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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STEPHEN TREWIN and JOSEPH FARHATT, On Behalf of Themselves And All Others Similarly Situated, **Plaintiffs,** vs. CHURCH & DWIGHT, INC., **Defendant.**	Civ. No. 3:12-CV-01475 (MAS) (DEA) **MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION SEEKING ENTRY OF AN ORDER PRELIMINARILY APPROVING PROPOSED CLASS ACTION SETTLEMENT**

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I. INTRODUCTION

Plaintiffs, Stephen Trewin and Joseph Farhatt ("Plaintiffs"), submit this Memorandum in Support of their Unopposed Motion Seeking Entry of an Order Preliminarily Approving the Proposed Class Action Settlement, as memorialized in the Joint Stipulation of Settlement ("Settlement Agreement") that was executed on July 16, 2014 with Defendant, Church & Dwight, Inc. ("Defendant" or "Church & Dwight").[1] As detailed below, the Court should preliminarily approve the Settlement Agreement because, among other things, it provides substantial benefits to Class Members, includes a comprehensive Notice Plan, and satisfies the requirements of Fed R. Civ. P. 23(e).

II. FACTUAL BACKGROUND

A. Plaintiffs' Allegations

Plaintiffs commenced this action against Defendant on behalf of themselves and all other similarly situated consumers, for violations of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq*. ("CFA") and Missouri Merchandising Practices Act, Mo. Ann. Stat. § 407.020 (West 2010) (the "Action").

Plaintiffs allege that Defendant manufactures, markets, sells, and distributes

[1]The Settlement Agreement and its exhibits are attached hereto at Exhibit "A" to the Declaration of James C. Shah ("Shah Decl."). The defined terms in the Settlement Agreement are capitalized herein and incorporated by reference.

Arm & Hammer® Essentials™ (the "Product") using a marketing, advertising and labeling campaign that is centered on representations that are intended to, and do, convey to consumers that Arm & Hammer® Essentials™ deodorant is a "Natural" product that contains "natural" ingredients and provides "natural" protection. However, Plaintiffs allege that Defendant's claims are false and misleading because Arm & Hammer® Essentials™ is not all natural and, instead, contains artificial and synthetic ingredients. Defendant denies that its marketing, advertising and labeling for the Arm & Hammer® Essentials™ deodorant are false or misleading.

B. History Of The Litigation

Plaintiffs commenced this Action on March 9, 2012. (D.I. 1.) Prior to initiating the Action, Class Counsel spent considerable time discussing the issues, including the labeling and advertising, with Plaintiffs and a number of other potential Class Members, as well as investigating the scope of natural claims and various ingredients in the Product. In addition, Class Counsel researched the various laws potentially applicable to Plaintiffs' claims, including New Jersey law and the law of Missouri, the states where the Plaintiffs reside.

Defendant filed a Motion to Dismiss the initial Complaint on May 14, 2012. (D.I. 22.) Following briefing and oral argument, the Court granted the motion to dismiss without prejudice by Order dated December 11, 2012. (D.I. 42.) Plaintiffs

filed an Amended Complaint on January 7, 2013. (D.I. 44.) Following briefing on Defendant's Motion to Dismiss the Amended Complaint, the Court denied the motion by Order dated September 13, 2013 (D.I. 56) and Defendant filed its Answer on October 15, 2013. (D.I. 57.)[2] Following the filing and service of the Amended Complaint, the parties commenced a dialogue to determine whether a framework could be developed to resolve the matter. That dialogue eventually proved to be fruitful.

C. The Terms Of The Settlement Agreement

As set forth in the Settlement Agreement, Plaintiffs' counsel and counsel for Defendant have negotiated a proposed Settlement that, if approved, will provide substantial benefits to the following Class: all persons or entities who purchased Arm & Hammer® Essentials™ deodorant in the United States with the label stating "Natural Deodorant" ("Old Label").[3] Excluded from the Class are: (i) those who purchased the Essentials™ with the Old Label for purpose of resale; (ii) those with claims for personal injuries arising from the use of the Essentials™ with the Old Label; (iii) Defendant and its officers, directors and employees; (iv) any

[2] During this time, and in advance of the commencement of discovery, which the parties had agreed would begin following an order on the Defendant's Motion to Dismiss the Complaint, the parties met and conferred on several occasions concerning the scope of class-related discovery, submitted their respective positions to the Court and participated in several teleconferences with the Court on those discovery issues.

[3] "Old Label" means the label for the Arm & Hammer® Essentials™ deodorant containing the words "Natural Deodorant" and "Natural Protection."

person who files a valid and timely Request for Exclusion; and (v) the Judge(s) to whom this Litigation are assigned and any members of their immediate families.

After substantial negotiations, the parties agreed that the relief to Class Members would include the following components:

1. Common Fund

Church & Dwight will establish a Settlement Fund in the amount of $1,500,000 within ten (10) days from the entry of the Preliminary Approval Order. A Class Member is entitled to obtain $4 for each purchase of an Arm & Hammer® Essentials™ Deodorant with the Old Label for up to five (5) units, without the need to present proof of purchase. To receive Settlement relief, each claimant must submit a valid and timely Claim Form either by mail or electronically.

If a Class Member is able to present documentary evidence of a purchase price in excess of $4.00 (*e.g.*, a receipt), the Class Member is entitled to a cash reimbursement equivalent to the full purchase price of the Arm & Hammer® Essentials™ Deodorant with the Old Label. Class Members need not present a receipt or other evidence of a purchase to claim reimbursement for five (5) or fewer units under the terms of the Settlement Agreement.

Class Members wishing to claim reimbursement for more than five (5) units will need to show proof of purchase to be eligible to be reimbursed for purchases of the Arm & Hammer® Essentials™ Deodorant with the Old Label exceeding

five (5) units. The actual amount paid to individual claimants will depend upon the number of valid claims made and the amount in the net Settlement Account at the time the claims were made. If the aggregate amount of Eligible Claims exceeds the Net Settlement Fund, Eligible Claims will be reduced pro rata. For each claim made for a purchase or purchases, the Class Member must include in the Claim the number of units of Arm & Hammer® Essentials™ Deodorant with the Old Label purchased and the approximate date(s) of purchase. Failure to state the number of purchases of Arm & Hammer® Essentials™ Deodorant with the Old Label will result in the payment for one (1) Arm & Hammer® Essentials™ Deodorant. The parties also agreed to a protocol to use in connection with the processing of the Claim Forms, which is set forth in the Settlement Agreement. *See* Settlement Agreement, ¶¶ 7-8. A Claims Administrator shall administer the funds to Class Members, which are to be paid out of the Settlement Fund. *Id.* at ¶¶ 6-7. Notably, none of the Cash Settlement Amount will revert to the Defendant. *Id.* at ¶ 6.3. Any residual funds will be donated on a *cy pres* basis to the National Environmental Education Foundation.

2. Injunctive Relief

After the filing of the Action and as a result thereof, Church & Dwight changed the labeling and advertising of the Arm & Hammer® Essentials™ Deodorant to address the concerns raised by the Action. The new labeling ("New

Label") does not contain the words "Natural Deodorant" or state that it provides "Natural Protection." Church & Dwight acknowledges that the changes were made as a result of the Action. Settlement Agreement, ¶ 5.

3. Dismissal With Prejudice and Release of Claims

In exchange for these significant benefits, the Settlement Agreement provides that all Members of the Class will fully release Defendant from all claims relating in any way to the advertising, marketing, packaging, promotion, sales and distribution of the Arm & Hammer® Essentials™ Deodorant with the Old Label and with the New Label, and dismiss the Action. *See* Settlement Agreement, ¶¶ 3, 13. The release (the complete and controlling terms of which are set forth in full in the Settlement Agreement) does not, however, include any claims for personal injuries.

Defendant has agreed not to oppose Plaintiffs' counsels' request for an award of Attorneys' Fees and Expenses not to exceed $420,000. *Id.* at ¶ 14. Class Counsel will separately move for approval of these Attorneys' Fees and Expenses prior to Final Approval of the Settlement. *Id.* Defendant has also agreed not to oppose (and shall pay, if approved by the Court) an application for service awards for Plaintiffs Steve Trewin and Joseph Farhatt in the amount of $2,500 each. *See id.* at ¶ 14.4. Defendant's obligations to pay Court-approved Attorneys' Fees and Expenses to Class Counsel and the service awards to the Class Representatives

shall not reduce or impact the Settlement benefits that the Class is to receive. *Id.* at ¶ 14.5. This information will be clearly communicated to Class Members in the Class Notice. Class Counsel submit that the Settlement and requested awards should be preliminarily approved.

D. Notification To Class Members

The Settlement Agreement requires Class Counsel to take all necessary and reasonable steps to ensure that notice of the Settlement is provided to the Class in accordance with Rule 23. The Settlement Agreement contains a notice and administration plan ("Notice Plan"), the entire cost of which will be paid by Defendant, and not from the Settlement Fund. *See* Settlement Agreement, ¶ 8.1 and Exhibit 7. Through a competitive process in which bids were solicited from different vendors, the parties have agreed - subject to Court approval - to use Strategic Claims Services ("Administrator" or "Claims Administrator") to handle the notice program and claims administration process.

The Administrator shall publish the Short Form Notice, attached as Exhibit 3 to the Settlement Agreement, on one occasion each in *USA Today National Edition, Time Magazine National Edition and Reader's Digest Magazine*. Further, the Administrator has designed additional website publication of the Notice and proposed, targeted on-line advertising on Facebook and Yahoo. Finally, the Administrator will create and maintain a dedicated website related to the

Settlement, at www.churchanddwightsettlement.com, as well as a contact number for Class Members to call with questions. The website shall contain downloadable copies of the Long Form and Short Form Notices, Settlement Agreement, and Claim Form, which Claim Form can be completed online. Finally, at or prior to the Final Approval Hearing, the Administrator shall provide an affidavit to the Court attesting that notice was disseminated in a manner consistent with the terms of the Settlement Agreement (or in a manner otherwise required by the Court). Settlement Agreement, ¶ 9.2.

Consistent with Fed R. Civ. P. 23(c) and (e), all Class Members will be provided with a reasonable opportunity to object to the Settlement, or to exclude themselves from it. *See* Settlement Agreement, ¶¶ 10-11. In addition, the notices will each advise potential Class Members of: (a) the nature of the action; (b) the definition of the Class certified; (c) the Class claims, issues or defenses; (d) that a Class Member may enter an appearance through counsel if the Member so desires; (e) that the Court will exclude from the Class any Member who requests exclusion and when and how members may elect to be excluded; and (f) of the binding effect of a Class judgment on Class Members under Rule 23(c)(3).

III. THIS COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT AGREEMENT

Settlement spares litigants the uncertainty, delay and expense of a trial, and reduces the burden on judicial resources. As a result, "[c]ompromises of disputed

claims are favored by the courts." *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910). This is "particularly [true] in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged"); *In re Sch. Asbestos Litig.*, 921 F.2d 1330, 1333 (3d Cir. 1990) (the court "encourage[s] settlement of complex litigation that otherwise could linger for years"). The proposed Settlement Agreement meets all the requirements for preliminary approval by this Court.

A. Class Action Settlement Procedure

Federal Rule of Civil Procedure 23 sets forth a procedure and specific criteria for class action settlement approval. *Smith v. Prof'l Billing & Mgmt. Servs.*, Civ. No. 06-4453, 2007 WL 4191749, at *1 (D.N.J. Nov. 21, 2007). That approval procedure includes the following steps:

1. Preliminary approval of the proposed Settlement;

2. Dissemination of notice of the Settlement to Class Members.

3. A formal fairness hearing, also called the Final Approval Hearing, at which Class Members may be heard regarding the Settlement, and at which counsel may introduce evidence and present argument concerning the fairness, adequacy, and reasonableness of the Settlement.

Id. at *1-*5. *See also In re Aetna UCR Litig*., No. 07-3541, 2013 WL 4697994, at *10 (D.N.J. Aug. 30, 2013). This procedure safeguards class members' due process rights and enables the court to fulfill its role as the guardian of class interests. *See In re GMC*, 55 F.3d at 785; *Hanlon v. Palace Entm't Holdings, LLC*, No. 11-987, 2012 WL 27461, at *5 (W.D. Pa. Jan. 3, 2012) (explaining that at the preliminary approval phase, the "court must only 'make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms'" (quoting Manual for Complex Litigation (Fourth), § 21.632 (2011))). "The ultimate approval of a class action settlement depends on 'whether the settlement is fair, adequate, and reasonable.'" *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007) (quoting *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 965 (3d Cir. 1983)). However, "[i]n evaluating a proposed settlement for preliminary approval… the Court is required to determine only whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval." *Id*. (citations omitted). "Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient." *Smith*, 2007 WL 4191749, at *1 (internal quotation marks omitted). "Preliminary approval is appropriate where the proposed settlement is

the result of the parties' good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason." *Id.*

Because there are no "obvious deficiencies" in the Settlement Agreement here, nor any "grounds to doubt its fairness," the standards for granting preliminary approval are readily satisfied. Plaintiffs respectfully submit that this Settlement is fair, adequate, and reasonable; that the requirements for final approval will be satisfied; and that Class Members will be provided with notice in a manner that satisfies the requirements of due process and Fed R. Civ. P. 23(e). Therefore, this Court is respectfully requested to enter the Proposed Order granting preliminary approval, which will: (i) grant preliminary approval to the proposed Settlement; (ii) conditionally certify the Class and appoint Class Counsel pursuant to the provisions of Fed R. Civ. P. 23; (iii) schedule a Final Approval Hearing; and (iv) direct that notice of the proposed Settlement and hearing be provided to Class Members in a manner consistent with the agreed-upon notice provisions in the Settlement Agreement.

B. The Settlement Is Fair, Reasonable and Adequate

Unlike at the final approval stage, the court, at the preliminary approval stage does not undertake a full and complete fairness review. *See Smith*, 2007 WL 4191749, at *1. Instead, the court's duty is to conduct a threshold examination of the overall fairness and adequacy of the settlement in light of the likely outcome

and the cost of continued litigation. *See generally Gregory v. McCabe, Weisberg & Conway, PC.*, No. 13-6962 (AMD), 2014 WL 2615534, at *2 (D.N.J. June 12, 2014). In making this assessment at the preliminary approval stage, district courts within the Third Circuit typically consider factors such as: (i) whether the negotiations occurred at arm's length; (ii) whether there was sufficient discovery to support the proposed settlement; and (iii) whether the proponents of the settlement are experienced in similar litigation. *See Gregory*, 2014 WL 2615534, at *2 & n. 6; *see also Curiale v. Lenox Group, Inc.*, No. 07-1432, 2008 WL 4899474, at *9, n.4 (E.D. Pa. Nov. 14, 2008) (citations omitted); *Jones v. Commerce Bancorp, Inc.*, No. 05-5600 (RBK), 2007 WL 2085357, at *2 (D.N.J. July 16, 2007); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975) (considering the complexity of case, reaction of class members, stage of proceedings, risks associated with the litigation, ability of the defendant to withstand a greater settlement, and whether the settlement falls within the range of reasonableness).

In light of these standards, the criteria for granting preliminary approval to the proposed Settlement of this complex class action lawsuit are met. The Settlement Agreement represents the culmination of extensive and intensive arm's-length negotiations over the course of several months. Plaintiffs are represented by attorneys with considerable experience in consumer fraud and advertising class action litigation and who are therefore well-versed in the issues. Defendant is

similarly represented by counsel with extensive experience defending consumer class actions and complex litigation matters.

With respect to the monetary consideration paid by the Defendant, there are two distinct, substantial benefits to the Class. First, the Defendant has made a common fund available to compensate members of the Class. The $1,500,000 amount was negotiated following extensive discussions between the parties as to the respective strengths and weaknesses of their claims, and an evaluation of economic harm inflicted by Defendant's alleged conduct on the proposed Class. Second, Defendant provided additional relief in the form of a change in its labeling, made as a result of the lawsuit and which reflects the allegations in the lawsuit.

Given these benefits, the proposed Settlement Agreement falls well within the range of reasonableness. Indeed, there is generally "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class is presented for court approval." Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions §11:41, at 90 (4th ed. 2002). Class counsel's judgment that the settlement is fair and reasonable is entitled to great weight. *See Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962

F. Supp. 450, 543 (D.N.J. 1997) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (court is "entitled to rely upon the judgment of experienced counsel for the parties")), aff'd, 148 F.3d 283 (3d. Cir. 1998), *cert. denied*, 525 U.S. 1114 (1999). Finally, the Settlement will also remove the uncertainties and risks to both parties from proceeding further in the litigation. For these reasons, preliminary approval should be granted.

C. Certification Of The Proposed Class For Purposes Of Settlement Only Is Appropriate

Both the Supreme Court and various circuit courts have recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). As such, Plaintiffs seek the conditional certification of the Class set forth above and in the Settlement Agreement. "For the Court to certify a class, the plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b)." *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 564 (D.N.J. 2010). The four requirements of Fed. R. Civ. P. 23(a) are numerosity, commonality, typicality, and adequacy. In addition, Plaintiffs seek certification of the Class for purposes of Settlement pursuant to Rule 23(b)(3), which provides that certification is appropriate where "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members

[predominance], and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy [superiority]." Fed R. Civ. P. 23(b)(3). As discussed below, these requirements are met for purposes of settlement in this case.

1. Numerosity Under Rule 23(a)(1)

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed R. Civ. P. 23(a)(1). "Generally, if the named plaintiff demonstrates the potential number of plaintiffs exceeds 40, the numerosity requirement of Rule 23(a) has been met." *In re OSB Antitrust Litig*., No. 06-826, 2007 U.S. Dist. LEXIS 56584, at *5 (E.D. Pa. Aug. 3, 2007); *see also Zinberg v. Washington Bancorp, Inc.*, 138 F.R.D. 397, 405 (D.N.J. 1990) ("It is proper for the court to accept common sense assumptions in order to support a finding of numerosity."). During the Class Period, Defendant sold millions of units of the Product annually in the United States. Even assuming that there were individual Class Members who bought multiple units, the number of Class Members far exceeds that which would be necessary to satisfy the numerosity requirement. *See Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001) (numerosity requirement satisfied "if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40"). Numerosity is, therefore, easily satisfied.

2. Commonality Under Rule 23(a)(2)

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "A finding of commonality does not require that all class members share identical claims, and factual differences among the claims of the putative class members do not defeat certification." *In re Prudential Ins. Co. Sales Litig.*, 148 F.3d 283, 310 (3d Cir. 1998). The Supreme Court has stated that Rule 23(a)(2)'s commonality requirement is satisfied where the plaintiffs assert claims that "depend upon a common contention" that is "of such a nature that it is capable of classwide resolution -- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). Both the majority and dissenting opinions in that case agreed that "for purposes of Rule 23(a)(2) even a single common question will do." *Id.* at 2556.

In this case, there are a myriad of common questions of law and fact, such as: (a) whether the labels and advertising of the Arm & Hammer® Essentials™ Deodorant with the Old Label were false and misleading; (b) whether Defendant's acts and practices in connection with the promotion, marketing, advertising, packaging, labeling, distribution, and sale of the Arm & Hammer® Essentials™ Deodorant with the Old Label violated the applicable deceptive trade practices statutes; (c) whether Defendant's conduct, as set forth in the Amended Complaint,

injured members of the Class; (d) whether Class Members have been damaged by the wrongs complained of herein; and (e) if so, the measure of those damages and the nature and extent of other relief that should be provided. Commonality is, therefore, satisfied.

3. Typicality Under Rule 23(a)(3)

In considering typicality under Rule 23(a)(3), the court must determine whether "the named plaintiffs' individual circumstances are markedly different or ... the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based." *Johnston v. HBO Film Mgmt., Inc.,* 265 F.3d 178, 184 (3d Cir. 2001). "If the claims of the named plaintiffs and class members involve the same conduct by the defendant, typicality is established." *Inmates of the Northumberland County*, No. 08-cv-345, 2009 U.S. Dist. LEXIS 126479, at *71 (M.D. Pa. Mar. 17, 2009) (quoting *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 259 F.3d 154, 183-84 (3d Cir. 2001)). As the Third Circuit explained in *Warfarin Sodium*:

> [T]he claims of the representative plaintiffs arise from the same alleged wrongful conduct on the part of [the defendant], specifically the alleged misrepresentation and deception regarding the equivalence of generic warfarin sodium and Coumadin. The claims also arise from the same general legal theories.

391 F.3d at 532. The same is true here, where the Class Members all purchased the Arm & Hammer® Essentials™ Deodorant with the Old Label pursuant to the

alleged misrepresentations on its label. Amended Complaint (D. I. 44) at ¶¶ 40-48; *see also Jones*, 2007 WL 2085357, at *3. Moreover, there are no individual facts unique to any of the proposed Class Representatives that would make their claims atypical. Because the claims of Plaintiffs and the Class Members "all arise from the alleged misrepresentations by [the Defendant]," the typicality requirement is met. *Johnston*, 265 F.3d at 185.

4. Adequacy Of Representation Under Rule 23(a)(4)

The final requirement of Rule 23(a) is that "the representative part[y] will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). There are two criteria for determining whether the representation of the class will be adequate: 1) the representative must have common interests with unnamed members of the class; and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel. *See Jones*, 2007 WL 208535 at *4; *Gregory*, 2014 WL 261534, at *7.

In addressing the adequacy of the proposed class representative(s), district courts examine whether he or she "has the ability and incentive to represent the claims of the class vigorously, that he or she has obtained adequate counsel, and that there is no conflict between the individual's claims and those asserted on behalf of the class." *Ritti v. U-Haul Int'l., Inc.*, 05-4182, 2006 U.S. Dist. LEXIS 23393, at *15 (E.D. Pa. Apr. 26, 2006). Here, each of the Class Representatives is

adequate in that they purchased the Arm & Hammer® Essentials™ Deodorant with the Old Label based upon the labeling claims and were allegedly injured in the same manner. They have actively participated in the prosecution of this case, including communicating with their attorneys regarding the case investigation, the claims asserted and the Settlement negotiations. With respect to the adequacy of Class Counsel, they have invested considerable time and resources into the prosecution of this action. Class Counsel have a wealth of experience in litigating complex class action lawsuits and have competently and aggressively prosecuted this matter and were able to negotiate an outstanding Settlement for the Class in this case. The adequacy requirement is, therefore, met here. The firm resume of Shepherd Finkelman Miller & Shah, LLP is attached as Exhibit "B" to the Shah Declaration.

5. The Requirements Of Rule 23(b)(3) Are Met

Plaintiffs seek to certify the Class under Rule 23(b)(3), which has two components: predominance and superiority. *See* Fed. R. Civ. P. 23(b)(3). When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only and that a showing of manageability at trial is not required. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 618 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable

management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial.").

With respect to predominance, the Third Circuit has reiterated that the focus of the "inquiry is on whether the defendant's conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant's conduct." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 298 (3d Cir. 2011) (*en banc*). "To determine whether common issues predominate over questions affecting only individual members, the Court must look at each claim upon which the plaintiffs seek recovery … determine whether generalized evidence exists to prove the elements of the plaintiffs' claims on a simultaneous, class-wide basis, or whether proof will be overwhelmed by individual issues." *Dewey*, 728 F. Supp. 2d at 568. With respect to superiority, the court "considers whether or not a class action is a superior method of fairly and efficiently adjudicating the controversy." *Id*. at 569. Rule 23(b)(3) provides a non-exhaustive list of factors to be considered when making this determination. These factors include: (i) the class members' interests in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already begun by or against class members; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (iv) the likely difficulties in managing a class action. *Id.* (quoting Fed. R. Civ. P. 23(b)(3)).

Here, there are numerous common questions of law and fact that predominate over any questions that may affect individual Class Members. For example, if this case were to proceed, the primary issue would be whether Defendant is liable to the Class under the claims pled in the Amended Complaint based on the labeling claims on the Arm & Hammer® Essentials™ Deodorant with the Old Label. This is an issue subject to generalized proof, and it is common to all Class Members. *See Jones*, 2007 WL 208535, at *4; *Gregory*, 2014 WL 261534, at *5-*7; *Smith*, 2007 WL 4191749, at *4. Accordingly, the predominance prong of Rule 23(b)(3) is satisfied.

The second prong of Rule 23(b)(3) - that a class action be superior to other available methods for the fair and efficient adjudication of the controversy - also is readily satisfied. *See* Fed. R. Civ. P. 23(b)(3). The Settlement Agreement provides Members of the Class with the ability to obtain prompt, predictable, and certain relief, and it contains well-defined administrative procedures to ensure due process. This includes the right of Class Members who may be dissatisfied with the Settlement to object or exclude themselves from it. The Settlement also will relieve the substantial judicial burdens that would be caused by repeated adjudication of the same issues in thousands of individualized trials against Defendant by going forward with this case as a class action. And because the parties seek to resolve this case through a Settlement, any manageability issues that

could have arisen at trial are marginalized. *Sullivan*, 667 F.3d 273, 302-303 (3d Cir. 2011); *In re Ins. Brokerage Antitrust Litig*., 579 F.3d 241, 269 (3d Cir. 2009). Finally, the parties are not aware of any other pending lawsuit, class action or otherwise, brought by a Class Member against Defendant for the conduct alleged in this case. Therefore, "class status here is not only the superior means, but probably the only feasible [way]…to establish liability and perhaps damages." *Augustin v. Jablonsky*, 461 F.3d 219, 229 (2d Cir. 2006) (quoting *Tardiff v. Knox County*, 365 F.3d 1, 7 (1st Cir. 2004)).

In sum, because the requirements of Rule 23(a) and Rule 23(b)(3) are satisfied, conditional certification of the proposed Class for purposes of Settlement is appropriate.

D. The Court Should Approve The Notice Plan

Under Fed. R. Civ. P. 23(e), class members who would be bound by a settlement are entitled to reasonable notice of it before the settlement is ultimately approved by the Court. *See* Fed. Jud. Ctr., Manual for Complex Litig. (3d ed. 1995) § 30.212. And because Plaintiffs here seek certification of the Class under Rule 23(b)(3), "the Court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable efforts." *See In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 U.S. Dist. LEXIS 119870, at

*42-43 (W.D.Ky. Dec. 22, 2009) (citing Fed. R. Civ. P. 23(c)(2)(B)). In order to satisfy these standards and "comport with the requirements of due process, [the] notice must be 'reasonably calculated to reach interested parties.'" *Id.* at *43 (*q*uoting *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008)); *DeBoer v. Mellon Mortgage Co.*, 64 F.3d 1171, 1176 (8th Cir. 1995) ("Notice of a settlement proposal need only be as directed by the district court... and reasonable enough to satisfy due process.").

The content of the proposed Short and Long Notices (collectively "the Notices") complies with the requirements of Rules 23(c)(2) and 23(e). The Notices clearly and concisely explain the nature of the Action, the Class and the terms of the Settlement. They provide a clear description of the Class and the binding effect of Class membership. The Notices also explain how to exclude oneself from the Class, the right to object to the Settlement Agreement, how to obtain copies of the Notices and Settlement Agreement, and how to contact the Administrator or Class Counsel. *See* Shah Decl., Settlement Agreement, Exhibits 1-3.

The parties propose the most efficient notice program possible, taking into consideration the desire to reach a broad cross-section of Class Members and to maximize the opportunity for Members of the Class to understand the nature of the Class and the Settlement and to respond appropriately if they so choose. Class

Counsel, with Defendant's approval, has retained the Administrator to facilitate issuance of notice, and the Administrator has designed a multi-pronged notification effort that includes published notice, an online internet campaign and press releases. In addition, a neutral information website will be established, at www.churchanddwightsettlement.com, where Class Members can obtain additional information about the case. The costs of Notice and claims administration will be paid by Defendant and not out of the Settlement Fund.

Pursuant to the Notice Plan, the Short Form Notice (substantially in the form attached as Exhibit 2 to the Settlement Agreement) will be utilized in the published notice. In addition, the internet website (www.churchanddwightsettlment.com) shall post case and Settlement-related materials, including all Orders Granting Preliminary Approval and the forms of notice, as well as a toll-free information number. The internet domain name and toll-free number will be identified on the Notices. Finally, the substance of the proposed Class Notices will include all necessary legal requirements and provide a comprehensive explanation of the Settlement in simple, non-legalistic terms. *See* Fed. R. Civ. P. 23(c)(2)(B). Such notice plans are commonly used in class actions involving consumer goods like this one and constitute valid, due and sufficient notice to class members, and satisfy both Rule 23(c)(2)(B)'s "best notice practicable" standard and Rule

23(e)(1)'s "notice in a reasonable manner" standard. *See, e.g.*, Moore's Federal Practice - Civil § 23.102[3][a]-[c]. Accordingly, Plaintiffs respectfully request that the Court approve the agreed-upon plan of notice.

E. A Final Approval Hearing Should Be Scheduled

The Court should schedule a Final Approval Hearing to decide whether to grant final approval to the Settlement, address Class Counsel's request for Attorneys' Fees and Expenses and a service award for the Class Representatives, and determine whether to dismiss this Action with prejudice. *See* Fed. Jud. Ctr., Manual for Complex Litig. § 30.44 (3d ed. 1995); *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 600 (3d Cir. 2010). Plaintiffs respectfully request that the Final Approval Hearing be scheduled.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order: (1) conditionally certifying a class with respect to the claims against Defendant pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) for the purpose of effectuating a class action Settlement of the claims against the Defendant; (2) preliminarily approving the Settlement; (3) directing notice to Class Members consistent with the Notice Plan in the Settlement; and (4) scheduling a Final Approval Hearing. A Proposed Order is submitted herewith as Exhibit 4 to the Settlement Agreement.

DATED: July 16, 2014

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