

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

DAUPHIN COUNTY County

For Prothonotary Use Only:

Docket No:

2017 CV 4007 EQ

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint
 Writ of Summons
 Petition
 Transfer from Another Jurisdiction
 Declaration of Taking

Lead Plaintiff's Name: Commonwealth of Pennsylvania, Office of Attorney General

Lead Defendant's Name: Johnson & Johnson Consumer Inc.

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a Class Action Suit? Yes No

Is this an MDJ Appeal? Yes No

Name of Plaintiff/Appellant's Attorney: Nicole L. VanOrder, Senior Deputy Attorney General, PA Office of Attorney General

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____
 Employment Dispute: Discrimination
 Employment Dispute: Other _____
 Other: _____

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other _____
 Zoning Board
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: _____

Equity - Consumer Protection Law, 73 P.S. 201-1 et seq.

COMMONWEALTH OF PENNSYLVANIA,
ACTING BY ATTORNEY GENERAL,
JOSH SHAPIRO

Plaintiff

v.

JOHNSON & JOHNSON CONSUMER INC. and
JOHNSON & JOHNSON

Defendants

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

: CIVIL ACTION- EQUITY

: NO. 2017 CV 4007 EQ

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE

213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

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**NOTICE CONCERNING MEDIATION OF ACTIONS PENDING BEFORE THE
COURT OF COMMON PLEAS OF DAUPHIN COUNTY**

The Judges of the Court of Common Pleas of Dauphin County believe that mediation of lawsuits is a very important component of dispute resolution. Virtually all lawsuits can benefit in some manner from mediation.

The Court has adopted Dauphin County Local Rule 1001 to encourage the use of mediation. This early alert enables litigants to determine the best time during the life of their lawsuit for a mediation session. The intent of this early alert is to help the parties act upon the requirement to consider good faith mediation at the optimal time.

The Dauphin County Bar Association provides mediation services and can be reached at 717-232-7536. Free mediation sessions for pro bono cases referred by MidPenn Legal Services are available through the DCBA.

AVISO

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

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DAUPHIN COUNTY LAWYER REFERRAL SERVICE
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

**AVISO REFERENCIAS A LA MEDIACIÓN DE LAS ACCIONES PENDIENTES ANTES
LA CORTE DE SOPPLICAS COMUNES DEL CONDADO DE DAUPHIN**

Los jueces de la corte de súplicas comunes del condado de Dauphin creen que la mediación de pleitos es un componente muy importante de la resolución del conflicto. Virtualmente todos los pleitos pueden beneficiar de cierta manera de la mediación.

La code ha adoptado la regla local de condado de Dauphin 1001 para animar el use de la mediación. Esta alarma temprana permite a litigantes determinar la mejor época durante la vida de su pleito para una sesión de la mediación. El intento de esta alarma temprana es actuar sobre la mediación de la buena fe en el tiempo óptimo.

La asociación de la barra del condado de Dauphin proporciona servicios de la mediación y se puede alcanzar en 717-232-7536. La sesión libre de la mediación para los favorables casos del bono se refinio por MidPenn que los servicios juridicos están disponibles con el DCBA.

An adequate supply of forms containing the bilingual notices required by these Rules shall be furnished by the Dauphin County Bar Association to the Office of the Prothonotary and shall be available for use by litigants and their attorneys.

Thomas M. Devlin
Chief Deputy Attorney General
Health Care Section

Nicole L. VanOrder
Deputy Attorney General
Attorney I.D. No. 86293
Office of Attorney General
Health Care Section
14th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
Telephone: (717) 705.6938
Facsimile: (717) 787.1190

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COMMONWEALTH OF PENNSYLVANIA,
ACTING BY ATTORNEY GENERAL,
JOSH SHAPIRO

Plaintiff

v.

JOHNSON & JOHNSON CONSUMER INC. and
JOHNSON & JOHNSON

Defendants

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

: CIVIL ACTION- EQUITY

: NO. 2017 CV 400

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COMPLAINT IN EQUITY AND PETITION FOR INJUNCTIVE AND OTHER RELIEF

AND NOW, the Commonwealth of Pennsylvania, acting by Attorney General Josh Shapiro, through the Health Care Section (hereinafter "Plaintiff" and/or "Commonwealth"), brings this action pursuant to Pennsylvania's *Unfair Trade Practices and Consumer Protection Law*, 73 Pa. Cons. Stat. Ann. §§ 201-1 to -9 (West 2008) (hereinafter "Consumer Protection Law"). Pennsylvania's Consumer Protection Law authorizes the Office of Attorney General to bring an action in the name of the Commonwealth of Pennsylvania, to restrain by preliminary and/or permanent injunction, unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful by Section 201-3 of Pennsylvania's Consumer Protection Law. Upon information and belief, the Commonwealth alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter and the Defendants in this action pursuant to Section 931(a) of the Judicial Code, 42 Pa. Cons. Stat. Ann. § 931(a) (West 2004), because Defendants have transacted business within the Commonwealth of Pennsylvania at all times relevant to this Complaint.

2. Venue is proper pursuant to Pennsylvania Rule of Civil Procedure 1006(a)(1), Pa. R.C.P. No. 1006(a)(1), because Defendants transact business in Dauphin County, Pennsylvania and/or some of the transactions out of which this action arose occurred in Dauphin County, Pennsylvania.

PARTIES

3. The Commonwealth of Pennsylvania, by and through Attorney General Josh Shapiro (“Commonwealth” and/or Attorney General) is the plaintiff in this case.

4. Defendant Johnson & Johnson is a New Jersey corporation and its principal place of business and executive offices are located at One Johnson & Johnson Plaza, New Brunswick, NJ, 08933.

5. Defendant Johnson & Johnson Consumer Inc., a wholly-owned subsidiary of Defendant Johnson & Johnson (“J&J”), is a New Jersey corporation with its principal place of business at 199 Grandview Road, Skillman, NJ 08558. McNeil-PPC, Inc., which subsequently merged into Johnson & Johnson Consumer Inc., manufactured, promoted, advertised, offered for sale, sold, and distributed over the counter (“OTC”) drugs, through its unincorporated McNeil Consumer Healthcare Division, headquartered at 7050 Camp Hill Road, Fort Washington, Pennsylvania. McNeil owned and/or operated, through its Consumer Healthcare Division, facilities in Fort Washington, Pennsylvania; Las Piedras, Puerto Rico; and Lancaster, Pennsylvania. McNeil Consumer Healthcare Division formerly a division of McNeil-PPC. Inc., is now a division of Johnson & Johnson Consumer Inc. (“McNeil”).

TRADE AND COMMERCE

6. McNeil transacts business in Pennsylvania and nationwide by manufacturing, promoting, advertising, offering for sale, selling, and/or distributing adult, children, and infant OTC

drugs, including but not limited to the following product brands: Tylenol, Motrin, Benadryl, St. Joseph Aspirin, Sudafed, Pepcid, Mylanta, Rolaid, Zyrtec, and Zyrtec Eye Drops with different formulations of these drugs for adults, infants, and children.

7. McNeil was, at all times relevant hereto, engaged in trade or commerce within the meaning of the Unfair Trade Practices and Consumer Protection Law in the Commonwealth of Pennsylvania, including, but not limited to, Dauphin County.

MCNEIL'S CONDUCT

8. McNeil represented that quality and safety were a top priority and that McNeil complied with current Good Manufacturing Practices ("cGMP").

9. Between 2009 and 2011, McNeil announced voluntary recalls of certain lots of over-the-counter medicines, including but not limited to the following:

- a. On September 11, 2009, McNeil announced a voluntary recall of 57 product lots of Infants' and Children's Tylenol liquid products manufactured at its Fort Washington, Pennsylvania facility.
- b. On November 6, 2009, December 18, 2009, and January 15, 2010, McNeil announced voluntary recalls of 595 product lots of Tylenol, St. Joseph Aspirin, Benadryl, Rolaid, and Motrin products manufactured at its Fort Washington, Pennsylvania and Las Piedras, Puerto Rico facilities.
- c. On April 30, 2010, McNeil announced a voluntary recall of approximately 1,200 product lots of Infants' and Children's Tylenol, Motrin, Benadryl, and Zyrtec liquid products manufactured at its Fort Washington, Pennsylvania facility.

10. During this time period, McNeil delivered for introduction into commerce certain batches of over-the-counter medicines that were not manufactured, processed, packed, or held in conformance with certain federal current cGMP.

11. McNeil stipulated in a Guilty Plea and Sentencing Memorandum with the United States that some of its OTC drugs were not manufactured, processed, packed, labeled, held, or distributed in conformance with cGMP requirements, and therefore were deemed adulterated as a matter of federal law, without any showing of actual defect, and that the Federal Food, Drug, and Cosmetic Act prohibited the introduction or delivery for introduction into interstate commerce of any drug that was deemed adulterated.

12. McNeil also stipulated that it did not initiate any Corrective Action Preventive Action plans ("CAPA Plans") for multiple batches of OTC drugs between May 2009 and April 2010 when foreign material, particulate matter and/or contamination were observed, even though its own operating procedures required CAPA Plans. Failure to initiate CAPA Plans did not comply with McNeil's operating procedures, and therefore, did not comply with cGMP requirements for these drugs.

13. McNeil stipulated that it delivered for introduction into interstate commerce certain batches of OTC drugs that were deemed adulterated as a matter of federal law and cGMP requirements.

CLAIMS FOR RELIEF

**VIOLATION OF SECTION 201-3 OF THE CONSUMER PROTECTION LAW RELATING
TO SECTION 201-2(4)(VII) — COUNT I**

14. Plaintiff realleges and incorporates by reference herein each and every allegation contained in the preceding paragraphs 1 through 13.

15. McNeil promoted, advertised, offered for sale, sold, and/or distributed OTC drugs in Pennsylvania that were deemed adulterated because these OTC drugs were not manufactured, processed, packed, held, or distributed in compliance with cGMP. McNeil violated Section 201-3 of Pennsylvania's Consumer Protection Law when they misrepresented the quality of their OTC drugs and their compliance with cGMP. *See* 73 Pa. Cons. Stat. Ann. § 201-2(4)(vii) and 201-3.

VIOLATION OF SECTION 201-3 OF THE CONSUMER PROTECTION LAW
RELATING TO SECTION 201-2(4)(V) — COUNT II

16. Plaintiff realleges and incorporates by reference herein each and every allegation contained in the preceding paragraphs 1 through 15.

17. McNeil promoted, advertised, offered for sale, sold, and/or distributed OTC drugs in Pennsylvania that were deemed adulterated because these OTC drugs were not manufactured, processed, packed, held, or distributed in compliance with cGMP. McNeil violated Section 201-3 of the Pennsylvania Consumer Protection Law when they represented that these OTC drugs had sponsorship, approval, characteristics, ingredients, uses, benefits, quantities, or qualities that they did not have. McNeil engaged in trade or commerce that was unfair, false, deceptive, or misleading and therefore unlawful under Section 201-3 and the accompanying definition found at Section 201-2(4)(v). *See* 73 Pa. Cons. Stat. Ann. § 201-2(4)(v), and 201-3.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth prays that this honorable Court enter an Order:

A. Permanently enjoining the Defendants, its agents, employees, and all other

persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair or deceptive conduct as provided by Section 201-4 of the Consumer Protection Law, 73 Pa. Cons. Stat. Ann. § 201-4 in the promotion and marketing of its OTC drugs;

B. Ordering Defendants to pay all costs for the prosecution and investigation of this action, as provided by Section 201-4.1 of the Consumer Protection Law, 73 Pa. Cons. Stat. Ann. § 201-4.1;

C. Ordering Defendants to pay to the Commonwealth a civil penalty up to One Thousand Dollars (\$1,000.00) for each and every violation of the Consumer Protection Law, and a civil penalty up to Three Thousand Dollars (\$3,000.00) for each and every violation of the Consumer Protection Law where the victim is sixty (60) years of age or older, as provided by Section 201-8 of the Consumer Protection Law, 73 Pa. Cons. Stat. Ann. § 201-8; and

D. Granting such other and further relief as the Court deems equitable and proper.

Respectfully Submitted,

JOSH SHAPIRO
Attorney General

Thomas M. Devlin
Chief Deputy Attorney General
Health Care Section

Date: May 24, 2017

By: 

Nicole L. VanOrder
Senior Deputy Attorney General
Attorney I.D. No. 86293
Office of Attorney General
Health Care Section

14th Floor, Strawberry Square
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Facsimile: (717) 787.1190

COMMONWEALTH OF PENNSYLVANIA,
ACTING BY ATTORNEY GENERAL,
JOSH SHAPIRO

Plaintiff

v.

JOHNSON & JOHNSON CONSUMER INC. and
JOHNSON & JOHNSON

Defendants

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

: CIVIL ACTION- EQUITY

: NO. _____

VERIFICATION

Nicole L. VanOrder states that she is a Senior Deputy Attorney General of the Commonwealth of Pennsylvania, Office of Attorney General, Health Care Section, and the Plaintiff in this action. She verifies that the statements made in the foregoing Complaint in Equity and Petition for Injunctive and Other Relief are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 (West 1998), relating to unsworn falsification to authorities.

Dated: _____



Nicole L. VanOrder
Senior Deputy Attorney General

COMMONWEALTH OF PENNSYLVANIA,
ACTING BY ATTORNEY GENERAL,
JOSH SHAPIRO

Plaintiff

v.

JOHNSON & JOHNSON CONSUMER INC. and
JOHNSON & JOHNSON

Defendants

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

:
: CIVIL ACTION- EQUITY

:
: NO. _____

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2017, I personally served, via Certified First Class Mail and Electronic Mail a copy of the Commonwealth's *Complaint in Equity and Petition for Injunctive and Other Relief*; the *Commonwealth's Motion to Approve Consent Decree*; and a copy of the fully executed *Consent Decree* submitted to this Court for approval, upon:

Thomas B. Malone
Attorney I.D. No. 77291
THE MALONE FIRM LLC
1650 Arch Street, Suite 2501
Philadelphia, PA 19103
Telephone: (215) 987-5200

Ethan M. Posner
Stephen P. Anthony
Christopher M. Denig
Joshua N. DeBold
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001

Dated: May 24, 2017

Michele McCutcheon

Michele McCutcheon
Clerk Typist III

COMMONWEALTH OF PENNSYLVANIA,
ACTING BY ATTORNEY GENERAL,
JOSH SHAPIRO

Plaintiff

v.

JOHNSON & JOHNSON CONSUMER INC. and
JOHNSON & JOHNSON

Defendants

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

:
:
: CIVIL ACTION- EQUITY

: NO. 2017 CV 4007 EQ

ORDER

NOW, on this _____ day of _____ 2017, upon consideration of the
Motion to Approve Consent Decree, the motion is hereby granted.

The Consent Decree shall be entered as an order of this Court.

, Judge

Order Distribution

Thomas B. Malone
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1650 Arch Street, Suite 2501
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Senior Deputy Attorney General
Attorney I.D. No. 86293
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COMMONWEALTH OF PENNSYLVANIA,
ACTING BY ATTORNEY GENERAL,
JOSH SHAPIRO

Plaintiff

v.

JOHNSON & JOHNSON CONSUMER INC. and
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Defendants

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

: CIVIL ACTION- EQUITY

: NO. 2017 CV 400

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MOTION TO APPROVE CONSENT DECREE

AND NOW, comes the Commonwealth of Pennsylvania, acting by its Attorney General, Josh Shapiro, through the Health Care Section of the Public Protection Division (hereinafter "Commonwealth"), and respectfully moves this honorable Court for entry of the Consent Decree as an Order of this Court, and in support thereof respectfully avers the following:

1. Simultaneous with the filing of this Motion and the fully executed Consent Decree, the Commonwealth filed a Complaint in the above-captioned matter alleging, inter alia, violations of Pennsylvania's *Unfair Trade Practices and Consumer Protection Law*, 73 Pa. Cons. Stat. Ann. §§ 201-1 to 201-9 (West 2008).

2. The Commonwealth, Johnson & Johnson Consumer Inc., and Johnson & Johnson (hereinafter the "Parties"), agree to entry of the Consent Decree pursuant to a settlement of the disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged and costly litigation, and to further the goal of enhancing the manufacturing, promoting, advertising, offering for sale, selling, and/or distributing adult, children, and infant OTC drugs in the public interest. Defendant Johnson & Johnson is a New Jersey corporation and its principal place of business and executive offices are located at One Johnson & Johnson Plaza, New Brunswick, NJ, 08933. Defendant Johnson & Johnson Consumer Inc., a wholly-owned

subsidiary of Defendant Johnson & Johnson, is a New Jersey corporation with its principal place of business at 199 Grandview Road, Skillman, NJ 08558.

WHEREFORE, the Commonwealth respectfully requests that this honorable Court approve and enter the Consent Decree, which was filed simultaneous with this Motion, as an Order of this Court.


Respectfully Submitted,

JOSH SHAPIRO
Attorney General

Thomas M. Devlin
Chief Deputy Attorney General
Health Care Section

Date: May 24, 2017

By:



Nicole L. VanOrder
Senior Deputy Attorney General
Attorney I.D. No. 86293
Office of Attorney General
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Harrisburg, Pennsylvania 17120
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IN THE COURT OF COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA

**COMMONWEALTH OF
PENNSYLVANIA, OFFICE OF
ATTORNEY GENERAL**

Plaintiff,

vs.

**JOHNSON & JOHNSON CONSUMER
INC.; and
JOHNSON & JOHNSON,**

Defendants.

IN THE COURT OF:

NO. 2017 CV 4007 EQ

DAUPHIN COUNTY
PENNA.

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CONSENT DECREE

AND NOW, comes the Plaintiff, Commonwealth of Pennsylvania, by and through the Pennsylvania Office of Attorney General (“Commonwealth” and/or “Attorney General”), having filed an action pursuant to the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1 *et seq.* (“Consumer Protection Law”), and the parties having consented to entry of this Consent Decree (“Consent Decree”) without trial or adjudication of any issue of fact or law or finding of wrongdoing or liability of any kind.

I. BACKGROUND

PARTIES

- A. The Commonwealth, by and through the Health Care Section within the Public Protection Division of the Office of Attorney General is the Plaintiff in this case. The Division is charged with, among other things, the responsibility of enforcing the Consumer Protection Law.
- B. Johnson & Johnson Consumer Inc. operates a division known as McNeil Consumer Healthcare Division (“McNeil”). McNeil’s executive offices are located at 7050

Camp Hill Road, Fort Washington, PA 19034. Johnson & Johnson Consumer Inc. is a subsidiary of Johnson & Johnson. Johnson & Johnson's executive offices are located at One Johnson & Johnson Plaza, New Brunswick, NJ, 08933. McNeil engages in trade affecting consumers, within the meaning of the Consumer Protection Law, in the Commonwealth of Pennsylvania, including, but not limited to Dauphin County. Johnson & Johnson consents to the jurisdiction of the Court solely for the purposes of this Judgment.

TRADE AND COMMERCE

- C. At all times relevant hereto, McNeil engaged in trade affecting consumers, within the meaning of the Consumer Protection Law, in the Commonwealth of Pennsylvania, including, but not limited to Dauphin County.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED

AS FOLLOWS:

II. FINDINGS

- A. Johnson & Johnson consents to the jurisdiction of the Court solely for the purposes for this Judgment.
- B. The terms of this Consent Decree shall be governed by the laws of the Commonwealth of Pennsylvania.
- C. Entry of this Consent Decree is in the public interest and reflects a negotiated agreement among the Parties.
- D. This Court retains jurisdiction of this Consent Decree and the Parties hereto for the purpose of enforcing and modifying this Consent Decree and for the purpose of

granting such additional relief as may be necessary and appropriate.

III. PREAMBLE

- A. The Attorneys General of the Multistate Working Group (defined below and collectively referred to hereinafter as the "State Attorneys General"), conducted a multistate investigation into certain McNeil acts and practices.
- B. The State Attorneys General have individually and collectively determined to resolve the investigation by entering into similar settlement agreements between defendants and each Signatory Attorney General.
- C. By entering into this Judgment, the Parties have agreed to resolve claims related to certain McNeil business practices under each state's Consumer Protection Laws.
- D. This Judgment does not constitute an admission by McNeil for any purpose, of any fact or of a violation of any state law, rule, or regulation, nor does this Judgment constitute evidence or admission of any liability, fault or wrongdoing, all of which McNeil denies. McNeil does not admit any violation of law, and does not admit any wrongdoing that was or could have been alleged by Plaintiff before the date of this Judgment.
- E. This Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. It is the intent of the Parties that this Judgment shall not be binding or admissible in any other matter, including, but not limited to, any investigation or litigation, other than in connection with the enforcement of this Judgment. No part of this Judgment shall create a private cause of action or confer any right to any third party for violation of any federal or state statute except that a State may file an action to enforce the terms of this Judgment.

- F. McNeil is entering into this Judgment solely for the purpose of settlement of the instant action. This Judgment does not create a waiver of or limit McNeil's legal rights, remedies, or defenses in any other action by the Signatory Attorney General, and does not waive or limit McNeil's right to defend itself from, or make argument in, any other matter, claim, or suit, including, but not limited to, any investigation or litigation relating to the subject matter or terms of this Judgment. Nothing in this Judgment shall waive, release, or otherwise affect any claims, defenses, or positions McNeil may have in connection with any investigations, claims, or other matters the State is not releasing hereunder. Notwithstanding the foregoing, a State may file an action to enforce the terms of this Judgment.
- G. Nothing in this Judgment shall require McNeil to:
1. Take any action that is prohibited by the Federal Food, Drug and Cosmetic Act ("FDCA") or any regulation promulgated thereunder, or by the U.S. Food and Drug Administration ("FDA"); or
 2. Fail to take any action that is required by the FDCA or any regulation promulgated thereunder, or by the FDA.
- H. This Judgment (or any portion thereof) shall in no way prohibit, limit, or restrict McNeil from making representations with respect to its products that are permitted or authorized under Federal law, the FDCA, or the FDA or FDA Guidance for Industry, so long as those representations, taken in their entirety, are not false, misleading, or deceptive. Further, the Judgment shall in no way prohibit, limit, or restrict McNeil from making representations with respect to its products that are required or authorized by, or consistent with, the FDA-approved labeling

requirements for McNeil products, so long as the representation, taken in its entirety, is not false, misleading, or deceptive.

- I. The acceptance of this Judgment by the Commonwealth shall not be deemed approval by the Commonwealth of any of McNeil's advertising or business practices. Further, neither McNeil, nor anyone acting on its behalf shall state or imply, or cause to be stated or implied, that the Commonwealth or any other governmental unit of the Commonwealth has approved, sanctioned or authorized any practice, act, advertisement or conduct of McNeil.
- J. Any failure by any party to this Judgment to insist upon the strict performance by another party of any provision of this Judgment shall not be deemed a waiver of any such provision. Notwithstanding such failure, the party shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment, the payment of attorney's fees, the imposition of any applicable penalties, and any other applicable remedies, including but not limited to, contempt and civil penalties as set forth in the Commonwealth's Consumer Protection Law and/or other applicable state law.

IV. DEFINITIONS

- A. "Consumer Protection Laws" shall mean the laws of the Commonwealth as cited among those listed in footnote 1.¹

¹ ALASKA - Alaska's Unfair Trade Practices and Consumer Protection Act, AS 45.50.471 - 561; ARIZONA - *Arizona Consumer Fraud Act*, A.R.S. § 44-1521 et seq.; ARKANSAS - *Ark. Code Ann. § 4-88-101, et seq.*; CALIFORNIA - Bus. & Prof Code §§ 17200 et seq. and 17500 et seq.; COLORADO - *Colorado Consumer Protection Act*, Colo. Rev. Stat. § 6-1-101 et seq.; CONNECTICUT - *Connecticut Unfair Trade Practices Act*, Conn. Gen. Stat. §§ 42-110a et seq.; DELAWARE - *Delaware Consumer Fraud Act and Uniform Trade Practices Act*, Del. CODE ANN. tit. 6, §§ 2511 to 2536; DISTRICT OF COLUMBIA, *District of Columbia Consumer Protection Procedures Act*, D.C. Code §§ 28-3901 et seq.; FLORIDA - *Florida Deceptive and Unfair Trade Practices Act, Part II*, Chapter 501, Florida Statutes, 501.201 et seq.; HAWAII - Haw. Rev. Stat. Chpt. 481A and Haw. Rev. Stat. Chpt. (continued...)

- B. “Covered Conduct” shall mean McNeil’s business practices relating to the Covered Products that were the subject of recalls or retrievals during the calendar years 2009 through 2011, meaning (1) alleged representations prior to the Effective Date of this Judgment regarding the quality or safety of Covered Products during the above-referenced time period; or (2) the introduction into the stream of commerce of the Commonwealth during the same time period of Covered Products that the Commonwealth alleges or could have alleged were not manufactured in accordance with current Good Manufacturing Practices.
- C. “Covered Products” shall mean the products listed in Exhibit A.

480; IDAHO – *Consumer Protection Act*, Idaho Code Section 48-601 *et seq.*; ILLINOIS – *Consumer Fraud and Deceptive Business Practices Act*, 815 ILCS 505/1 *et seq.* and *Uniform Deceptive Trade Practices Act*, 815 ILCS 510/1 *et seq.*; INDIANA - *Deceptive Consumer Sales Act*, I.C. § 24-5-0.5 *et seq.*; KANSAS - *Kansas Consumer Protection Act*, K.S.A. 50-623 *et seq.*; KENTUCKY - KRS 367.110 *et seq.*; LOUISIANA – *Unfair Trade-Practices and Consumer Protection Law*, LSA-R.S. 51:1401, *et seq.*; MAINE – *Unfair Trade Practices Act*, 5 M.R.S. §§ 205-A through 214; MARYLAND - *Maryland Consumer Protection Act*, Md. Code Ann., Com. Law § 13-101 *et seq.*; MASSACHUSETTS – *Mass. Gen. Laws c. 93A*, §§ 2 and 4; MICHIGAN – *Michigan Consumer Protection Act*, MCL § 445.901 *et seq.*; MINNESOTA - *Minnesota Deceptive Trade Practices Act*, Minn. Stat. §§ 325D.43-48; *Minnesota False Advertising Act*, Minn. Stat. § 325F.67; *Minnesota Consumer Fraud Act*, Minn. Stat. §§ 325F.68-70; *Minnesota Deceptive Trade Practices Against Senior Citizens or Disabled Persons Act*, Minn. Stat. § 325F.71.; MISSOURI – *Merchandising Practices Act*, Chapter 407, RSMo. MONTANA - *Mont. Code Ann. § 30-14-101 et seq.*; NEBRASKA – *Uniform Deceptive Trade Practices Act*, NRS §§ 87-301 *et seq.*; NEVADA – *Deceptive Trade Practices Act*, Nevada Revised Statutes 598.0903 *et seq.*; NEW HAMPSHIRE – *New Hampshire Consumer Protection Act*, RSA 358-A; NEW JERSEY – *New Jersey Consumer Fraud Act*, NJSA 56:8-1 *et seq.*; NEW MEXICO - *New Mexico Unfair Practices Act* NMSA 1978, S 57-12-1 *et seq.* (1967); NEW YORK – *General Business Law Art. 22-A*, §§ 349-50, and *Executive Law § 63(12)*; NORTH CAROLINA – *North Carolina Unfair and Deceptive Trade Practices Act*, N.C.G.S. §§ 75-1.1, *et seq.*; NORTH DAKOTA – *Unlawful Sales or Advertising Practices*, N.D. Cent. Code § 51-15-02 *et seq.*; OHIO – *Ohio Consumer Sales Practices Act*, R.C. 1345.01, *et seq.*; PENNSYLVANIA – *Pennsylvania Unfair Trade Practices and Consumer Protection Law*, 73 P.S. 201-1 *et seq.*; RHODE ISLAND - *Rhode Island Deceptive Trade Practices Act*, Rhode Island General Laws § 6-13.1-1, *et seq.*; SOUTH CAROLINA - *South Carolina Unfair Trade Practices Act*, S.C. Code §§ 39-5-10 *et seq.*; SOUTH DAKOTA – *South Dakota Deceptive Trade Practices and Consumer Protection*, SDCL ch. 37-24; TENNESSEE – *Tennessee Consumer Protection Act*, Tenn. Code Ann. § 47-18-101 *et seq.*; TEXAS – *Texas Deceptive Trade Practices-Consumer Protection Act*, Tex. Bus. And Com. Code 17.41, *et seq.*; VERMONT – *Consumer Protection Act*, 9 V.S.A. §§ 2451 *et seq.*; VIRGINIA - *Virginia Consumer Protection Act*, Va. Code Ann. §§ 59.1-196 through 59.1-207; WASHINGTON – *Unfair Business Practices/Consumer Protection Act*, RCW §§ 19.86 *et seq.*; WEST VIRGINIA – *West Virginia Consumer Credit and Protection Act*, W.Va. §46A-1-101 *et seq.*; WISCONSIN – *Wis. Stat. § 100.182 (Fraudulent drug advertising)*.

- D. “Current Good Manufacturing Practices” or “cGMP” shall mean those practices that comply with the current Good Manufacturing Practice regulations promulgated by the FDA at 21 C.F.R. parts 210-211, together with any subsequent amendments or additions.
- E. “Effective Date” shall mean the date on which a copy of this Judgment, duly executed by McNeil and by the Signatory Attorney General, is approved by and becomes a judgment of the Court.
- F. “McNeil” shall mean (i) McNeil Consumer Healthcare, a division of Johnson & Johnson Consumer Inc.; (ii) the legal entity responsible for manufacturing, selling, offering for sale, promoting, or distributing the Covered Products to the extent that such entity manufactures, sells, offers for sale, promotes, or distributes the Covered Products; and (iii) all successors to these entities to the extent that such successor manufactures, sells, offers for sale, promotes, or distributes the Covered Products.
- G. “Multistate Executive Committee” shall mean the Attorneys General and their staffs representing Arizona, Delaware, District of Columbia, Florida, Kentucky, Maryland, Massachusetts, Montana, New Jersey, Ohio, Pennsylvania, and Texas.
- H. “Multistate Working Group” shall mean the Attorneys General and their staffs representing Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii², Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota,

² Hawaii is being represented in this matter by its Office of Consumer Protection, an agency which is not part of the state Attorney General’s Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. For simplicity, the entire group will be referred to as the “Attorneys General,” and such designation, as it includes Hawaii, refers to the Executive Director of the State of Hawaii Office of Consumer Protection.