



substantially the same work as employees with those titles (discovery may reveal additional titles and employees that should be included):

- a. Pharmaceutical Sales Representative
- b. Professional Pharmaceutical Sales Representative
- c. Senior Pharmaceutical Sales Representative
- d. Specialty Sales Representative
- e. Senior Specialty Sales Representative

and who were employed during the statute of limitations period for the particular claim for relief in which the term Pharmaceutical Reps is used, including time during which the statute of limitation was or may have been tolled or suspended. The above job positions are referred to herein as “Covered Positions.”

3. In this pleading, “Defendants” means “defendants and each of them” and refers to the defendants named in the particular claim for relief in which the word “Defendants” appears. Defendants include Schering-Plough Corporation and all domestic affiliates and subsidiaries.

4. The allegations in this pleading are made without any admission that, as to any particular allegation, Plaintiffs bear the burden of pleading, proof, or persuasions. Plaintiffs reserve all rights to plead in the alternative.

#### **JURISDICTION AND VENUE**

5. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* This Court has supplemental jurisdiction over the state laws, presently consisting of the laws of New Jersey, but possibly consisting of the laws of other states, as may be

revealed in discovery. The state law claims are so related in this action within such original jurisdiction that the form part of the same case or controversy under Article III of the United States Constitution.

6. Venue is proper in this District because a substantial part of the events and omissions giving rise to the claims occurred in this District. Venue is proper in this District also because there is personal jurisdiction in this District over Defendant. Presently and at all times, Defendant has conducted substantial, continuous and systematic commercial activities in this District.

#### **PARTIES**

7. Defendant Schering-Plough Corporation (“Schering-Plough”) is a New Jersey corporation with its principal executive offices in New Jersey. Schering-Plough does business in all fifty states and the United States Territories.

8. Plaintiff Eugene Kuzinski is a New Jersey resident and was employed by Defendant in New Jersey for approximately 20 years, ending in March of 2006. Plaintiff was employed by Defendant in various positions, most recently as a Senior Pharmaceutical Sales Representative. Plaintiff worked hours in excess of forty (40) hours per workweek without receiving overtime compensation as required by federal law.

9. Plaintiff Marc Campano is a Connecticut resident and was employed by Defendant in Connecticut ending in June of 2004. Plaintiff was employed by Defendant in various positions, most recently as a Senior Pharmaceutical Sales Representative. Plaintiff worked hours in excess of forty (40) hours per workweek without receiving overtime compensation as required by federal law.

10. Plaintiff Shawn Jones is a Texas resident and was employed by Defendant in Texas as a Specialty Pharmaceutical Sales Representative. Plaintiff worked hours in excess of forty (40) hours per workweek without receiving overtime compensation as required by federal law.

11. Plaintiff Jerrold Harris is a Texas resident and was employed by Defendants in Texas ending in December of 2006. Plaintiff was employed by Defendants in various positions, most recently as a Professional Pharmaceutical Sales Representative. Plaintiff worked hours in excess of forty (40) hours per workweek, without receiving overtime compensation as required by federal law.

#### **FACTS**

12. Plaintiffs Kuzinski, Campano, Jones and Harris are hereinafter collectively referred to as "Plaintiffs."

13. Plaintiffs hereby consent to sue pursuant to the FLSA § 16.

14. Upon information and belief, Defendant employs thousands of pharmaceutical sales representatives in the United States and hundreds within the States New Jersey.

15. Plaintiffs and Pharmaceutical Reps were paid a salary plus commissions for work performed.

16. Specifically, upon information and belief, Defendant's managers, with the knowledge and consent of corporate management, systemically violated the law throughout New Jersey and the United States by failing to pay employees overtime compensation for hours worked in excess of forty hours per week

17. As set forth above, Plaintiffs were employed by Defendant. During this time, Plaintiffs on a regular basis worked over 40 hours per week.

18. Plaintiffs have sustained substantial losses from Defendant's failure to pay them overtime compensation.

19. Upon information and belief, other employees who worked for Defendant throughout New Jersey and the United States and who are FLSA Collective Plaintiffs or members of the New Jersey class were subjected to the same policies and practices and have sustained similar losses of compensation for numerous hours worked on behalf of Defendant.

20. Defendant, through its corporate management and regional and district managers, has deliberately trained, supervised, instructed, and authorized its managerial employees to engage in the above unlawful practices and has ratified its actions thereafter, in order to enhance corporate profits and reduce its labor costs.

#### **FLSA COLLECTIVE ACTION ALLEGATIONS**

21. Plaintiff brings the First Claim for Relief for violation of the Fair Labor Standards Act ("FLSA") as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b) on behalf of all Pharmaceutical Reps employed by Defendant on or after the date that is three years before the filing of the Complaint in this case as defined herein ("FLSA Collective Plaintiffs").

22. At all relevant times, Plaintiff and the other FLSA Collective Plaintiffs are and have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendant's decision, policy, plan and common policies, programs, practices, procedures, protocols, routines, and rules (1) willfully

failing and refusing to pay them at the legally required time an a half rates for work in excess of forty (40) hours pre workweek, (2) willfully and inaccurately classifying them as exempt from overtime pay even though Defendant was aware that the FLSA Collective Plaintiffs were non-exempt and entitled to overtime pay, and (3) willfully failing to keep records required by the FLSA. The claims of Plaintiff stated herein are essentially the same as those of the other FLSA Collective Plaintiffs.

23. The First Claim for Relief is properly brought under and maintained as an opt-in collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. 216(b). The FLSA Collective Plaintiffs are readily ascertainable. For purpose of notice and other purposes related to this action, their names and addresses are readily available from the Defendant. Notice can be provided to the FLSA Collective Plaintiffs via first class mail to the last address known to Defendant.

#### **RULE 23 CLASS ALLEGATIONS – NEW JERSEY**

24. Plaintiff Kuzinski (“New Jersey Plaintiff”) brings the New Jersey Claims for Relief, pursuant to the Federal Rules of Civil Procedure (“FRCP”) Rule 23, on behalf of all persons who were, are, or will be employed by Defendant on or after the date that is two years before the filing of the Complaint in this case (the “Class Period”).

25. The proposed class that the New Jersey Plaintiff seeks to represent is defined as all persons who have been, are, or in the future will be employed in New Jersey by Defendants in any of the “Covered Positions.” All said persons, including the New Jersey Plaintiff, are referred to herein as the “New Jersey Class.” The New Jersey Class members are readily ascertainable. The number and identity of the New Jersey Class members are determinable from the records of Defendant. The hours assigned and

worked, the positions held, and the rates of pay for each New Jersey Class member are also determinable from Defendant's records. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendant. Notice can be provided by means permissible under said FRCP 23.

26. The proposed New Jersey Class is so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the court. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of Defendant, upon information and belief, there are more than one hundred (100) members of the New Jersey Class.

27. New Jersey Plaintiff's claims are typical of those claims which could be alleged by any member of the New Jersey Class, and the relief sought is typical of the relief which would be sought by each member of the New Jersey Class in separate actions. All the New Jersey Class members were subject to the same corporate practices of Defendant, as alleged herein, of failing to pay overtime compensation and failing to maintain accurate records. Defendant's corporate-wide policies and practices affected all New Jersey Class members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each New Jersey Class member. The New Jersey Plaintiff and other New Jersey Class members sustained similar losses, injuries and damages arising from the same unlawful policies, practices and procedures.

28. The New Jersey Plaintiff is able to fairly and adequately protect the interests of the New Jersey Class and has no interests antagonistic to the New Jersey Class. The New Jersey Plaintiff is represented by attorneys who are experienced and

competent in both class action litigation and employment litigation and have previously represented plaintiffs in wage and hour cases.

29. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries and damages suffered by each of the individual New Jersey Class members are small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual New Jersey Class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual members of the New Jersey Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the New Jersey Class, establishing incompatible standards of conduct for Defendants and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In

addition, if appropriate, the court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

30. Upon information and belief, Defendant and other employers throughout the state violate the New Jersey Minimum Wage Act. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity which allows for the vindication of their rights while eliminating or reducing these risks.

31. There are questions of law and fact common to the New Jersey Class which predominate over any questions affecting only individual class members, including:

- a) Whether Defendant employed or jointly employed the New Jersey Plaintiff and the New Jersey Class within the meaning of the New Jersey law.
- b) What proof of hours is sufficient where Defendant failed in its duty to maintain time records.
- c) What were the policies, practices, programs, procedures, protocols and plans of Defendant regarding payment of overtime wages.
- d) What were the policies, practices, programs, procedures, protocols and plans of Defendant regarding payment of wages for all hours worked.
- e) Whether Defendant failed and/or refused to pay the New Jersey Plaintiff and the New Jersey Class premium pay for hours worked in

excess of forty per workweek or eight hours per workday within the meaning of New Jersey law.

f) What are and were the policies, practices, programs, procedures, protocols and plans of Defendant regarding the types of work and labor for which Defendant did not pay the New Jersey Class members at all.

g) At what common rate, or rates subject to common methods of calculation, was and is Defendant required to pay the New Jersey Class members for their work.

h) What are the common conditions of employment and in the workplace, such as record keeping, breaks, and policies and practices regarding labor budgeting, that affect whether the New Jersey Class was paid at overtime rates for overtime work.

**FIRST CLAIM FOR RELIEF**  
**(for FLSA Overtime Violations)**

32. Plaintiffs and other FLSA Collective Plaintiffs reallege and incorporate by reference paragraphs 1-23.

33. Plaintiffs are informed and believe and thereon allege that at all relevant times, the Defendant has been, and continues to be, an “employer” engaged in interstate “commerce” within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, the Defendant has employed, and continues to employ the FLSA Collective Plaintiffs as “employee[s]” within the meaning of the FLSA. At all relevant times, the defendant has had gross operating revenues in excess of \$500,000.

34. Throughout the statute of limitations period covered by these claims, Plaintiffs and the other FLSA Collective Plaintiffs regularly worked in excess of forty (40) hours per workweek and continue to do so.

35. At all relevant times, Defendant has had, and continues to operate under a decision, policy and plan, and under common policies, programs, practices, procedures, protocols, routines and rules of willfully failing and refusing to pay the FLSA Collective Plaintiffs at time and a half rates for work in excess of forty (40) hours per workweek, and willfully failing to keep records required by the FLSA even though the FLSA Collective Plaintiffs have been and are entitled to overtime.

36. At all relevant times, Defendant willfully, regularly and repeatedly failed, and continues to fail to pay Plaintiffs and other FLSA Collective Plaintiffs at the required overtime rates, time and a half regular hourly rates, for hours worked in excess of forty (40) hours per workweek.

37. Plaintiffs and the FLSA Collective Plaintiffs seek damages in the amount of their respective unpaid overtime compensation, liquidated (double) damages as provided by the FLSA for overtime violations, attorneys' fees and cost, and such other legal and equitable relief as this Court deems just and proper.

**SECOND CLAIM FOR RELIEF**  
**(New Jersey Minimum Wage Act, N.J.S.A. §§ 34-11-56a et seq.)**  
**Brought by New Jersey Plaintiff on Behalf of**  
**Himself and the New Jersey Class**

38. New Jersey Plaintiff, on behalf of himself and the New Jersey Class, realleges and incorporates by reference paragraphs 1-20 and 24-31 as if they were set forth again herein.

39. It is unlawful under New Jersey law for an employer to suffer or permit a non-exempt employee to work without paying overtime wages for all hours worked in excess of forty (40) hour in any workweek.

40. Throughout the Class Period, Defendant willfully, regularly and repeatedly failed, and continues to fail to pay New Jersey Plaintiff and the New Jersey Class at the required overtime rates, one and a half times their regular hourly rates, for hours worked in excess of forty (40) hours per workweek.

41. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, New Jersey Plaintiff and the New Jersey Class members have sustained damages, including loss of earnings, in an amount to be established at trial, prejudgment interest, and costs, penalties and attorneys' fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all other FLSA Collective Plaintiffs, pray for relief as follows:

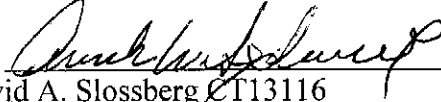
- A. A declaratory judgment that the practices complained of herein are unlawful under FLSA;
- B. Designation of Plaintiffs as representatives of the FLSA Collective Plaintiffs;
- C. Certification of the New Jersey state law claims as a class action brought pursuant to FRCP Rule 23;
- D. Designation of the New Jersey Plaintiff as representative of the New Jersey Class;

- E. An award of damages, according to proof, including liquidated damages, to be paid by Defendant;
- F. Penalties available under applicable law;
- G. Costs of action incurred herein, including expert fees;
- H. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216 and other applicable statutes;
- I. Pre-Judgment and post-judgment interest, as provided by law; and
- J. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

THE PLAINTIFFS

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