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12 Attorneys for Plaintiff
 13 PAUL ENGEL

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

18 PAUL ENGEL, on behalf of himself and others
 similarly situated,

19
 20 Plaintiff,

21 vs.

22 EMD SERONO, INC.,,

23 Defendant.

No. C 07 0117 CW

**ORDER GRANTING STIPULATION TO
 CORRECT SUBCLASS B DESIGNATION**

24 It is hereby stipulated by and between Plaintiff Paul Engel and the Class he represents, and
 25 Defendant EMD Serono, Inc., by and through their counsel of record, and subject to the approval of
 26 this Court, that:

27 WHEREAS the Court granted final approval of the parties' Stipulation of Settlement and
 28 Release ("Stipulation of Settlement") by its May 8, 2008 Order: (1) Finally Approving Class Action

1 Settlement And Plan Of Distribution; (2) Entering Final Judgment; (3) Approving Service Payment
2 To Named Plaintiff Paul Engel; (4) Approving The Payment Of Reasonable Costs Of Administration;
3 And (5) Reserving Jurisdiction (the “Final Approval Order”);

4 WHEREAS the Final Approval Order, paragraph 14, reserved to the Court continuing
5 jurisdiction over the settlement administration in this action;

6 WHEREAS on July 30, 2008, the Court previously signed a similar Stipulation and Order to
7 Correct Subclass B Designation in Final Approval Order to include Mr. Phineas Leevy as a member
8 of Subclass B, entitled to receive the benefits of the Settlement and subject to all the terms and
9 conditions of the Stipulation of Settlement and the Final Approval Order;

10 WHEREAS during the course of the settlement administration the parties have noted the need
11 to add three additional persons to Subclass B (“the California Class”);

12 WHEREAS Ms. Gina Guinasso formerly was employed by EMD Serono as a Key Account
13 Manager (“KAM”) and in that capacity was eligible to be a member of the Class in this action;

14 WHEREAS Ms. Guinasso was employed by EMD Serono as a KAM resident in California
15 from the beginning of the Class period on January 8, 2003 until May 1, 2005 and thereafter was
16 employed by it in a different capacity in Washington state;

17 WHEREAS EMD Serono recently discovered that, through clerical oversight, Ms. Guinasso
18 was not included on the list of Subclass B members that received the Notice Of Collective Action
19 Lawsuit (“Class Notice”), and Ms. Guinasso did not opt-in and did not become a member of Subclass
20 A (the “FLSA Collective Action Class”);

21 WHEREAS Subclass A is an opt-in class pursuant to the FLSA, whereas Subclass B is an
22 opt-out class pursuant to Rule 23, F.R.Civ.P.;

23 WHEREAS the Stipulation of Settlement contained a list of members of Subclass B (the
24 “California Class”) that that should have but did not include Ms. Guinasso;

25 WHEREAS Ms. Guinasso is represented by the Class Counsel;

26 WHEREAS the parties agree that Ms. Guinasso should be included within Subclass B in the
27 Stipulation of Settlement and receive the benefits of the Settlement, and she does not wish to opt-out
28 of the Class nor object to the Settlement;

1
2 WHEREAS Ms. Mariah Martin was and is employed by EMD Serono as a KAM;

3 WHEREAS Ms. Martin was first employed by EMD Serono as a KAM resident in California
4 on December 5, 2007 and between then and the end of the Class period on March 10, 2008;

5 WHEREAS Ms. Martin was first employed by EMD Serono as a KAM resident in California
6 after the settlement of this case on October 10, 2007 and did not originally receive notice of the
7 Action;

8 WHEREAS Ms. Martin contacted in-house counsel for EMD Serono and inquired concerning
9 whether she was in the Settlement Class and could be eligible for a settlement payment;

10 WHEREAS as a matter of business judgment, and without admitting any liability, EMD
11 Serono would like to include Ms. Martin in the Settlement, and the parties agree that she should be
12 included in the Settlement;

13 WHEREAS, with the consent of Class Counsel, Ms. Martin has had the facts stated above
14 explained to her by the in-house counsel for EMD Serono orally and in writing; has received the
15 Notice Of Class Action And Collective Action Settlement And Release (“Notice of Settlement”); has
16 had the opportunity to consult with Class Counsel; and has informed counsel for the parties in writing
17 (attached hereto as Exhibit A) that she wishes to receive the benefits of the Settlement and does not
18 wish to opt-out of the Class nor object to the Settlement;

19 WHEREAS the parties agree that Ms. Martin should be included within Subclass B in the
20 Stipulation of Settlement and receive the benefits of the Settlement;

21 WHEREAS Mr. William O’Kane was and is employed by EMD Serono as a KAM;

22 WHEREAS Mr. O’Kane was first employed by EMD Serono as a KAM resident in California
23 on January 21, 2008 and from then until the March 10, 2008 end of the Class period;

24 WHEREAS Mr. O’Kane was employed by EMD Serono as a KAM resident in California
25 after the settlement of this case on October 10, 2007 and after the submission of Plaintiff’s Notice of
26 Motion and Motion for Order: (1) Provisionally Certifying Settlement Class; (2) Preliminarily
27 Approving Class Action Settlement and Plan of Distribution; (3) Directing Distribution of Notice of
28 the Settlement; and (4) Setting a Schedule for the Final Settlement Approval Process on December

1 19, 2007, and he did not originally receive notice of this Action;

2 WHEREAS during the course of investigating the circumstances of Ms. Guinasso and Ms.
3 Martin, EMD Serono discovered that Mr. O’Kane was employed by EMD Serono after the
4 Settlement of this case on October 10, 2007;

5 WHEREAS as a matter of business judgment, and without admitting any liability, EMD
6 Serono would like to include Mr. O’Kane in the Settlement, and the parties agree that he should be
7 included in the Settlement;

8 WHEREAS, with the consent of Class Counsel, Mr. O’Kane has had the facts stated above
9 explained to him by the in-house counsel for EMD Serono orally and in writing; has received the
10 Notice Of Class Action And Collective Action Settlement And Release (“Notice of Settlement”); has
11 had the opportunity to consult with Class Counsel; and has informed counsel for the parties in writing
12 (attached hereto as Exhibit B) that he wishes to receive the benefits of the Settlement and does not
13 wish to opt-out of the Class nor object to the Settlement;

14 WHEREAS the parties agree that Mr. O’Kane should be included within Subclass B in the
15 Stipulation of Settlement and receive the benefits of the Settlement;

16 WHEREAS the parties agree that Ms. Guinasso, Mr. O’Kane and Ms. Martin should each be
17 included within Subclass B in the Stipulation of Settlement and receive the benefits of the Settlement;

18 WHEREAS the parties have agreed that, subject to the approval of this Court, EMD Serono
19 will add to the prior \$1,708,622.19 Settlement Payment the sum of \$ 31,426.70 and that, pursuant to
20 the formula stated in the Stipulation of Settlement, Ms. Guinasso’s share of the new total Settlement
21 Payment of \$1,740,048.89 is \$28,805.22; Mr. O’Kane’s share of the new total Settlement Payment of
22 \$1,740,048.89 is \$822.93; and Ms. Martin’s share of the new total Settlement Payment of
23 \$1,740,048.89 is \$1,798.55; such that Ms. Guinasso, Mr. O’Kane, and Ms. Martin each receives his
24 or her allocable share of the Settlement as if they originally had been included in the Settlement, and
25 no other Class member’s share is reduced; and from which amounts the Settlement Administrator
26 shall pay to the appropriate governmental entities the employees’ and employer’s share of any payroll
27 withholding payments as required by law pursuant to paragraph 2 of the Stipulation of Settlement;

28 WHEREAS EMD Serono shall bear any additional settlement administration costs, if any, of

1 the recalculations stated above;

2 NOW, THEREFORE, IT IS HEREBY STIPULATED, subject to the approval of the Court,
3 that:

4 1. Ms. Gina Guinasso, Mr. William O’Kane, and Ms. Mariah Martin each shall be included
5 within Subclass B in the Stipulation of Settlement and receive the benefits of the Settlement; and

6 2. EMD Serono shall add to the \$1,708,622.19 Settlement Payment the sum of \$31,426.70,
7 for a new total Settlement Payment of \$1,740,048.89; and, pursuant to the formula stated in the
8 Stipulation of Settlement, Ms. Guinasso’s share of the new total Settlement Payment of
9 \$1,740,048.89 is \$28,805.22, Mr. O’Kane’s share of the new total Settlement Payment of
10 \$1,740,048.89 is \$822.93; and Ms. Martin’s share of the new total Settlement Payment of
11 \$1,740,048.89 is \$ 1,798.55; from which amounts the Settlement Administrator shall pay to the
12 appropriate governmental entities the employees’ and employer’s share of any payroll withholding
13 payments as required by law pursuant to paragraph 2 of the Stipulation of Settlement; and

14 3. EMD Serono shall bear any additional settlement administration costs, if any, of the
15 recalculation stated above; and

16 4. Ms. Gina Guinasso, Mr. William O’Kane, and Ms. Mariah Martin each shall be made a
17 member of Subclass B subject to all the terms and conditions of the Stipulation of Settlement and the
18 Final Approval Order.

19
20 DATED: February 25, 2009

NIXON PEABODY LLP

21
22 By: _____/s/
23 Paul J. Hall

24 Attorneys for Defendant
25 EMD SERONO, INC.
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DATED: February 25, 2009

RUDY AXELROD & ZIEFF, LLP

By: _____
/s/ John T. Mullan
Attorneys for Plaintiff
PAUL ENGEL and the Class he represents

1 **ORDER**

2 Based upon the foregoing Stipulation of the Parties, and good cause appearing therefor,
3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

4 1. Ms. Gina Guinasso, Mr. William O’Kane, and Ms. Mariah Martin each shall be, and they
5 hereby are, included within Subclass B in the Stipulation of Settlement and shall receive the benefits
6 of the Settlement; and

7 2. EMD Serono shall add to the \$1,708,622.19 Settlement Payment the sum of \$31,426.70,
8 for a new total Settlement Payment of \$1,740,048.89; and, pursuant to the formula stated in the
9 Stipulation of Settlement, Ms. Guinasso’s share of the new total Settlement Payment of
10 \$1,740,048.89 is \$28,805.22, Mr. O’Kane’s share of the new total Settlement Payment of
11 \$1,740,048.89 is \$822.93; and Ms. Martin’s share of the new total Settlement Payment of
12 \$1,740,048.89 is \$ 1,798.55; from which amounts the Settlement Administrator shall make any
13 required payroll withholding payments as required by law pursuant to paragraph 2 of the Stipulation
14 of Settlement; and

15 3. EMD Serono shall bear any additional settlement administration costs, if any, of the
16 recalculation stated above; and

17 4. Ms. Gina Guinasso, Mr. William O’Kane, and Ms. Mariah Martin each shall be, and they
18 hereby are, made a member of Subclass B subject to all the terms and conditions of the Stipulation of
19 Settlement and the Final Approval Order.

20 Dated: March 5, 2009



21 Honorable Claudia Wilken
22 United States District Judge