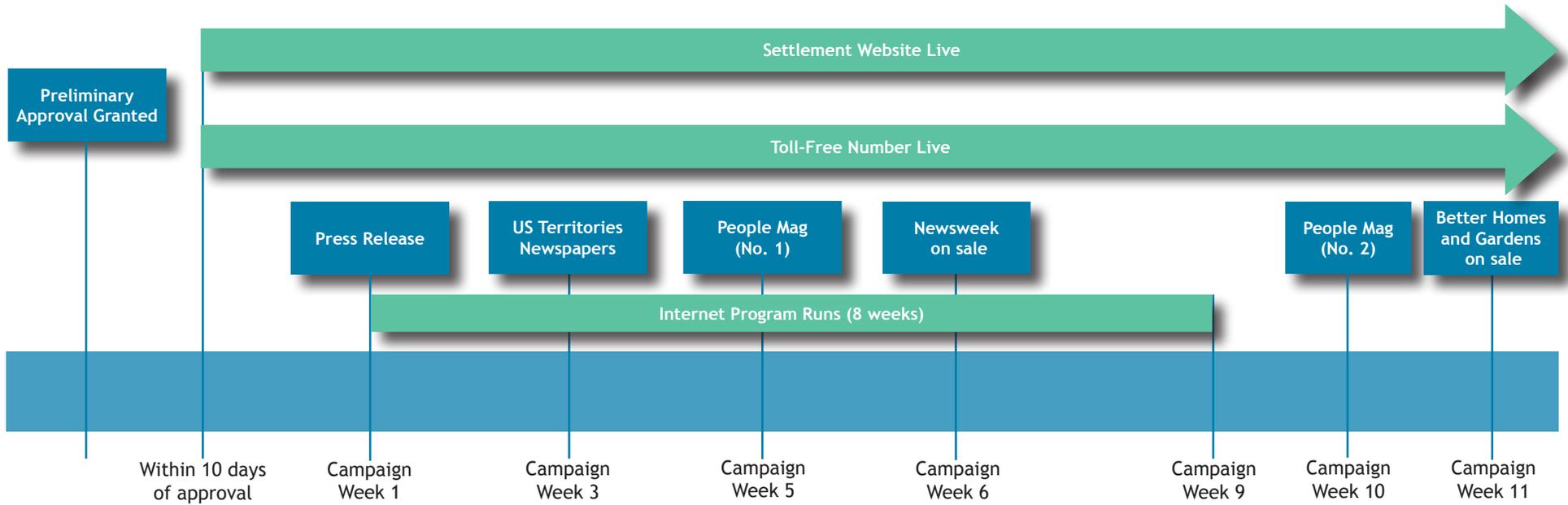
Also see *LinkedIn* page.

Exhibit B

Timeline



Sunscreen Estimated Timeline 2012



*Legal notice campaign runs approximately 77 days.

Exhibit C

Internet



Internet Descriptions

YAHOO! NETWORK

Yahoo! is one of the most trafficked Internet destinations worldwide. According to comScore Media Metrix, in January 2012 Yahoo reached almost 90% of all U.S. online adults age 18 and older with over 64 million average daily visitors. A run of Network buy on Yahoo! could include banner advertising on the many Yahoo! Sites, such as News, Finance and Sports. It also may include advertising on Yahoo's network of sites which includes hundreds of publisher partners' sites and many from comScore's top 250 list.

YAHOO! E-MAIL

Yahoo! E-mail is a free web-based e-mail service offered by signing up for a Yahoo! Account. According to comScore, in January 2012, Yahoo! E-mail had over 27.5 million daily visitors who averaged almost 25 minutes on the site per day.

REAL MEDIA NETWORK

Real Media Network, previously known as 24/7 Real Media, Inc., was named among the top five ad networks in the U.S. according to comScore's June 2010 rankings. The network includes over 2,000 web properties such as: Oprah, ivillage, Weather.com, MySpace and FoxNews.com among many others. Advertising may be purchased throughout the entire network or within specific "channels" such as technology, news, sports, etc. According to comScore, the network had over 56 million visitors in January 2012, accounting for 87.2% of all online adults 18 years old or older.

AOL

AOL is one of the leading web properties in the United States. AOL reports on the top news headlines, sports scores, entertainment news, weather, etc. A network buy on AOL could include advertising on any of their many "channels" with their network such as News, Travel, Health, Autos, among others. According to comScore January 2012 data, over 13 million people visit AOL.com each day averaging about 22 minutes on the site per day. According to AOL, their users visit the site an average of 2.6 times per day and they rank number one in all key engagement statistics (minutes per page, average minutes per day and average minutes per visit) among the "big 3" (AOL, MSN, Yahoo).

MSN RON

MSN delivers an uncluttered environment, superior content, highly qualified audience and innovative ad products. Our top-rated sites and engaging content provide expansive reach to millions. According to comScore April 2012, there are over 30 million average daily visitors per month.

MSN HOTMAIL

MSN Hotmail is a free web-based email service operated by Microsoft as part of its Windows Live group. It is currently the second largest web-based email service. According to comScore January 2012 data, MSN Hotmail had over 8 million daily visitors. Visitors spent an average of 25.6 minutes per day.

BATANGA NETWORK

The Batanga Network states that it is the number one Hispanic ad network with over 300 Hispanic websites. According to comScore January 2012, the network has a monthly audience of over 23 million online adults.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

<p>STEVEN BRODY, CHAIM HIRSCHFELD, and SUZANNE GRUNSTEIN, on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p>	<p>Civil Action No. 12-cv-4774-PGS-DEA</p>
<p>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,</p> <p style="text-align: center;">Defendants.</p>	

**[PROPOSED] ORDER PRELIMINARILY CERTIFYING A CLASS FOR
SETTLEMENT PURPOSES, PRELIMINARILY APPROVING THE CLASS
SETTLEMENT, APPOINTING CLASS COUNSEL, DIRECTING THE ISSUANCE OF
NOTICE TO THE CLASS, SCHEDULING A FINAL APPROVAL HEARING, AND
ISSUING RELATED ORDERS**

This motion is brought before the Court jointly by Plaintiffs Steven Brody, Chaim Hirschfeld and Suzanne Grunstein, and Defendants Merck & Co., Inc., MSD Consumer Care, Inc. and Merck Sharp & Dohme Corp. (“Defendants” or “Merck”). The Court finds as follows:

The above-captioned action was filed on July 31, 2012 in the United States District Court for the District of New Jersey (the “Action”); and

On or about October 31, 2003, plaintiff Joseph Goldstein (“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, as defined below; and

On or about November 13, 2003, plaintiffs Christopher Rovere (“Rovere”) and Rhonda Mason (“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, as defined below; and

On or about November 25, 2003, plaintiffs Cristina Williams (“Williams”) and Jessica Mulhearn (“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, as defined below; and

On or about November 25, 2003, plaintiff Glynis Lowd (“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; and

On or about February 10, 2004, plaintiff Robert Gaston (“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; and

Similar actions were filed in 2003, 2004, and 2005 against four other sunscreen manufacturers making similar claims; and

Pursuant to Orders dated April 26, 2004, August 23, 2004, and February 3, 2006, the actions described above were coordinated in the Superior Court for the State of California, County of Los Angeles, in a Judicial Council Coordination Proceeding styled SUNSCREEN CASES, JCCP No. 4352 (the “Coordinated Proceeding”); and

Pursuant to a Minute Order dated October 13, 2004, the Superior Court appointed Abraham, Fruchter & Twersky, LLP as lead counsel for the plaintiffs in the Coordinated Proceeding; and

The individual claims and causes of action asserted by plaintiffs Goldstein, Rovere, Mason, Williams, Mulhearn and Lowd were dismissed in summary judgment proceedings in 2008. At that time, Mr. Gaston’s breach of warranty claims were also dismissed via summary adjudication but his claims for violations of California’s Unfair Competition Law (“UCL”); violations of California’s Consumer Legal Remedies Act (“CLRA”) and common law fraud survived summary judgment; and

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 acknowledged its decision was the result of confusion about the impact of California’s Proposition 64 on the elements of proof for UCL class action claims. The trial court stated that it

did not believe that California 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; and

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; and

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; and

On July 31, 2012, Mr. Gaston, who is also represented by Proposed Settlement Class Counsel in this Action, Abraham, Fruchter & Twersky, LLP, and Merck submitted a settlement agreement in 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; and

On July 31, 2012, Plaintiffs, Steven Brody, Chaim Hirschfeld and Suzanne Grunstein through Proposed Settlement Class Counsel, filed this Action against Merck in which Plaintiffs asserted 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; and

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; and

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; and

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 the Settlement Agreement; and

Plaintiffs have agreed to a settlement pursuant to the provisions of the 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 the Agreement promptly in order to provide effective relief to Plaintiffs and the Settlement Class; and

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; and

The Parties have entered into the 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; and

Plaintiffs and Proposed Settlement Class Counsel believe that the 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; and

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 the 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; and

The Parties having entered into and filed with the Court on _____ a Settlement Agreement in which the Parties have agreed to settle the Action, pursuant to the terms of the Settlement Agreement, subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the settlement which, if approved, will result in dismissal of the Action with prejudice; and

The Court having reviewed the Settlement Agreement, including the exhibits attached thereto (together, the "Settlement Agreement") and all prior proceedings herein, and good cause appearing based on the record,

IT IS on this ____ day of _____, 2012, ORDERED AND DECREED as follows (all capitalized terms being defined as they are defined in the Settlement Agreement unless otherwise specified or defined herein):

1. **Stay of the Action.** All non-settlement-related proceedings in the Action are hereby stayed and suspended until further order of this Court.

2. **Preliminary Settlement Class Certification for Settlement Purposes Only.**

The Action is preliminarily certified as a class action for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3). The Court preliminarily finds for settlement purposes that: (a) the Settlement Class certified herein numbers at least in the thousands of persons, and that joinder of all such persons would be impracticable, (b) there are issues of law and fact that are typical and common to the Settlement Class, and that those issues predominate over individual questions; (c) a class action on behalf of the certified Settlement Class is superior to other available means of adjudicating this dispute; and (d) as set forth in paragraph 4, below, the

Named Plaintiffs and Settlement Class Counsel are adequate representatives of the Settlement Class. Merck retains all rights to assert that this action may not be certified as a class action, except for settlement purposes only.

3. **Settlement Class Definition.** “Settlement Class” and “Settlement Class Members” include 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. Provided, however, that the “Settlement Class” and “Settlement Class Members” shall exclude: (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’ Counsel; (e) Plaintiffs’ Counsel; (f) this Court and the members of this Court’s staff and immediate family; (g) the Honorable John Shepard Wiley, Jr. and the members of his staff and immediate family; (h) the Honorable Carl West and the members of his 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. “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.

4. **Settlement Class Representatives and Settlement Class Counsel.** Plaintiffs Steven Brody, Chaim Hirschfeld and Suzanne Grunstein are designated as the representatives of the conditionally certified Settlement Class. The Court preliminarily finds that these individuals are similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class, and will be adequate Settlement Class representatives. Abraham, Fruchter & Twersky,

LLP, which the Court preliminarily finds is experienced and adequate counsel, is hereby designated as Settlement Class Counsel.

5. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds that the Settlement Agreement and the settlement it incorporates, appear fair, reasonable and adequate. Manual for Complex Litigation (Fourth) § 21.632 (2004). Accordingly, the Settlement Agreement is preliminarily approved and is sufficient to warrant sending notice to the Settlement Class.

6. **Jurisdiction.** The Court has subject-matter jurisdiction over the Action pursuant to 28 U.S.C. §§ 1332 and 1367, and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391.

7. **Final Approval Hearing.** A Final Approval Hearing shall be held on _____ in Courtroom 4E, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street Room 2020, Trenton, NJ 08608, to determine, among other things: (a) whether the Action should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a), and (b)(3); (b) whether the settlement of this Action should be approved as fair, reasonable and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) whether Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) whether Settlement Class Members and related persons should be subject to a permanent injunction; (f) whether the application of Settlement Class Counsel for an award of Attorneys' Fees and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (g) whether the applications of the named Plaintiffs for incentive awards should be approved. The submissions of the Parties in support of the settlement, including Plaintiffs'

applications for Attorneys' Fees and Expenses and incentive awards, shall be filed with the Court no later than fourteen (14) days prior to the deadline for the submission of objections and may be supplemented up to seven days prior to the Final Approval Hearing.

8. **Administration.** In consultation with and subject to the approval of Settlement Class Counsel, Merck, or its designee, is hereby directed to establish the means necessary to administer the proposed settlement and implement the Claim Process, in accordance with the terms of the Settlement Agreement.

9. **Settlement Class Notice.** The proposed Long Form Notice, Publication Notice and the notice methodology described in the Settlement Agreement and the Declaration of Jeanne C. Finegan, APR, Concerning Proposed Class Member Notification Program ("Declaration of the Notice and Settlement Administrator"), are hereby approved.

a. Pursuant to the Settlement Agreement, the Court appoints GCG Inc. to be the Notice and Settlement Administrator to help implement the terms of the Agreement, the Notice Plan and the terms outlined in the Declaration of the Notice and Settlement Administrator.

b. The Notice and Settlement Administrator shall send the Long Form Notice 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. The Notice and Settlement Administrator shall also send the applicable documents to each appropriate State and Federal official, as specified in 28 U.S.C. § 1715. The Notice and Settlement Administrator shall 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.

c. The Notice and Settlement Administrator shall 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.

d. The Notice and Settlement Administrator shall: (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.

e. No later than ten (10) days after the entry of this Preliminary Approval Order, the Notice and Settlement Administrator shall establish an Internet website, www.sunscreensettlement.com, that will inform Settlement Class Members of the terms of the Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format: (i) the Settlement Agreement; (ii) the Long Form Notice with the attached Claim Form; (iii) the Preliminary Approval Order; (iv) Frequently Asked Questions in a form substantially similar to the one attached to the Settlement Agreement as Exhibit 9, which will reference the Website and the toll-free number, (v) the toll-free number; and (vi) as agreed by Settlement Class Counsel and Merck, other relevant orders of the Court. 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 the

toll-free number; and (z) the Long Form Notice will reference the Settlement Website and the toll-free number.

f. The Notice and Settlement Administrator shall 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. The Parties and their counsel shall not issue any other notice, press release, and/or similar statement relating to the Settlement of this Action, and/or the claims against Merck in the Coordinated Proceeding unless otherwise required by the Court in this Action or in the Coordinated Proceeding or as agreed to by the Parties.

g. Merck shall provide to the Notice and Settlement Administrator, within ten (10) business days of the entry of this Preliminary Approval Order, a list of all counsel for anyone who has litigation against Defendants that involve claims pertaining to the Eligible Coppertone Sunscreen Products that are subject to the Plaintiffs' Release set forth in the Settlement Agreement. The Notice and Settlement Administrator shall mail copies of the Long Form Notice to all such legal counsel. Defendants will promptly direct the Notice and Settlement Administrator to serve the Long Form Notice on counsel for any Settlement Class Members who subsequently initiate litigation, arbitration, or other proceedings against Merck that involve claims pertaining to the Eligible Coppertone Sunscreen Products that are subject to Plaintiffs' Release set forth in the Settlement Agreement.

h. Within ten (10) days after the entry of this Order, the Notice and Settlement Administrator shall timely establish a toll-free telephone number that will provide Settlement-related information to Settlement Class Members in English and, as requested, Spanish, as further specified in the Settlement Agreement.

i. The Notice and Settlement Administrator shall timely disseminate any remaining notice, as stated in the Settlement Agreement and/or the Declaration of the Notice and Settlement Administrator.

j. Not later than ten (10) days before the date of the Final Approval Hearing, the Notice and Settlement Administrator shall file with the Court: (a) a list of those persons who have opted out or excluded themselves from the Settlement; and (b) the details outlining the scope, methods, and results of the notice program.

10. **Findings Concerning Notice.** The Court finds that the notices described in Paragraph 9 of this order: (a) constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed settlement, and their rights under the proposed settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e) and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Settlement Class Members, and comply with the Federal Judicial Center's illustrative class action notices.

11. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written request for exclusion to the Notice and Settlement Administrator at the address provided in the Long Form Notice, postmarked no later than twenty (20) days before the Final Approval Hearing, and specifying that he or she wants to

be excluded. The Notice and Settlement Administrator shall forward copies of any written requests for exclusion to Settlement Class Counsel and Defendants' Counsel. A list reflecting all requests for exclusion shall be filed with the Court by the Notice and Settlement Administrator no later than ten (10) days before the Final Approval Hearing. Any potential Settlement Class Member who does not file a timely written request for exclusion as provided in Section V.A of the Settlement Agreement shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, Plaintiffs' Release in the Settlement Agreement, even if he or she has litigation pending or subsequently initiates litigation against Merck relating to the claims and transactions released in this Action. Persons who properly exclude themselves from the Settlement Class shall not be entitled to participate in the benefits of the Settlement Agreement.

12. **Objections and Appearances.** Any Settlement Class Member or counsel hired at any Settlement Class Member's own expense who complies with the requirements of this paragraph may object to any aspect of the proposed settlement.

a. Any Settlement Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement, the proposed Settlement, the award of Attorneys' Fees and Expenses, or the Named Plaintiffs' incentive awards, must deliver to Settlement Class Counsel identified in the Long Form Notice and to Defendants' Counsel, and file with the Court, no more than twenty (20) days before the Final Approval Hearing, a written statement of objections, as well as the specific reason(s), if any, for each objection, including any legal support the Settlement Class Member wishes to bring to the Court's attention and any evidence or other information the Settlement Class Member wishes to introduce in support of the objections, a statement of whether the Settlement Class Member intends to appear and argue at the Final Approval

Hearing, and list the Settlement Class Member's purchase(s) of the Eligible Coppertone Sunscreen Products. Settlement Class Members may do so either on their own or through an attorney retained at their own expense. The objection must include proof of purchase of the Eligible Coppertone Sunscreen Products and/or a representation and warranty, submitted under penalty of perjury, that the objector purchased an Eligible Coppertone Sunscreen Product. Acceptable proof of purchase includes a photocopy of the label(s), 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. Each proof of purchase must be clearly and uniquely numbered by the claimant before copies are made and the originals must be available for inspection upon request by the Notice and Settlement Administrator.

b. Any Settlement Class Member who files and serves a written objection, as described above and in Section VI.A of the Settlement Agreement, may appear at the Final Approval Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses or incentive awards to the Plaintiffs. Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must deliver a notice of intention to appear to Settlement Class Counsel and Defendants' Counsel as identified in the Long Form Notice, and file said notice with the Court, no later than twenty (20) days before the Final Approval Hearing. Any Settlement Class Member who fails to comply with the provisions in this section or in Sections VI.A and B of the Settlement Agreement shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of the

Settlement Agreement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, Plaintiffs' Release in the Settlement Agreement in the Action.

13. **Preliminary Injunction.** All Settlement Class Members and/or their representatives who do not timely exclude themselves from the Settlement Class are hereby preliminarily barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing litigation as class members, putative class members, or otherwise against Merck (or against any of its related parties or affiliates), and/or from receiving any benefits from, any lawsuit, administrative, or regulatory proceeding or order in any jurisdiction, except as provided otherwise in the California State Settlement or ordered by the Court in the Coordinated Proceeding, based on or relating to the claims or causes of actions or the facts, and circumstances relating thereto, concerning this Action, and/or the matters and claims encompassed in Plaintiffs' Release in the Settlement Agreement. In addition, except as provided otherwise in the California State Settlement, or ordered by the Court in the Coordinated Proceeding, all such persons are hereby preliminarily barred and enjoined from filing, commencing, or prosecuting a lawsuit against Merck (or against any of its related parties or affiliates) as a class action, a separate class, or group for purposes of pursuing a putative class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who do not timely exclude themselves from the Settlement Class, arising out of, based on or relating to the claims, causes of action, facts and/or circumstances relating thereto, concerning this Action, and/or the matters and claims encompassed in the Plaintiffs' Release. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary

injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over this Action.

14. **Post-Office Box(es)**. The Notice and Settlement Administrator or their designated agent(s) shall rent one or more post-office boxes, to be used for receiving requests for exclusion from the Settlement Class and any other communications.

15. **Disclosure of Objections**. The Notice and Settlement Administrator, Defendants' Counsel and Settlement Class Counsel shall promptly furnish to each other copies of any and all objections or written requests for exclusion that might come into their possession.

16. **Termination of Settlement**. This Order shall become null and void and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Agreement; (b) the settlement is terminated in accordance with the Settlement Agreement; or (c) the settlement does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the settlement shall be used or referred to for any purpose whatsoever.

17. **Use of Order**. This Order shall be of no force or effect if the settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Merck of any fault, wrongdoing, breach, or liability. Nor shall the Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or the other Settlement Class Members that their claims lack merit or that the relief requested is

inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have in these Actions or in any other lawsuit.

18. **Access to Documents.** During the pendency of this Court's consideration of the proposed Settlement Agreement, Settlement Class Members and/or their attorneys shall be allowed access, at their own expense, at a place designated by Settlement Class Counsel, to the documents disclosed through discovery in this Action or the Coordinated Proceeding to Settlement Class Counsel by Merck, for the sole purpose of evaluating the fairness, reasonableness and adequacy of the proposed settlement, provided that such persons shall not be allowed access to these materials unless and until they enter into the Confidentiality Agreement, which is attached as an Exhibit to the Settlement Agreement. The terms and conditions of the Confidentiality Agreement are incorporated herein by reference and, if breached, may be the basis for a finding of contempt of Court. Only Settlement Class Members who have not excluded themselves from the Settlement Class will be allowed to review the documents produced by Merck in the Action.

19. **Retaining Jurisdiction.** This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Settlement Class.

20. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing without further written notice.

PETER G. SHERIDAN
UNITED STATES DISTRICT JUDGE

If you purchased Eligible Coppertone Sunscreen Products described below, your rights may be affected by a proposed class action settlement.

Para una notificación en Español, visitar nuestro website.

A settlement has been proposed in a class action lawsuit regarding Eligible Coppertone Sunscreen Products as described below.

ARE YOU AFFECTED?

You are a Settlement Class Member and may be eligible to receive payment if you are a natural person and you purchased any Eligible Coppertone Sunscreen Products up to [date] with limited exclusions.

WHAT IS THIS CASE ABOUT?

Plaintiffs allege that Merck violated state laws regarding the labeling and advertising of certain sunscreen products. Merck denies all wrongdoing. The Court did not decide which side was right and instead, the parties decided to settle. They believe the proposed settlement is fair, reasonable, and adequate and will provide substantial benefit to the Settlement Class.

WHAT DOES THIS SETTLEMENT PROVIDE?

The settlement provides a fund of between \$3 and \$10 million to pay claims to eligible Settlement Class Members who purchased Eligible Coppertone Sunscreen Products; claim administration costs; named plaintiffs' incentive awards; and at least \$1 million divided among three legal services organizations. Merck shall separately pay attorneys' fees and expenses and notice costs. Eligible Coppertone Sunscreen Products include any and all sunscreen products sold in the United States under the brand name "Coppertone," which were represented to provide protection against the sun's UVA and/or UVB rays. Merck has also agreed to make certain label and advertising changes.

HOW DO YOU ASK FOR A PAYMENT?

To be eligible for payment, Settlement Class Members must send a completed Claim Form **electronically submitted or postmarked no later than [DATE]** declaring that they purchased Eligible Coppertone Sunscreen Products between July 31, 2006 up to [date] and satisfy other requirements, as applicable.

Payments will vary depending upon the number of product(s) purchased by each Claimant, the number of

products claimed by all Settlement Class Members, other payments as discussed above, and other adjustments and deductions. The amount could be the same or less than \$1.50 for each individual product purchased.

WHAT ARE YOUR OPTIONS?

If you are a Settlement Class Member, you may (1) do nothing; (2) exclude yourself from the Settlement Class; (3) send in a Claim Form; and/or (4) object.

If you don't want to be bound by the settlement, you must exclude yourself by letter **postmarked by [DATE]**. If you exclude yourself, you can't get a payment from this settlement, but you can sue Merck for these claims. If you stay in the Settlement Class, you may submit a Claim Form and/or object. Claim Forms must be submitted to the Notice and Settlement Administrator by [DATE]. Objections must be filed with the Court by [DATE]. The detailed notice available as set forth below describes how to file a claim, object, or exclude yourself from the Settlement Class as well as other important information. The Court will hold a hearing on [DATE] at [TIME] before Hon. Peter Sheridan at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, to consider final approval of the settlement, payment of attorneys' fees and expenses of up to \$2 million and payments of up to \$2,500 for each of the 3 named plaintiffs, and related issues. You may appear at the hearing, but you don't have to.

Claims for injunctive and other non-monetary relief have been settled in another proceeding in California making similar allegations. The claims for monetary relief made in the California action may be affected by this proposed settlement.

HOW CAN YOU GET A CLAIM FORM OR MORE INFORMATION?

To obtain a detailed notice, Claim Form or other settlement documents, visit **www.sunscreensettlement.com**. You can also call toll-free [number], or write to the Notice and Settlement Administrator, [ADDRESS].

**FREQUENTLY ASKED QUESTIONS AND ANSWERS ABOUT THE
NATIONWIDE CLASS ACTION SETTLEMENT RELATING TO THE
ELIGIBLE COPPERTONE SUNSCREEN PRODUCTS**

Please note that this Frequently Asked Questions and Answers (“FAQs”) is merely intended to **highlight some of the main points** of the Settlement Agreement. For the specific terms, requirements and/or conditions of the settlement, please review the Settlement Agreement and/or the Long Form Notice, which can be found at www.sunscreensettlement.com. For a summary of the terms of the settlement, please call, toll-free, [number]. If there is any conflict between these FAQs and the Settlement Agreement and/or the Long Form Notice, those documents govern.

A. General Questions

1. Have I been sued?

No, you have **not** been sued. The lawsuit was brought **against** Merck on behalf of purchasers of Eligible Coppertone Sunscreen Products (more fully described below).

2. What companies are named as defendants (or are involved) in this lawsuit?

The named defendants include Merck & Co., Inc., formerly known as Schering-Plough Corporation, MSD Consumer Care, Inc., formerly known as Schering-Plough Healthcare Products, Inc. and Merck Sharp & Dohme Corp., formerly known as Schering Corporation which was successor in interest to Schering-Plough Healthcare Products Sales Corporation and Schering-Plough Healthcare Products Advertising Corporation. We refer to all of the defendants collectively as “Merck”.

3. I received the Long Form Notice and Claim Form in the mail. What is this? Why did I get this?

You received this notice because you requested it and/or you may be a Settlement Class Member eligible to receive payment from the proposed settlement of a class action lawsuit that was brought on behalf of people who bought Eligible Coppertone Sunscreen Products.

You were sent this notice because you have a right to know about the proposed settlement of this class action lawsuit and about your rights and options before the Court decides whether to approve the settlement.

The Long Form Notice explains: (1) what this lawsuit is about, (2) the terms of the proposed settlement, (3) your legal rights under the settlement, (4) what payments are

These FAQs are only a brief summary. Please refer to the Settlement Agreement and/or Long Form Notice for additional terms, requirements, and/or conditions.

available under the settlement, (5) who is eligible for what payments under the settlement, (6) how to qualify for a settlement payment, (7) other relief bring provided in this settlement, and (8) other important information pertaining to the settlement.

The Claim Form, which is attached to the Long Form Notice and is available at www.sunscreensettlement.com, is the form you must fill out if you want to receive payment from the proposed settlement for the purchase of one or more Eligible Coppertone Sunscreen Products from July 31, 2006 up to **[date]**.

4. What is the lawsuit generally about?

The lawsuit concerns claims that Merck violated certain state laws and consumer protection statutes in connection with alleged misrepresentations concerning the nature and extent of the benefits provided by Merck's Eligible Coppertone Sunscreen Products, as described below in the answer to question 6. Merck denies any and all allegations of wrongdoing and does not admit or concede actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged in this lawsuit or in any similar action.

5. Am I a settlement class member?

With some limited exceptions, the Settlement Class includes all natural persons who purchased Eligible Coppertone Sunscreen Products in the United States of America, including any territories and/or possessions, up to and including **[DATE]**.

You are **not** a Settlement Class Member if you:

- (a) timely and validly request exclusion from the Settlement Class;
- (b) are a natural person who purchased Eligible Coppertone Sunscreen Products for purposes of resale;
- (c) are one of Defendants' officers, directors, and employees;
- (d) are one of Defendants' attorneys in this class action lawsuit;
- (e) are one of Plaintiffs' attorneys in this class action lawsuit;
- (f) are the Honorable Peter G. Sheridan or a member of his staff or immediate family;
- (g) are the Honorable John Shepard Wiley, Jr. or one of the members of his staff or immediate family

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- (h) the Honorable Carl West or one of the members of his staff and immediate family; or
- (i) are a Judge to which the case is subsequently assigned or a member of his or her staff or immediate family, if applicable.

6. Which Eligible Coppertone Sunscreen Products are included?

“Eligible Coppertone Sunscreen Products” means any and all sunscreen products sold in the United States of America including 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.

7. Why did the case settle?

In October and November 2003 and February 2004, five individual lawsuits were initiated in the State of California asserting claims against Merck on behalf of a putative class of consumers relating to alleged misrepresentations concerning the nature and extent of benefits provided by the Eligible Coppertone Sunscreen Products. On April 26, 2004, these actions and other actions filed against other defendants were coordinated in the Superior Court in a Judicial Council Coordination Proceeding styled SUNSCREEN CASES, JCCP No. 4352 (the “Coordinated Proceeding”). As more fully described in the Long Form Notice and the Settlement Agreement, the parties in the Coordinated Proceeding extensively briefed a number of issues before trial and/or appellate courts, which rendered decisions on issues including, but not limited to, preemption, class certification, and summary judgment.

A settlement was submitted in one of the cases in the Coordinated Proceeding. The settlement submitted in the Coordinated Proceeding certified a settlement-only class of California residents and only provided injunctive relief relating to label and advertising changes in return for a release of these and related injunctive relief claims.

The parties negotiated the proposed settlement with an understanding of the factual and legal issues that would affect the outcome of this class action based on the extensive proceedings in the Coordinated Proceeding and additional discovery and a Merck witness interview. The Named Plaintiffs in this Action are represented by lead attorneys for the Plaintiffs in the Coordinated Proceeding who have the experience and knowledge that came from thoroughly litigating the Coordinated Proceeding, as indicated above.

The Court has not decided whether Plaintiffs’ claims or Merck’s defenses have any merit, and it will not do so if the proposed settlement is finally approved. The proposed settlement does not suggest that Merck has or has not done anything wrong, or that the Plaintiffs and the Settlement Class would or would not win their case if it were to go to

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trial.

8. What does the settlement provide?

The Settlement Agreement provides that Merck will create a fund of a minimum of \$3 million to a maximum of \$10 million that will be used to pay:

- (a) Payments to Claimants for timely, valid, and approved Claims;
- (b) claim administration costs, including, but not limited to, escrow and banking fees and costs;
- (c) payment to Named Plaintiffs for incentive awards, not to exceed \$2,500 per each of the three Named Plaintiffs;
- (d) \$1 million divided up as follows to three legal services organizations, \$333,333.33 each to 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”); and
- (e) residual payments, if any funds remain of the \$3 million minimum, split equally between and among LAFLA, LSNYC, and LSNJ. No remaining funds will be returned to Merck.

Merck will also separately pay, to Settlement Class Counsel, the Attorneys’ Fees and Expenses as awarded by the Court as well as notice costs. Merck shall make a \$1.5 million initial payment amount, with up to \$1 million to be used for notice and related notice administration costs and expenses, and not less than \$500,000 used as an advance (and credited as a payment towards the Settlement Fund) to pay claims and claims administration and associated costs, with any remainder from the initial notice payment to be used for the payment of Claims and claims administration and associated costs and credited as a payment towards the Settlement Fund.

If you are an eligible Settlement Class Member who purchased any of the Eligible Coppertone Sunscreen Products from July 31, 2006, up to and including [DATE], as further described below, you may be eligible for payment from this settlement if you complete and submit a Claim Form electronically submitted or postmarked no later than [DATE], subject to certain conditions and limitations.

Merck also agrees 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. Merck further agrees 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;

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Sunscreen Drug Products for Over-the-Counter Human Use” and codified in 76 FR 35620 (“Final Rule”), except with respect to 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. Merck will also comply with any subsequent enforcement rulings under the Final Rule as they become effective.

In return for the benefits in this settlement, and if the settlement is implemented, all Settlement Class Members (not just those Settlement Class Members who purchased Eligible Coppertone Sunscreen Products on or after July 31, 2006 will release Merck from the claims discussed in the Long Form Notice at Appendix A, will be barred and enjoined from filing similar claims, and this action will be dismissed with prejudice, among other terms.

9. What do I need to do now?

If you are a Settlement Class Member, you have certain rights. You can do nothing, submit a claim, exclude yourself from the Settlement Class, or object and/or appear at the Final Fairness Hearing.

If you choose to remain in the Settlement Class, you may **do nothing**. However, you will not be eligible for a payment if you do not submit a Claim.

You must **submit a Claim Form** electronically no later than **[date]** or postmarked no later than **[date]** to receive the cash benefits of the settlement. Participating Settlement Class Members who qualify may receive payment under the Settlement if it is granted by the Court at the Final Approval Hearing, including any appeals.

If you do not want to participate in the Settlement, you **may exclude** yourself from the Settlement Class. In order to exclude yourself, you must notify the Notice and Settlement Administrator in writing **postmarked** no later than **[date]**.

If you choose to remain a Settlement Class Member, you **may object** to the proposed Settlement. In order for your objection to be considered by the Court, it must be provided in writing and **filed** with the Court **and received** by the Court, Settlement Class Counsel, and Merck’s Counsel no later than **[date]**.

If you choose to remain a Settlement Class Member and if you have previously submitted a written objection, you **may appear** at the Final Fairness Hearing. In order for you to appear at the Final Fairness Hearing, your Notice of Intention to Appear must be provided in writing and **filed** with the Court **and received** by the Court, Settlement Class Counsel, and Merck’s Counsel no later than **[date]**.

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The Court will hold a Final Approval Hearing on **[date]** at **[time]** in Federal Court in Trenton, New Jersey to decide whether or not to approve the proposed Settlement, award Attorneys' Fees and Expenses and to consider related issues. We do not know how long it will take for the Court to decide these and related issues.

10. What if I do nothing?

If you do nothing, you will **not** get benefits from the settlement, but, if you are a Settlement Class Member, you will be bound by the settlement's release and waiver of claims.

Unless you exclude yourself from the Settlement Class, if the settlement is approved all of the Court's orders will apply to you and you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Merck concerning the claims in this lawsuit, ever again, regardless of whether you submit a Claim Form.

11. What will I get from this Settlement?

You must complete and submit a Claim Form on or before the deadline, which is **[DATE]**, in order to be considered for payment under the settlement. The amount of the cash payment you may be entitled to under the proposed settlement depends upon the number of Eligible Coppertone Sunscreen Products that you purchased from July 31, 2006 up to and including **[DATE]** and submit on the Claim Form, as well as the total of the valid, timely, completed, and approved Claims by all other Settlement Class Members and other factors specified in the Settlement Agreement. The payment for each Eligible Coppertone Sunscreen Product shall be not more than \$1.50, subject to the adjustments, procedures, and other uses of the Settlement Fund discussed in the Settlement Agreement.

If the amounts required to pay (a) all timely, valid and approved Claims, (b) the guaranteed cy pres awards; (c) claim administration costs, including any administrative and/or bank-related fees and costs related to the Escrow Account; and (d) any 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. If the total amounts to pay items (a)-(d) in the prior paragraph above do not equal or exceed the \$3 million minimum, any remaining funds after all claims are processed and checks sent, but

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uncashed, by Settlement Class Members, shall be paid in equal amounts to LAFLA, LSNYC, and LSNJ. No remaining funds will be returned to Merck.

Merck also agrees 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. Merck further agrees that 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 Drug Products for Over-the-Counter Human Use" and codified in 76 FR 35620 ("Final Rule"), except with respect to 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. Merck will also comply with any subsequent enforcement rulings under the Final Rule as they become effective.

12. When will the Court decide the amount of attorneys' fees and expenses to be awarded?

The Court will consider the amount of attorneys' fees and expenses when it issues its decision regarding the final approval of the settlement.

13. What is Merck paying Settlement Class Counsel (Plaintiffs' attorneys) in attorneys' fees and costs?

The amount of fees and costs that Settlement Class Counsel will be receiving will be determined by the Court when it issues its decision regarding final approval of the settlement. Settlement Class Counsel will make an application for an award of Attorneys' Fees and Expenses that will not exceed \$2 million, which reflects, in part, the extensive work done in the Coordinated Proceeding. The Attorneys' Fees and Expenses awarded by the Court and payable to Settlement Class Counsel shall be paid by Merck and not from the Settlement Fund.

14. When will the settlement be final?

The Parties cannot be sure at this time. The settlement will only be final when the Court approves the settlement and the Court's order approving the settlement is no longer subject to appeal. If the Court approves the settlement, but someone appeals, the settlement will not become final until all appeals are resolved and the settlement remains intact.

15. Has the Court finally approved the settlement?

The Court will hold a final hearing (called a Final Fairness Hearing) to decide whether to

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finally approve the settlement. On [DATE] at [TIME], the Court will hold the Final Fairness Hearing at Courtroom 4E, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608 before the Honorable Peter G. Sheridan.

At the hearing, the Court will consider whether to grant final certification to the class for settlement purposes, whether to approve the proposed settlement as fair, reasonable and adequate, whether to award attorneys' fees and costs, whether to award the Named Plaintiffs an award for their help, whether to issue a permanent injunction and consider related settlement issues.

B. Submitting a Claim

16. How can I submit a Claim?

You will be eligible for payment provided that you are a Settlement Class Member and you complete and timely submit a valid Claim Form and any additional documentation to the Notice and Settlement Administrator demonstrating the purchase of Eligible Coppertone Sunscreen Product(s) from July 31, 2006 up to and including [DATE].

To receive a payment under the settlement, you must send in a Claim Form. A Claim Form and directions are attached as **Appendix B** to the Long Form Notice. You may also obtain a Long Form Notice or a Claim Form and other relevant documents by visiting www.sunscreensettlement.com. Please read the instructions and certification carefully, fill out the Claim Form completely and accurately, and submit the form and any documents, if required and as indicated on the Claim Form. Claim Forms must be **electronically submitted** or **postmarked** no later than [DATE].

You may seek reimbursement for purchases of **up to six (6) Eligible Coppertone Sunscreen Products** without proof of purchase. Merck shall have the right to request that the Notice and Settlement Administrator request proof of purchase of each unit from You if you seek reimbursement for **between seven (7) and nine (9) Eligible Coppertone Sunscreen Products**. If you seek reimbursement for purchases of **ten (10) or more Eligible Coppertone Sunscreen Products**, you will be **required** to provide proof of purchase of each unit with the submission of the Claim. **Acceptable proof of purchase** includes a photocopy of the label(s), tube(s), spray(s), bottle(s), and/or similar containers, cash register receipt(s), credit card receipt(s), credit card statement(s) or similar document that sufficiently indicates the purchase of Eligible Coppertone Sunscreen Products. Each proof of purchase submitted must be clearly and uniquely numbered and the originals of such proofs of purchase must be available for inspection upon request by the Claims Administrator. Claimants submitting multiple proofs of purchase using a Xerox copy of the label(s), tube(s), spray(s), bottle(s), and/or similar container(s) must provide such copies on the same photocopy sheet with at least four (4) copies to a page. Claimants may provide less than four (4) copies to a page only if: (i) less than four (4)

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copies are being submitted or (ii) less than four (4) copies remain after placing all other copies on photocopy sheets with no less than four (4) to a page.

You will not be given an opportunity to cure or fix any deficiencies in your Claim Form. **Thus, you must complete the entire Claim Form and submit any documentation when first submitting the Claim Form. Failure to do so will result in the denial of your Claim and you will receive no cash payment from this settlement.** Pursuant to the terms of the Settlement Agreement, the Notice and Settlement Administrator's determination is final and cannot be appealed by anyone.

17. What do I have to do to participate in the Claim Process?

You will be eligible for payment, provided you are a Settlement Class Member, you complete and timely submit the Claim Form, and you purchased Eligible Coppertone Sunscreen Products from July 31, 2006 up to and including [date], among other requirements. Claim Forms must be electronically submitted or postmarked no later than [date].

18. How many claims can I make?

You may not submit more than one Claim for each Eligible Coppertone Sunscreen Product for which you are seeking payment from the Settlement Fund.

C. The Release

19. What is the release and waiver?

The Release and Waiver is an agreement in which Settlement Class Members give up claims they might have against Merck in exchange for the Settlement benefits. The release is reprinted in Appendix A of the Long Form Notice that you received or you can read it by visiting www.sunscreensettlement.com. You should read the release carefully.

20. Do I have to sign a release?

No. If you remain in the Settlement Class, you will automatically release Merck and the Released Defendants from any claims set forth in Appendix A to the Long Form Notice and will give up your rights to pursue or continue any action against Merck relating to your Eligible Coppertone Sunscreen Products and the claims at issue in this lawsuit. Settlement Class Members will release a wide range of claims in order to receive the benefits in the Settlement Agreement. A word-for-word copy of the Release section from the Settlement Agreement is attached as Appendix A of the Long Form Notice.

These FAQs are only a brief summary. Please refer to the Settlement Agreement and/or Long Form Notice for additional terms, requirements, and/or conditions.

D. Opting Out (Exclusion), Objecting, and/or Appearing

21. How can I exclude myself from the settlement class?

If you want to be excluded from the Settlement Class, you must notify the Notice and Settlement Administrator by sending a letter by mail **postmarked** no later than **[DATE]**. Send your letter to:

Notice and Settlement Administrator
[ADDRESS]

Your letter requesting exclusion does not need to be in any particular form, but it must include the following information in order to be effective:

- (1) your name;
- (2) your address;
- (3) your telephone number;
- (4) a statement that you purchased the Eligible Coppertone Sunscreen Products;
- (5) a statement that you wish to be excluded from the Settlement Class;
- (6) your signature; and
- (7) the case name and number: *Steven Brody, et al. vs. Merck & Co., Inc., et al.*, Case No. 12-cv-4774-PGS-DEA.

Please write “EXCLUSION REQUEST” on the lower left-hand corner of the *front* of the envelope.

22. What is the deadline for requesting exclusion from the settlement class?

Your exclusion request letter must be postmarked no later than **[Date]**.

23. What happens if I exclude myself from the settlement class?

If you request exclusion from the Settlement Class, then for each of the excluded Eligible Coppertone Sunscreen Products:

- You will **not** be eligible for payment under the proposed settlement;
- You will **not** be allowed to object to the terms of the proposed settlement, and
- You will **not** be bound by any subsequent rulings entered in this case if the proposed settlement is finally approved.

These FAQs are only a brief summary. Please refer to the Settlement Agreement and/or Long Form Notice for additional terms, requirements, and/or conditions.

However, if your request for exclusion is late or deficient, you will still be a part of the Settlement Class, you will be bound by the settlement and by all other orders and judgments in this lawsuit, and you will not be able to participate in any other lawsuits based on the claims in this case.

24. What do I need to do to object?

If you choose to remain a Settlement Class Member, you have a right to object to any parts of the proposed settlement. The Court will consider your views.

To object, you must send a letter saying that you object to the settlement of *Steven Brody, et al. vs. Merck & Co., Inc., et al.*, Case No. 12-cv-4774-PGS-DEA. Your written objection must include:

- (1) your name;
- (2) your address;
- (3) your telephone number;
- (4) proof of purchase of Eligible Coppertone Sunscreen Products, as described in the answer to question 16 above, that sufficiently indicates the purchase of the Eligible Coppertone Sunscreen Products OR, alternatively, a representation and warranty, submitted under penalty of perjury, that you purchased an Eligible Coppertone Sunscreen Product;
- (5) a written statement of your objection(s), including any legal support and/or any supporting evidence you wish to introduce;
- (6) a statement of whether you intend to appear and argue at the Fairness Hearing;
- (7) your signature; and
- (8) the case name and number: *Steven Brody, et al. vs. Merck & Co., Inc., et al.*, Case No. 12-cv-4774-PGS-DEA.

25. Where do I send my objection?

If you choose to object, in order to be considered by the Court, your written objections must be **filed with the Court, and copies must be received by all of the following recipients no later than [DATE]:**

COURT	SETTLEMENT CLASS COUNSEL	MERCK'S COUNSEL
Clerk of the Court United States District Court District of New Jersey Clarkson S. Fisher Building & U.S. Courthouse 402 East State Street Trenton, NJ 08608	Mitchell Twersky Abraham, Fruchter & Twersky, LLP One Penn Plaza Suite 2805 New York, NY 10119	John P. Hooper David E. Stanley Reed Smith LLP 599 Lexington Avenue New York, NY 10022

These FAQs are only a brief summary. Please refer to the Settlement Agreement and/or Long Form Notice for additional terms, requirements, and/or conditions.

26. If I object, can I still receive relief under the proposed settlement?

If you file objections, but the Court approves the settlement as proposed, you can still complete a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions discussed in the Settlement Agreement.

27. What is the deadline for objecting?

If you choose to object, in order to be considered by the Court, your written objections must be filed with the Court, and copies must be received by the Court, Settlement Class Counsel, and Merck's Counsel no later than **[Date]**.

28. When and where will the Court decide whether to approve the settlement?

On **[date]**, at **[time]**, the Court will hold a Final Fairness Hearing at the United States District Court for the District of New Jersey, before the Honorable Peter G. Sheridan in Courtroom 4E, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608.

29. May I speak at the Final Fairness Hearing?

Yes, if you are a Settlement Class Member and have filed an objection, you may ask the Court for permission to speak at the hearing. To do so, you must submit an objection and also file a document called a "Notice of Intention to Appear."

30. What do I have to do to speak at the Final Fairness Hearing?

If you are a member of the Settlement Class, and you, or your attorney, wants to appear and speak at the Final Fairness Hearing, you, or your attorney, must have submitted an objection and must file a Notice of Intention to Appear at the Final Fairness Hearing with the Clerk of the Court, and deliver that Notice of Intention to Appear to the attorneys for both sides, at the addresses listed in the Long Form Notice. Your Notice of Intention to Appear at the Final Fairness Hearing must be filed with the Court and received by the Court, Merck's Counsel and Settlement Class Counsel, at the addresses listed in the answer to question 25 no later than **[date]**.

E. Other Settlement-Related Issues

31. Can I review materials relating to the Action?

You (and/or your attorney) may, at your own expense, review materials applicable to this Action. Those documents will be made available by appointment with Settlement Class

These FAQs are only a brief summary. Please refer to the Settlement Agreement and/or Long Form Notice for additional terms, requirements, and/or conditions.

Counsel during regular business hours at a place designated by Settlement Class Counsel. To obtain access to certain materials you (and/or your attorney) must first sign a Confidentiality Agreement, which Settlement Class Counsel will provide.

32. Where can I get additional information?

The full Settlement Agreement is on file with the Clerk of the Court and the Settlement Agreement is also available at www.sunscreensettlement.com. If you have questions, you may call toll-free **[number]**, where responses to common questions are available. For a more detailed statement of the matters involved in this case, you may review the Complaint and the other papers and Court orders on file in the Clerk's office at any time during normal business hours, Monday through Friday, 9:00 a.m. to 4:00 p.m. Eastern Time.

These FAQs are only a brief summary. Please refer to the Settlement Agreement and/or Long Form Notice for additional terms, requirements, and/or conditions.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

STEVEN BRODY, CHAIM HIRSCHFELD and
SUZANNE GRUNSTEIN, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

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. 12-cv-4774-PGS-DEA

**CONFIDENTIALITY AGREEMENT FOR DISCOVERY
MATERIALS MADE AVAILABLE TO SETTLEMENT CLASS MEMBERS**

Pursuant to the Settlement Agreement and all of its attached exhibits, which are incorporated herein by reference, including, but not limited to, this Confidentiality Agreement for Discovery Materials Made Available to Settlement Class Members (“Confidentiality Agreement”), it is hereby stipulated and agreed, by and between the undersigned, as follows:

1. Pursuant to the Court’s Preliminary Approval Order, Settlement Class Counsel, as determined by them, will provide the undersigned Settlement Class Members and/or counsel retained at those Settlement Class Members’ expense and/or certain other persons identified in Paragraph 6 (below)

with access to documents Merck disclosed to Settlement Class Counsel in the course of discovery in this Action and the Coordinated Proceeding.¹

2. The following documents and materials to be reviewed pursuant to this Confidentiality Agreement shall be deemed “Confidential Information.” “Confidential Information” shall be limited to:

- (a) the labeling, warranties, practices, advertising, marketing, campaigning, development, packaging, promotion, displays, brochures, manufacture, operation, performance, functionality, notification, providing, offering, dissemination, and distribution relating to the Eligible Coppertone Sunscreen Products;
- (b) sales and accounting records relating to the Eligible Coppertone Sunscreen Products;
- (c) marketing, advertising, media and public relations materials relating to the Eligible Coppertone Sunscreen Products;
- (d) intercompany and intracompany communications relating to the information above; and
- (e) related information and materials.

In addition, any and all notes, memoranda, or dictation that copies, reproduces, reflects, incorporates, or otherwise refers to the Confidential Information made by any person afforded access to Confidential Information pursuant to this Confidentiality Agreement shall be treated as, and deemed to be, Confidential Information as well.

3. All Confidential Information to which the undersigned and/or certain other persons identified in Paragraph 6 (below) are given access is subject to this Confidentiality Agreement; and such Confidential Information shall not be used or disclosed to anyone or in any manner, except as provided herein.

4. The undersigned and/or certain other persons identified in Paragraph 6 (below) specifically certify(ies) that he/she/they shall use the Confidential Information solely for purposes of evaluating the fairness, reasonableness, and adequacy of the proposed settlement in this Action and for

¹ All terms are as defined in the Settlement Agreement, unless otherwise defined herein.

no other purpose. In particular and without limitation, Confidential Information provided pursuant to this Confidentiality Agreement shall not be used: (a) in the litigation of this Action and/or in the Coordinated Proceeding, if the Court should fail to approve the proposed settlement for any reason, or if any appellate court should reverse an order of this Court approving the proposed settlement; and (b) in the litigation of the Coordinated Proceeding, if the proposed settlement of the claims against Merck in the Coordinated Proceeding is not finally approved for any reason, or if any appellate court should reverse an order of the trial court approving the proposed settlement in the Coordinated Proceeding; and/or (d) in any other litigation, arbitration, or other judicial or administrative proceeding, including, without limitation, in the investigation or preparation of any such proceeding.

5. The undersigned and/or certain other persons identified in Paragraph 6 (below) may inspect the Confidential Information by prior appointment at a time during regular business hours and at a location designated by Settlement Class Counsel. Duplication of documents or materials containing Confidential Information shall not be permitted, except for documents that the undersigned Settlement Class Members and/or their counsel represent to the Court that they need to duplicate for the Court in support of a point of objection. The cost of any duplication shall be borne by the requesting Settlement Class Member or their counsel. Any such documents shall be filed under seal with the Court, labeled, "Confidential – Subject to Protective Order," and shall be delivered to the Clerk of the Court in an envelope bearing the notation, "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION SUBMITTED UNDER SEAL PURSUANT TO COURT ORDER." However, in the course of inspecting the Confidential Information, the undersigned Settlement Class Member(s) and/or certain other persons identified in Paragraph 6 (below) shall be permitted to make a reasonable amount of notes reflecting their review of Confidential Information, which shall also be treated as Confidential Information.

6. Access to Confidential Information shall be limited to those persons who are working directly on the Settlement Class Members' behalf, to whom it is necessary that the Confidential Information be disclosed and who are:

- a. the undersigned Settlement Class Members;
- b. their undersigned counsel;
- c. employees of such counsel assigned to and necessary to assist such counsel in evaluating the proposed settlement; and
- d. consultants or experts, to the extent necessary to assist the undersigned Settlement Class Members and/or their counsel in evaluating the proposed settlement.

7. Any person given access to Confidential Information shall be advised, prior to being granted access, of the terms of this Confidentiality Agreement and of the Court's Preliminary Approval Order and shall thereby become bound by their terms, including without limitation, the requirement that such Confidential Information may not be disclosed to any person other than those described in Paragraph 6 (above). In addition, access to Confidential Information shall not be provided to any person described in Subparagraphs 6.c or 6.d of this Confidentiality Agreement until and unless such person has executed an undertaking in the form attached hereto as Exhibit A. The individual who provides access to Confidential Information to such person shall retain the executed undertaking and shall provide a copy of it to Settlement Class Counsel and to Defendants' Counsel.

8. By providing access to Confidential Information, no party to this Action shall be deemed to have waived any claim that such information is privileged, confidential, or protected from discovery as attorney work product, nor shall any party use this Confidentiality Agreement as an admission or concession that the Confidential Information is relevant, material, responsive, admissible, or otherwise discoverable in any pending or future litigation or judicial or administrative proceeding. The undersigned Settlement Class Members and/or certain other persons identified in Paragraph 6 (above)

agree that they, or any of them, shall not contend or otherwise take the position in this or in any other pending or future litigation or judicial or administrative proceeding that any party has waived the attorney-client privilege and/or the protection of the attorney work product doctrine, or any other privilege or protective doctrine, with regard to Confidential Information.

9. The terms of this Confidentiality Agreement shall survive the termination of this Action and/or the Coordinated Proceeding. At the earlier of: (a) the conclusion of any or all appeals of the Final Approval Order and Final Judgment approving the Settlement; or (b) such time as the parties terminate their Settlement Agreement, all persons having received Confidential Information shall either return such material and all copies thereof (including notes and other records containing or reflecting Confidential Information) to Defendants' Counsel or shall destroy such material. Defendants reserve the right to demand written certification of destruction from any person who has been given access to Confidential Information.

10. The terms of this Confidentiality Agreement shall be enforceable by any aggrieved party, including any party to this Action and/or the Coordinated Proceeding. The undersigned and/or other persons identified in Paragraph 6 (above) agree(s) that, if he/she/they fail to comply with this Confidentiality Agreement, Defendants may suffer irreparable harm that may not be adequately compensated for by monetary damages alone. Any breach of the terms of this Confidentiality Agreement shall give rise to any and all applicable legal and equitable remedies for enforcement of the Confidentiality Agreement and/or relief, including, without limitation, injunctive relief and/or damages, for its breach, in addition to any other remedies available at law.

11. Pursuant to the Court's Preliminary Approval Order incorporating this Confidentiality Agreement, any breach of the terms of this Confidentiality Agreement shall constitute a violation of the Court's Preliminary Approval Order and may result in an order of contempt of Court and/or other sanctions, upon application to the Court by any party aggrieved by such violation, including any party to

this Action. The undersigned and/or certain other persons identified in paragraph 6 below consent to the jurisdiction of the United States District Court for the District of New Jersey for purposes of interpretation and enforcement of the terms of this Confidentiality Agreement.

12. Any dispute over the meaning or interpretation of this Confidentiality Agreement shall be governed by the laws of the State of New Jersey, disregarding any conflicts-of-law provisions.

13. The undersigned Settlement Class Member(s) and/or their counsel agree(s) to notify Settlement Class Counsel and Defendants' Counsel immediately: (a) of any disclosure of Confidential Information in violation of this Confidentiality Agreement and or the Court's Preliminary Approval Order, even if inadvertent; and (b) if any person granted access to the Confidential Information under this Confidentiality Agreement is served with or otherwise receives a subpoena, summons, court order, request or application requiring disclosure of Confidential Information. In any such instance, the undersigned Settlement Class Member(s) and/or their counsel agree(s): (a) not to oppose Defendants' efforts to prevent the disclosure of the Confidential Information; and (b) not to surrender the Confidential Information to any third party without the consent of Merck or except by the final order of a court with competent jurisdiction.

14. The notice required in Paragraph 13 of this Confidentiality Agreement must be provided by e-mail or facsimile and next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service to:

John P. Hooper
David E. Stanley
Reed Smith LLP
599 Lexington Avenue
New York, New York 10022
jhooper@reedsmith.com
Telephone: (212) 521-5400
Facsimile: (212) 521-5450

Mitchell Twersky
Abraham, Fruchter & Twersky LLP
One Penn Plaza, Suite 2805
New York, New York 10119
mtwersky@aftllaw.com
Telephone: (212) 279-5050
Facsimile: (212) 279-3655

15. No waiver by any party hereto of any breach of any term or condition of this Confidentiality Agreement shall be deemed a waiver of a similar or dissimilar term or condition.

16. The waiver by one party of any breach of this Confidentiality Agreement by another party shall not be deemed a waiver of any prior or subsequent breach of this Confidentiality Agreement.

17. The undersigned certify(ies) and agree(s) that he/she/they: (a) has read, understands, consents, accepts, and agrees to be bound by the terms of this Confidentiality Agreement and the Preliminary Approval Order and by the terms of any future Orders of the Court concerning the information he/she shall receive; and (b) shall use the Confidential Information solely for the purposes of evaluating the fairness, reasonableness and adequacy of the proposed settlement in this Action and for no other purpose.

18. This Confidentiality Agreement may be executed in one or more counterparts, each of which shall constitute a duplicate original.

Dated: _____

COUNSEL, INDIVIDUALLY AND ON BEHALF OF
THE SETTLEMENT CLASS MEMBER(S):

[Signature]

[Print Name]

[Firm Name]

[Print Name of Class Member(s)]

[Address and Telephone Number]

THE SETTLEMENT CLASS MEMBER(S):

[Signature]

[Print Name]

[Address and Telephone Number]

EXHIBIT A TO THE CONFIDENTIALITY AGREEMENT

The undersigned hereby certifies that he/she understands, consents and acknowledges that Confidential Information is being provided to him/her pursuant to the terms and restrictions of the Settlement Agreement preliminarily approved by the United States District Court for the District of New Jersey in *Steven Brody, et al. v. Merck & Co., Inc., et al.*, Civil Action No. 12-cv-4774-PGS-DEA (the “Court”), by the Court's Preliminary Approval Order. The undersigned also certifies that he/she has been provided with the attached Confidentiality Agreement and has read, understands, consents, accepts and agrees to be bound by its terms.

The undersigned acknowledges that breach of the Confidentiality Agreement shall be actionable by any aggrieved party, including any party to the aforementioned Action, and that such breach shall subject the undersigned to any and all applicable legal and equitable remedies for enforcement of the Confidentiality Agreement and/or relief, including damages, for its breach. The undersigned also acknowledges that breach of the Confidentiality Agreement will violate the Court’s Order and may subject the undersigned to an order of contempt of Court or other sanctions, upon application to the Court by any party aggrieved by such violation, including any party to the aforementioned Action. The undersigned hereby subjects himself/herself to the jurisdiction of the Court for purposes of enforcement of the terms and restrictions of the Confidentiality Agreement, the Preliminary Approval Order, and/or the Final Approval Order and Final Judgment.

Dated: _____, _____

By: _____

Print Name: _____