



July 24, 2007

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Honorable Joel Schneider
United States Magistrate Judge
District of New Jersey
Mitchell H. Cohen Courthouse
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Camden, NJ 08101-0887

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Re: *Center for Science in the Public Interest v. The Coca-Cola Company, et al.*, Civil No. 07-539 (JHR); *Melfi v. The Coca-Cola Company, et al.*, Civil No. 07-828 (NLH)

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Dear Judge Schneider:

This letter responds to your June 14, 2007 Letter Order requesting that the parties address whether the referenced *CSPI* and *Melfi* actions should be consolidated for discovery and case management purposes. Defendants also wish to notify the Court of a development in a third case, *Simmens v. The Coca-Cola Company, et al.*, United States District Court, Eastern District of Pennsylvania, Civil No. 07-668, relevant to the issue of potential consolidation. On July 3, 2007, Judge Jan DuBois granted Defendants' motion to transfer *Simmens* to the District of New Jersey, finding that a transfer will promote the just and efficient resolution of that case. A copy of Judge DuBois' Order and the operative complaint in *Simmens* is enclosed. *Simmens* has not yet been docketed in this court.

Simmens was filed by the same counsel representing Ms. Melfi, and the complaint is virtually identical to the complaint in *Melfi*. As in *Melfi*, *Simmens* seeks to certify a nationwide class of purchasers of Enviga. The cases differ only with respect to the statewide classes alleged – *Simmens* seeks to certify a class of Pennsylvania purchasers whereas *Melfi* seeks to certify a class of New Jersey purchasers. *Simmens*, *Melfi* and *CSPI* constitute all of the actions currently pending in any court related to the marketing of Enviga.

Accordingly, Defendants respectfully request consolidation of these three actions for purposes of case management and discovery only pursuant to Fed. R. Civ. P. 42(a). See, e.g., *Ortho-McNeil Pharmaceutical, Inc. v. Kali Laboratories, Inc.*, No. 02-5707 (DMC), 2007 WL 1814080, * 5-6 (D.N.J.). Proceeding on different discovery

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Honorable Joel Schneider
July 24, 2007
Page 2

schedules in these three cases, which are now pending in the same jurisdiction, will result in needless duplication of time and effort on the part of both the parties and the Court.

To provide the Court a brief status update, the briefing of Defendants' Motion to Dismiss in *Simmens* has occurred on the same schedule as in *Melfi*. Defendants filed reply briefs in support of the motion in both cases on June 29, 2007. In addition, prior to transfer, Judge DuBois, at the request of the parties, entered a scheduling order in *Simmens* that is virtually identical to this Court's June 6, 2007 Order. A copy of the *Simmens* scheduling order is enclosed.

In *CSPI*, Defendants moved to dismiss the entirety of CSPI's claims for lack of standing, and CSPI's response to that motion was due on July 20, 2007. Rather than respond to the motion, CSPI chose to file an amended complaint on July 20, and Defendants anticipate moving to dismiss that complaint as well.

The discovery that is being conducted in *Melfi* and *Simmens* will be relevant in *CSPI* should that case progress. Thus, in light of the transfer of *Simmens* to the District of New Jersey, Defendants respectfully request that these three actions be consolidated for purposes of coordinated discovery and case management.

Respectfully,


Gita F. Rothschild

GFR/ks

cc: All Counsel