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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MERCK & CO., INC.,

Defendant.

Civil No. 3159

**STIPULATION BETWEEN PARTIES IN SUPPORT OF THE UNOPPOSED MOTION  
OF MERCK & CO., INC. TO TERMINATE THE CONSENT DECREE**

It is stipulated by and between the undersigned parties, through their respective attorneys,  
that:

1. Defendant Merck & Co., Inc. (“Merck”), the successor in interest to Merck & Co., Inc.,<sup>1</sup> the original defendant in this action, has filed a motion requesting that the Court

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<sup>1</sup> On November 3, 2009, following review by the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act Of 1976, Merck & Co., Inc. (“Legacy Merck”) merged with Schering-Plough Corporation (“Schering-Plough”). As a result of the merger, Schering-Plough—which was renamed Merck & Co., Inc. (“Merck”)—became the parent company of both Legacy Merck and the former Schering-Plough operating companies. Legacy Merck was renamed Merck Sharp & Dohme Corp.

terminate the consent decree entered in the above-captioned matter on October 6, 1945 (“Consent Decree”). The United States has agreed to the termination of the Consent Decree subject to reserving its right to withdraw its consent at any time prior to the Court entering an order granting termination of the Consent Decree.

2. In the event that the Court finds that no further notice is required, an Order in the form of Exhibit A may be filed and entered by the Court *sua sponte*, provided that the United States has not withdrawn its consent.

3. In the event that the Court should order that further notice of the proposed termination be given:

(a) Merck shall publish at its own expense a notice of the proposed termination, in the form attached as Exhibit 1, in two consecutive issues of the print and on-line editions of “The Pink Sheet”, a weekly publication. An Order, in the form attached as Exhibit B, directing such publication, may be filed and entered by the Court without further notice to any party or any other proceeding;

(b) The United States will publish in the Federal Register a notice, in the form attached as Exhibit C, announcing the motion to terminate the Consent Decree and the United States’ provisional consent to the motion, summarizing the Complaint in this action, the Consent Decree, and the procedures for inspection and obtaining copies of relevant papers, and inviting the submission of comments;

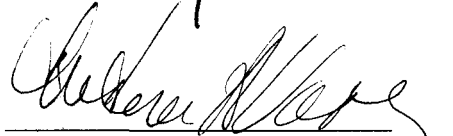
(c) A period for public comment shall end thirty days after the last publication of the notices required by this Order and within 20 days after conclusion of the thirty-day public comment period, the United States will file with the Court copies of any comments that it receives and its response to those comments; and

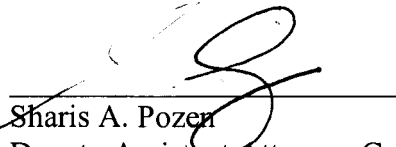
(d) An Order, a proposed form of which is attached as Exhibit D, terminating the Consent Decree, may be filed and entered by the Court upon the request of any party or by the Court *sua sponte*, at any time after the United States has filed with the Court any comments that it receives and any responses thereto and without further notice to any party or any other proceeding, provided that the United States has not withdrawn its consent.

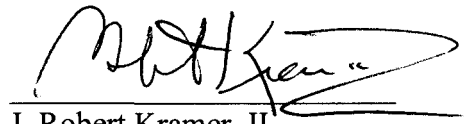
4. The United States may withdraw its consent at any time before the entry of an Order terminating the Consent Decree by filing a notice of withdrawal of its consent with the Court and serving a copy of said notice upon Merck.


5. In the event that the United States withdraws its consent, or if an Order terminating the Consent Decree is not entered pursuant to this Stipulation, then this Stipulation shall be of no effect whatsoever; the making of this Stipulation shall be without prejudice to any party in this or any other proceeding; and the Stipulation shall not thereafter be used in this or any other action or for any other purpose.

Dated: July 25, 2011

  
Christine A. Varney  
Assistant Attorney General

  
Sharis A. Pozen  
Deputy Assistant Attorney General

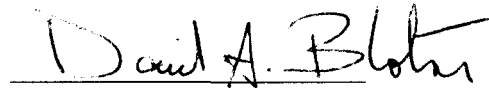
  
J. Robert Kramer, II  
General Counsel

  
William H. Stallings  
Chief, Transportation, Energy,  
and Agriculture Section

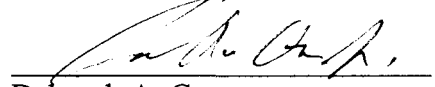
Attorneys  
United States Department of Justice  
Antitrust Division

Dated: July 25, 2011

FOR PLAINTIFF  
UNITED STATES OF AMERICA

  
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FOR DEFENDANT  
MERCK & CO., INC.

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MERCK & CO., INC.,

Defendant.

Civil No. 3159

**ORDER TERMINATING THE CONSENT DECREE**

The Court having received the motion of defendant Merck & Co., Inc. (“Merck”) for termination of the consent decree entered in this case on October 6, 1945 (“Consent Decree”), and the United States having represented to the Court that it has no objection to the motion, and the Court having considered all papers filed in connection with this motion, and the Court finding that it is in the public interest to terminate the Consent Decree, it is

**ORDERED, ADJUDGED, AND DECREED:**

That said Consent Decree is hereby terminated.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Court Judge  
District of New Jersey

**NOTICE OF THE PROPOSED TERMINATION OF THE CONSENT DECREE  
ENTERED IN UNITED STATES v. MERCK & CO., INC. ON OCTOBER 6, 1945**

PLEASE TAKE NOTICE that a motion has been filed asking the Court to enter an Order terminating the consent decree entered on October 6, 1945 (“Consent Decree”) in United States v. Merck & Co., Inc., et al., Civil No. 3159 (D.N.J. 1943).

The United States has filed with the Court a responsive memorandum setting forth the reasons why it believes that the termination of the Consent Decree would serve the public interest. Copies of the motion to terminate, the stipulation containing the United States’ provisional consent, the United States’ memorandum, and all further papers filed with the Court in connection with the termination motion will be available for inspection at the Antitrust Documents Group, Antitrust Division, 450 5th Street, N.W., Room 1024, Washington, DC 20530, on the website at [www.usdoj.gov/atr](http://www.usdoj.gov/atr), and at the Office of the Clerk of the United States District Court for the District of New Jersey. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations. Interested persons may submit comments regarding the proposed termination of the Consent Decree to the United States. Such comments must be received by the Antitrust Division within thirty (30) days and will be filed with the Court by the United States.

Comments should be addressed to William H. Stallings, Chief, Transportation, Energy, and Agriculture Section, United States Department of Justice, Antitrust Division, 450 Fifth Street, N.W., Suite 8000, Washington, DC 20530.

**Exhibit B**

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

MERCK & CO., INC.,

Defendant.

Civil No. 3159

**ORDER ESTABLISHING NOTICE AND PUBLIC COMMENT PROCEDURES  
FOR THE UNOPPOSED MOTION OF MERCK & CO., INC.  
TO TERMINATE THE CONSENT DECREE**

Defendant Merck & Co., Inc. having moved for an Order terminating the consent decree entered by this Court on October 6, 1945 (“Consent Decree”) in the above-captioned matter, and Plaintiff, the United States, having provisionally consented to the motion, and Plaintiff having proposed, and defendant Merck & Co., Inc. (“Merck”) having agreed, that notice of the motion and the United States’ provisional consent to it be published at Merck’s expense, and that all interested persons be given an opportunity to submit comments concerning the proposed termination of the Consent Decree, and it appearing to the Court desirable to invite such comments, and in consideration of the Stipulation of the parties dated \_\_\_\_\_, 2011, it is

ORDERED that Merck shall publish at its own expense a notice in the form attached hereto as Exhibit 1 in two consecutive issues of “The Pink Sheet”, a weekly publication, and file proof of such publications with the Court; and it is



FURTHER ORDERED, that copies of all comments received by Plaintiff within thirty (30) days after the last publication of the notices required by this Order shall be filed with this Court by Plaintiff promptly after it receives such comments; and it is

FURTHER ORDERED, that this Court will not rule upon Defendant's motion until at least the fortieth (40th) day after the last publication of the notices required by this Order and the publication by the United States of a notice in the Federal Register announcing these proceedings.

DONE, this day of \_\_\_\_\_, 2011.

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United States District Court Judge  
District of New Jersey

Exhibit C

**FEDERAL REGISTER NOTICE**

U.S. Department of Justice  
Antitrust Division

Proposed Termination of Consent Decree

Notice is hereby given that defendant Merck & Co, Inc. (“Merck”) has filed a motion to terminate the consent decree entered on October 6, 1945 (“Consent Decree”) in *United States v. Merck & Co., Inc., et al.*, Civil No. 3159 (D.N.J. 1943). Notice is also hereby given that the Antitrust Division of the United States Department of Justice (the “Department”), in a stipulation also filed with the Court, has provisionally consented to termination of the Consent Decree, but has reserved the right to withdraw its consent pending receipt of public comments.

On October 28, 1943, the United States filed a complaint alleging that the defendants had conspired to restrain trade and commerce in the distribution and sale of chemicals and pharmaceuticals. Essentially, the complaint alleged that Merck had entered into a “Treaty Agreement” in 1932 with E. Merck, a partnership doing business under that name in Darmstadt, Germany, pursuant to which the companies broadly allocated customers and territories between themselves in the sale and distribution of chemical and pharmaceutical products made by them, and suppressed competition between them in the United States and in foreign markets. The suit was resolved in 1945 by entry of the Consent Decree.

The Department has filed with the Court a memorandum setting forth the reasons why the United States believes that termination of the Consent Decree would serve the public interest. Copies of the motion to terminate, the stipulation containing the United States’ provisional consent, the United States’ memorandum, and all other papers filed with the Court in connection with the motion to terminate will be available for inspection at the Antitrust Documents Group,

Antitrust Division, 450 5<sup>th</sup> Street, N.W., Room 1024, Washington, DC 20530, on the website at [www.usdoj.gov/atr](http://www.usdoj.gov/atr), and at the Office of the Clerk of the United States District Court for the District of New Jersey. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Consent Decree to the United States. Such comments must be received by the Antitrust Division within thirty (30) days and will be filed with the Court by the United States. Comments should be addressed to William H. Stallings, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Washington, DC 20530.

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J. Robert Kramer II  
General Counsel  
Antitrust Division

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

MERCK & CO., INC.,

Defendant.

Civil No. 3159

**ORDER TERMINATING THE CONSENT DECREE**

The Court having received the motion of defendant Merck & Co., Inc. (“Merck”) for termination of the consent decree entered in this case on October 6, 1945 (“Consent Decree”), and the United States having represented to the Court that it has no objection to the motion, and notice of the motion having been published in the Federal Register and “The Pink Sheet”, and all interested parties having been given an opportunity to submit comments concerning the proposed termination of the Consent Decree, and the Court having considered all papers and comments filed in connection with this motion, and the Court finding that it is in the public interest to terminate the Consent Decree, it is

**ORDERED, ADJUDGED, AND DECREED:**

That said Consent Decree is hereby terminated.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Court Judge  
District of New Jersey


**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing Stipulation Between Parties In Support Of The Unopposed Motion Of Merck & Co., Inc. To Terminate The Consent Decree to be served upon the following attorneys by First Class Mail on July 25<sup>th</sup>, 2011:

Deborah A. Garza  
James R. Dean, Jr.  
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Washington, DC 20004-2401

Ronald A. Hewitt  
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Mary E. Storella  
Grace Han McMahon  
Merck & Co., Inc.  
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