

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

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**In re SCHERING-PLOUGH CORP.
Intron/Temodar Consumer Class Action**

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**Master File No.
06-5774 (SRC) (CCC)**

CONSOLIDATED AMENDED CLASS COMPLAINT

I. NATURE OF THIS CLASS ACTION

1. Lead Plaintiffs, International Brotherhood of Teamsters Local No. 331 Health & Welfare Trust Fund and Heavy and General Laborer’s Local Union 472/172 Welfare Fund (collectively, “Lead Plaintiffs”), bring this class action

against Defendant, Schering-Plough Corporation (“Schering” or the “Company”), on behalf of a proposed class of health and welfare funds and third-party payors (collectively, “third-party payors”) that paid any portion of the purchase price for Intron-A, PEG-Intron and Rebetol (the “Intron Franchise drugs”) and/or Temodar, marketed and sold by Schering, from on or about January 1, 1999 to on or about December 31, 2003 (the “Class Period”).

2. Lead Plaintiffs allege the following upon information and belief, except as to those allegations concerning the Lead Plaintiffs, which are alleged upon personal knowledge. Lead Plaintiffs’ information and belief is based upon, among other things, the U.S. Government’s investigation of Schering for off-label prescription drug marketing activities that led to the entry of a federal criminal guilty plea by Schering Sales Corporation (“Schering Sales”), a subsidiary of Defendant Schering, for conspiring to make false statements to the U.S. Food & Drug Administration (the “FDA”), as well as Lead Plaintiffs’ counsel’s own investigation of Schering.

3. During the Class Period and in order to inflate the sale of Temodar and/or Intron Franchise drugs, Defendant Schering carried out an unlawful scheme to corrupt doctors’ judgment in two ways: First, Defendant Schering disseminated false and misleading information about the efficacy and safety of their drugs and, second, Defendant Schering paid doctors money to induce or persuade them to

prescribe Schering drugs, motivating the physicians to think about their own pocketbooks rather than their patient's health.

4. As set forth herein, during the Class Period, Defendant Schering illegally marketed Temodar and Intron Franchise drugs to doctors as being safe and effective for uses not approved by the FDA and induced doctors to prescribe Temodar and Intron Franchise drugs for their patients for such unapproved uses. For example, and as set forth fully herein, Schering marketed Intron A to doctors for the treatment of superficial bladder cancer, even though the FDA has *not* approved the drug as a safe and effective treatment for that illness. Also, Schering marketed Temodar as a first-line treatment for use by patients with brain tumors and brain metastases, even though the FDA did not approve the drug for this use during the Class Period. In furtherance of its illegal marketing scheme, Schering paid bribes and kickbacks to doctors to influence them to prescribe Temodar and Intron Franchise drugs for off-label uses when they otherwise would not have done so.

5. Schering also illegally paid bribes and kickbacks to doctors to prescribe Intron Franchise drugs to treat Hepatitis C, an approved use of the drug.

6. Additionally, as set forth more fully below, Schering devised numerous other schemes that compensated or otherwise rewarded doctors for prescribing Temodar and Intron Franchise drugs off-label.

7. Through improper payments to doctors and an off-label marketing scheme, Schering illegally inflated the number of prescriptions of Temodar and Intron Franchise drugs written during the Class Period. Lead Plaintiffs and third-party payors nationwide (the “Nationwide Class”), while unaware of Defendant Schering’s scheme, paid for these prescriptions. As a result of Schering’s illegal schemes, Schering received in excess of \$3.4 billion in before tax profits, representing ill-gotten gains to which it was not entitled.

8. Schering Sales, a subsidiary of Defendant Schering, has already admitted wrongdoing and pled guilty to federal criminal charges of conspiring to make false statements to the U.S. Government to hide the vast, illegal marketing and bribery scheme detailed in this Amended Complaint. Additionally, without admitting or denying wrongdoing, Schering agreed to settle civil claims for inflating the costs of Schering drugs to Medicare, Medicaid and other federal programs.

9. Lead Plaintiffs assert claims against Defendant Schering on behalf of the Nationwide Class under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961, *et seq.*; New Jersey’s Racketeer Influenced and Corrupt Organizations Act (“NJ RICO”), N.J.S.A. 2C:41-1, *et seq.*; the New Jersey Consumer Fraud Act (“CFA”), N.J.S.A. § 56:8-1 *et seq.*; civil conspiracy; unjust enrichment; fraudulent and negligent misrepresentation; and for an equitable

accounting of Schering's profits from the sale of Temodar and Intron Franchise drugs.

II. PARTIES

10. Plaintiff, General Laborer's Local Union 472/172 Welfare Fund ("Local 472/172 Fund"), is a Taft-Hartley welfare fund created pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.* Local 472/172 Fund is funded by contributions of participating employers and provides health and welfare benefits to covered employees and retirees. The address and place of business of Local 472/172 Fund is 700 Raymond Boulevard, Newark, New Jersey 07105. Local 472/172 Fund's health care coverage to eligible participants includes paying for medically necessary uses of drugs. During the Class Period, Local 472/172 Fund paid for an illegally inflated number of Temodar and Intron Franchise drug prescriptions on behalf of persons participating in Local 472/172 Fund's healthcare plan.

11. Plaintiff, International Brotherhood of Teamsters Local No. 331 Health & Welfare Trust Fund ("Local 331 Fund"), is a joint union-employer Taft-Hartley trust fund, organized and operating in the State of New Jersey. The address and place of business for Local 331 Fund is 117 West Washington Avenue, Pleasantville, New Jersey 08232. Local 331 Fund's health care coverage for eligible participants includes paying for medically necessary uses of drugs.

During the Class Period, Local 331 Fund paid for an illegally inflated number of Temodar and Intron Franchise drug prescriptions on behalf of persons participating in Local 331 Fund's healthcare plan.

12. Defendant Schering is a New Jersey corporation with its principal place of business located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033. The Company engages in the research, development, manufacture and marketing of prescription medicines and other therapeutic products. In 2005, Defendant Schering reported over \$9.5 billion in sales, of which \$1.96 billion – nearly 21% of the total – was attributable to sales of Temodar and Intron Franchise drugs.

13. ABC Corporations 1-10, present identities unknown, are business entities that participated in or assisted Defendant Schering in the unlawful conduct complained of herein.

14. John Does 1-10 and Jane Does 1-10 are individuals, present identities unknown, that participated in or assisted Defendant Schering in the unlawful conduct complained of herein.

15. Defendant Schering, ABC Corporations, and Jane and John Does acted by and through their employees, agents and servants, actual or ostensible, who then and there were acting within the course and scope of their duties, agency, employment and/or authority. The conduct complained of herein was uniformly

adopted and carried out by Defendant Schering in concert with John and Jane Does and ABC Corporations.

16. The research, design, marketing and advertising for Temodar and Intron Franchise drugs were centralized in Defendant Schering's New Jersey offices, and accordingly the acts and omissions complained of herein emanated from New Jersey.

III. JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this class action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because members of the Nationwide Class are citizens from a state different from Defendant Schering's corporate residence of New Jersey and the aggregate amount in controversy exceeds \$5,000,000. This Court has personal jurisdiction over the parties because Lead Plaintiffs are located and operating in this State (or otherwise submits to the jurisdiction of this Court), and Defendant Schering is headquartered in this state, and systematically and continuously conducts business in this State, including marketing, advertising, and selling drugs such as Temodar and Intron Franchise drugs to residents in this State.

18. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant Schering engaged in substantial conduct relevant to Lead Plaintiffs'

claims within this District and caused harm to Lead Plaintiffs and Class members residing within this District.

IV. BACKGROUND

A. State And Federal Laws Prohibit Defendant Schering From Making Payment To Doctors To Write Prescriptions

19. By paying doctors to prescribe Intron Franchise drugs and Temodar, Defendant Schering violated state commercial bribery laws, including N.J.S.A. § 2C:21-10. Section 2C:21-10 states: “A person commits a crime if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as . . . [a] physician.” Further, the statute provides: “A person commits a crime if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section.” N.J.S.A. § 2C:21-10(c).

20. As detailed below, Schering Sales violated N.J.S.A. § 2C:21-10 by paying doctors to prescribe Temodar and Intron Franchise drugs, whether or not the medication was medically warranted.

21. Further, Defendant Schering violated the federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2), which punishes “whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person . . . to purchase, lease, order, or arrange for or recommend purchasing,

leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program. . . .” 42 U.S.C. § 1320a-7b. As detailed below, during the Class Period, Defendant Schering bribed doctors to prescribe Temodar and Intron Franchise drugs, in violation of the Anti-Kickback law.

B. The FDA’s Prohibition Against Off-Label Marketing Of Prescription Drugs

22. When the FDA approves a drug for use, it does not approve that drug for illness in general, but only for specific conditions for which the drug has been tested on patients – “indicated” or “on-label” uses. Drug manufacturers such as Defendant Schering are prohibited from marketing and promoting a drug for unapproved or “off-label” uses, except in certain limited circumstances.

23. The dissemination of off-label information is prohibited, unless it is made (i) in response to an “unsolicited request from a healthcare practitioner,” or (ii) after submission of an application to the FDA seeking approval for the off-label use, where such materials are provided to the FDA prior to dissemination. Additionally, the materials must be in an unabridged form, and may not be false or misleading.

24. In 1983, Defendant Schering submitted to the FDA a New Drug Application (“NDA”) for Intron A, which was a new drug within the meaning of federal statutes and regulations. The FDA subsequently approved Intron A for

conditions such as chronic hepatitis B and C, hairy cell leukemia, follicular lymphoma, malignant melanoma, and AIDS-related Kaposi's sarcoma.

25. The FDA did not, then or thereafter, approve Intron A for superficial bladder cancer – an off-label use for which Schering heavily marketed the drug.

26. In 1998, Defendant Schering submitted to the FDA an NDA for Temodar as a new drug for the treatment of three types of cancer: (a) refractory anaplastic astrocytoma (a type of brain tumor), (b) recurrent glioblastoma (another type of brain tumor), and (c) metastatic malignant melanoma (melanoma that has metastasized in the brain). Under accelerated approval procedures for new drugs addressing life-threatening diseases, the FDA approved Temodar only for the treatment of refractory anaplastic astrocytoma – a disease suffered by roughly 4,000 patients a year.

27. The FDA did not, then or thereafter, approve Temodar for use in newly diagnosed anaplastic astrocytomas, metastatic melanoma, or brain metastases of other solid tumors – off-label uses for which Schering heavily marketed the drug. However, subsequent to the Class Period, the drug was approved to treat newly-diagnosed glioblastoma multiforme.

28. Under federal law, a pharmaceutical manufacturer may distribute a drug *only* if it is approved by the FDA. In order for the FDA to approve a drug, the manufacturer must show that a drug is “safe for use” for all “conditions

prescribed, recommended, or suggested” on a drug’s label. A drug is considered misbranded if its label does not contain, *inter alia*, “[s]tatements of all conditions, purposes, or uses for which such drug is intended.” 21 C.F.R. § 201.5; *see also* 21 U.S.C. § 331(a) (prohibiting the introduction of misbranded drugs into interstate commerce); 21 U.S.C. § 352(f) (stating that a drug is misbranded if it does not contain “adequate directions for use”). The term “intended” in 21 C.F.R. § 201.5 refers to “the objective intent of the persons legally responsible for the labeling of drugs [e.g., the manufacturer].” 21 C.F.R. § 201.128. Therefore, if a manufacturer intends that a drug be used for a certain purpose, information about that purpose must be on the drug’s label and approved as safe by the FDA.

29. Where a manufacturer directly advertises a drug for a particular use, that use is considered an intended use. *See* 21 C.F.R. § 201.128 (“[I]ntent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by . . . [manufacturers] or their representatives.”). Therefore, if a drug’s manufacturer advertises uses that are *not* on its FDA-approved label, the drug is considered misbranded and its distribution in interstate commerce is prohibited. *See* 21 U.S.C. § 331(a) & (d).

30. Further, depending on the circumstances, if a manufacturer promotes off-label use indirectly – for example, by sponsoring continuing medical education (“CME”) courses that promote off-label use – such off-label use may be

considered an “intended” use if the manufacturer *intended* that the drug be used for off-label purposes. See 21 C.F.R. § 201.128 (“It may be shown by the circumstances that the article is, with the knowledge of . . . [the manufacturer] or their representatives, offered and used for a purpose for which it is neither labeled nor advertised.”).

C. Risks and Benefits of Temodar And Intron Franchise Drugs

1. Temodar

31. Although Temodar has been shown to benefit some patients with certain types of brain tumors, it can cause certain serious side effects, including nausea, vomiting, anorexia, alopecia (hair loss), headache, fatigue, constipation, convulsions, weakness, and thrombocytopenia (low blood platelets).

32. In 1999, Schering estimated that there were only one to 1.5 cases of anaplastic astrocytoma per 100,000 persons each year, or about 2,000 - 3,000 cases diagnosed annually in the United States. Throughout the Class Period, Temodar was *not* approved to treat *any other* type of brain tumor.

2. Intron Franchise Drugs

33. Intron A was first approved in 1986 to treat hairy cell leukemia and, during the Class Period, following extensive study and the submission of supporting materials to the FDA, Intron A was approved to treat malignant melanoma, follicular lymphoma, condylomata acuminata, AIDS-related Kaposi’s sarcoma, chronic hepatitis C and chronic hepatitis B.

34. Intron A is administered in a doctor's office. Unlike prescription drugs sold by pharmacies, Doctors purchase Intron A and sell the drugs to patients at a profit.

35. Since Intron A has been introduced on the market, Defendant Schering has marketed related drugs as part of what it calls the "Intron Franchise." The Intron Franchise includes two other drugs approved to treat Hepatitis C: PEG-Intron is a longer lasting form of Intron A, which was approved in 2001 to treat Hepatitis C in certain patients, and Rebetol is a pill that was initially approved for use with Intron A in 1998 to treat Hepatitis C. The two drugs were sold in a single package and were known as Rebetrone Combination Therapy. In 2001, the FDA approved a stand-alone package for Rebetol. Also, in 2001, the FDA approved using Peg-Intron and Rebetol in combination to treat Hepatitis C. During the Class Period, Defendant Schering paid doctors to prescribe the Intron Franchise drugs for on-label and off-label uses.

36. Both Intron A and PEG-Intron cause serious side effects and both have a "black box" warning on their label, which is the most serious warning the FDA can require. Both "black box" warnings state that "[the drug] may cause or aggravate fatal or life-threatening neuropsychiatric, autoimmune, ischemic [inadequate blood flow to part of the body], and infectious disorders. Patients should be monitored closely with periodic clinical and laboratory evaluations.

Patients with persistently severe or worsening signs or symptoms of these conditions should be withdrawn from therapy.” The life-threatening neuropsychiatric disorders include, but are not limited to, suicidal and homicidal thoughts, hallucinations, and bipolar disorders.

37. In addition, Intron A and/or PEG-Intron can cause a laundry list of other side effects including, but not limited to, heart attack, respiratory failure, pneumonia, loss of vision, pancreatitis, hypothyroidism, hyperthyroidism, colitis, and bone marrow toxicity.

38. Rebetal also has very serious side effects including, but not limited to, causing severe birth defects and hemolytic anemia (an inadequate number of red blood cells causing fatigue, shortness of breath, dark urine, enlarged spleen and rapid heart rate).

39. Despite the drugs’ dangerous side effects, during the Class Period, Defendant Schering attempted to tip the scales in favor of treatment by paying doctors to prescribe Intron Franchise drugs for Hepatitis C and, also, marketed the drug to treat superficial bladder cancer, a type of bladder cancer that is confined to the lining of the bladder and has not invaded the muscle walls of the bladder.

D. Schering Sales Pleads Guilty To A Crime, Schering Settles Civil Claims

40. Defendant Schering blatantly lied to the FDA when questioned about its off-label marketing activity. On June 28, 2001, the FDA sent a letter to

Schering notifying the Company that it had identified promotional activity that provided false or misleading information about the drug Temodar (the “FDA Letter”). Specifically, the FDA Letter cited Defendant Schering for conducting off-label marketing of Temodar at the 37th American Society of Clinical Oncology Annual Meeting (“ASCO Meeting”) held in San Francisco, California, in May 2001.

41. At a Schering exhibit at the ASCO Meeting, the FDA witnessed a Schering representative stating that the Company had “tons of data on first line use” of Temodar, meaning that the drug could be used as an initial treatment for brain tumors. In reality, at the time, Temodar was only indicated for “the treatment of adult patients with refractory anaplastic astrocytoma, i.e., patients at first relapse who have experienced disease progression on a drug regimen containing a nitrosourea and procarbazine.” Therefore, promoting Temodar as an initial drug therapy was off-label marketing.

42. Additionally, during the ASCO Meeting, a Schering sales representative stated that Temodar’s survival results were compared to a placebo. However, at the time, no randomized controlled trials had shown that Temodar was more effective than a placebo.

43. In June of 2001, the FDA’s Division of Drug Marketing, Advertising, and Communications (“DDMAC”) notified Schering that DDMAC had “identified

promotional activities that [were] in violation of the Federal Food Drug and Cosmetic Act and its supplementing regulations” that had occurred at a commercial exhibit hall booth maintained and staffed by Schering at a recent American Society of Clinical Oncology (“ASCO”) Annual Meeting. DDMAC added that Schering gave “false or misleading information about Temodar,” that Defendant Schering “promoted Temodar for the unapproved use in first line therapy of anaplastic astrocytoma,” and demanded that Schering “immediately cease making such violative statements and any other promotional activities or materials for Temodar that make the same or similar claims or presentations.” The letter requested that Schering submit a written reply, and provide the date on which “this and other similarly violative materials were discontinued.”

44. At the time of receipt of the FDA’s letter, Defendant Schering and its co-conspirators knew that Defendant Schering’s sales force, at the direction of the home office, was engaged in the widespread unlawful off-label marketing of Intron A for superficial bladder cancer, and widespread unlawful off-label marketing of Temodar for conditions other than refractory anaplastic astrocytoma. In addition, Schering was paying doctors to increase prescriptions of Intron Franchise drugs for the on-label use to treat hepatitis C.

45. Defendant Schering’s unlawful marketing scheme of Temodar and Intron Franchise drugs included:

- a. paying doctors up to \$500 for each patient started on therapy utilizing Intron Franchise drugs;
- b. paying doctors to attend Schering promotional events and seminars where drugs were promoted for off-label uses;
- c. inducing doctors to prescribe Temodar and Intron Franchise drugs for off-label uses via remuneration through marketing programs, improper preceptorships, sham advisory boards, lavish entertainment, and improper placement of clinical trials;
- d. promoting Temodar and Intron Franchise with false or misleading efficacy information regarding off-label uses;
- e. placing Schering-funded assistants in doctors' offices; and
- f. marketing Temodar and Intron Franchise drugs for unapproved uses via a sales force trained to aggressively seek off-label sales through training classes, teleconferences, sales meetings, "for your information only" scientific articles and other literature from Schering's headquarters to use with physicians, and requiring the sales force to implement generously funded business plans that promoted and emphasized off-label sales.

46. On or about June 29, 2001, Schering employees met to determine how to conspire to conceal such practices. As a result of said meeting, Defendant Schering and its co-conspirators knowingly and willfully caused a written response to be submitted to the FDA that falsely described the practices described in the DDMAC letter as "isolated incidents" that were "certainly inconsistent with the direction provided by the home office." In the ensuing civil and criminal litigation, the government characterized Schering's letter as "false assurances designed to lull the FDA into believing that effective remedial action had been taken in order to avoid further FDA scrutiny of Schering's promotional activity."

47. Specifically, in response to the FDA letter, Schering did not admit that it was engaged in a nationwide illegal marketing campaign coordinated from the Company's headquarters in New Jersey to sell Temodar and Intron Franchise drugs for off-label use.

48. Further, in response to the FDA Letter, Defendant Schering represented to the FDA that it would warn its employees not to engage in off-label marketing and that Schering's sales force would only market drugs for on-label use. Despite sending an email message to employees urging them not to engage in off-label marketing, Schering secretly continued to actively train and incentivize its sales force to market Temodar and Intron Franchise drugs for off-label use.

49. Schering successfully concealed its illegal marketing practices, and on or about July 12, 2001, the FDA sent a letter informing Defendant Schering that it considered the matter closed based on Schering's representations. Schering continued its illegal off-label marketing scheme.

50. Not only did Schering illegally promote the off-label benefits of Temodar and Intron Franchise drugs to doctors, Schering actually paid doctors kickbacks for prescribing Temodar and Intron Franchise drugs for off-label use. According to the criminal information filed in federal court, "the sales force was provided with substantial budgets for advisory boards, speakers, entertainment, and

preceptorships to assist in obtaining off-label sales.” *See* Information filed on August 29, 2006 (the “Information”), ¶ 32.

51. Schering Sales pled guilty to Count I of the Information, which alleged that it conspired to make false statements to the FDA, in violation of 18 U.S.C. § 1001. According to the Information, Schering Sales was “engaged in the widespread marketing of Intron A for superficial bladder cancer and Temodar for conditions other than refractory anaplastic astrocytoma.” *See* Information, ¶ 32. The Information further stated: “Schering Sales and its co-conspirators knowingly and willfully made material false statements to the FDA in order to avoid scrutiny by the FDA of Schering’s off-label promotional activities regarding Temodar and Intron A.” *See id.*, ¶ 20.

52. Additionally, at the same time, Defendant Schering settled civil claims that it had defrauded Medicare, Medicaid and other government programs, without admitting or denying wrongdoing.

E. Schering’s Scheme Causes Harm To Third-Party Payors

53. Lead Plaintiffs and similarly situated Class members are third-party payors of prescription benefit plans, who pay part or all of the purchase price of medication for their participants.

54. Third-party payors utilize Pharmacy Benefit Managers (“PBMs”) to instruct them on which prescription drugs to provide their members and/or approve for coverage.

55. PBMs prepare a list of approved-for-coverage drugs known as a “*formulary*.” To get on the formulary, a drug is assessed by the PBM for clinical safety, efficacy, and cost effectiveness. Further, where a PBM finds that a drug has advantages over competitors, the drug is given a preferred status on its formulary.

56. The level of preference on the formulary corresponds with the amount a plan participant must contribute as a co-payment when purchasing a drug – the higher the preference, the lower the co-payment, the more likely that the drug will be purchased by a prescription plan’s beneficiary in lieu of a cheaper or more cost effective alternative, and vice versa. As such, the higher a drug’s preference on the formulary, the more likely it is for a doctor to prescribe that drug. This is well known to manufacturers such as Schering.

57. Due to the large number of drugs purchased through third-party payors, it is vital for a drug manufacturer’s economic interests to have its product listed on as many of the Class members’ formularies as possible.

58. However, once a drug is on a formulary, generally, third-party payors do not check for off-label uses of medications, which is left instead to doctors to determine if a prescription is necessary.

59. Therefore, Schering's scheme harmed third-party payors by inducing them to place Temodar and Intron Franchise drugs on formularies, but then engaging in an off-label marketing scheme to cause third-party payors to pay for drugs in cases where it was not approved as safe and effective by the FDA. Further, Schering interfered with doctors' medical judgment by illegally paying them to prescribe Intron Franchise drugs and Temodar for off-label and on-label uses.

F. The Ends Achieved By Defendant's Wrongful Conduct

60. As a result of Defendant Schering's illegal marketing scheme of Temodar and Intron Franchise drugs, the concealment and suppression of information regarding same, and/or the false representations made regarding the off-label uses for which they could be utilized, Schering realized an estimated \$3.4 billion in profits.

V. SCHERING'S SCHEME TO DEFRAUD LEAD PLAINTIFFS AND CLASS MEMBERS

A. Schering Promoted Temodar And Intron Franchise Drugs For Off-Label Use

61. During the Class Period, Defendant Schering was engaged in a massive marketing scheme to secretly market Temodar and Intron Franchise drugs

for off-label use. This off-label marketing campaign was so pervasive that a Schering sales representative stated that he would be done with a week's worth of work "at noon on Monday" if he did not market the drugs for off-label use.

62. In reference to Schering's rationale to forgo the costly FDA-approval process for Temodar, former Vice President and CEO Richard Kogan remarked that there was no reason to "buy the cow when the milk is free." In other words, because Defendant Schering was marketing – and successfully selling – Temodar (and Intron Franchise drugs) for unapproved uses, there was no reason to seek additional approved uses of the drugs.

63. Rather than prove to the FDA that Temodar was safe and effective as a treatment for illnesses other than anaplastic astrocytoma, during the Class Period, Defendant Schering engaged in an illegal, off-label marketing campaign. Specifically, Defendant Schering illegally marketed Temodar for newly diagnosed anaplastic astrocytoma, newly diagnosed glioblastoma multiforme, refractory glioblastoma multiforme, meningiomas, oligodendrogliomas, brain metastasis from primary tumors, malignant melanoma, extended therapy uses, combination therapy usage with radiation, combination therapy usage with other chemotherapy agents, and all other types of brain tumors.

64. As a result of Defendant Schering's illegal marketing campaign, the sales of Temodar increased *almost 10 fold*. About 85-95% of Temodar usage during the Class Period was for off-label uses.

65. Although the drug had debilitating side effects, Defendant Schering promoted the drug for uses where it had not yet proved its efficacy to the FDA. In fact, Schering executives had good reason other than cost not to aggressively seek additional FDA-approved indications of Temodar. For example, the Company stopped a clinical trial of Temodar after the drug produced more deaths than expected.

66. Additionally, Defendant Schering marketed Intron A for the off-label use of superficial bladder cancer when, during the Class Period, it was only approved to treat chronic hepatitis B, chronic hepatitis C, Aids-related Kaposi's sarcoma, hairy cell leukemia, malignant melanoma, and follicular lymphoma. The FDA never approved Intron A as a safe and effective treatment for superficial bladder cancer.

67. Bacillus Calmette-Guerin ("BCG") is the standard treatment of superficial bladder cancer. Nevertheless, without FDA approval, Defendant Schering marketed Intron A to be used in conjunction with BCG when BCG alone failed. Further, beginning in 2000, Schering marketed Intron A to be used in conjunction with BCG for patients newly diagnosed with superficial bladder

cancer before BCG alone was tried. Thus, absent Schering's marketing campaign, third-party payors would only have reimbursed for BCG, not both BCG and Intron A.

68. Additionally, Schering marketed Intron A for the following off-label uses: renal cell carcinoma, chronic myelogenous leukemia, myeloma, metastatic melanoma, and Peyronie's disease.

69. Schering went so far as to set up a Consultant Care Network ("CCN"), which was a hotline physicians could call with patient specific questions about Schering drugs, including Temodar and Intron Franchise drugs. Physician consultants staffed the hotline and frequently gave information concerning off-label use of Schering drugs, thus, increasing the number of off-label prescriptions.

B. During The Class Period, Defendant Schering Paid Doctors To Prescribe Temodar And Intron Franchise Drugs For On and Off-Label Use

70. During the Class Period, Defendant Schering improperly paid doctors to prescribe Intron Franchise drugs for on-label use, thereby increasing the expenses of third-party payors. These payments were illegal because they caused doctors to breach their duty of fidelity to patients, in violation of New Jersey's commercial bribery statute, and caused doctors to prescribe Schering drugs to patients for whom the U.S. Government paid the purchase price in violation of the Anti-Kickback Statute.

71. To increase the sales of Intron Franchise drugs and Temodar, Schering lined the pockets of doctors in the following manner:

1. Phony Speaker Events

72. Defendant Schering purported to give money to doctors for speaking at functions such as a dinner lecture. In reality, this money was given to physicians for prescribing Intron Franchise drugs and Temodar. Many doctors who received this money never actually spoke at a formal event.

2. Phony Preceptorships

73. Schering gave between \$500 and \$1,000 to doctors, ostensibly for teaching sales representatives about technical aspects of their practice. However, in reality, sales representatives used this money to influence doctor prescribing decisions. Doctors were paid no matter how little time they spent with sales representatives. Sales representatives could give doctors multiple preceptorship payments. Further, sales persons did not need to get pre-approval from their manager or Schering before paying a preceptor, but were instructed to use the money to illegally influence doctor prescribing decisions. Schering's sales representatives, therefore, used this money to increase prescriptions of Temodar and Intron Franchise drugs.

3. Phony Consultant Agreements

74. Schering sent doctors \$10,000 in exchange for signing a so-called consulting agreement with Schering. *See Gardiner Harris, As Doctors Write*

Prescriptions, Drug Company Writes Check, N.Y. TIMES, June 27, 2004, at 11. In reality, these consulting agreements did not require doctors to do any work, but were contingent on doctors prescribing Intron A. One doctor reported receiving such a check indicating that he would receive compensation for services provided on an attached Schedule A. However, when the doctor turned to “Schedule A,” it was entirely blank. *Id.*

75. Referring to Schering consulting agreements with liver specialists, Dr. Chris Pappas, director of clinical research for St. Luke’s Texas Liver Institute, stated: “These were very high-value consulting agreements with selected opinion leaders that looked like payments of money with no clear agreements on what was supposed to be executed.” *Id.* These payments were intended to and did induce doctors to prescribe Schering drugs.

4. Phony Clinical Trials

76. Schering also disguised payments to doctors for prescribing Intron A by falsely stating that such compensation was given to doctors to conduct clinical trials. Defendant Schering paid doctors \$1,000 to \$1,500 per patient taking Intron A, ostensibly because doctors were supposed to send data back to Schering concerning patient health. *Id.* Typically, there were 10-50 patients in a study that lasted 10-16 weeks.

77. However, Schering did not care whether it received any data from doctors and it paid doctors for each patient that they placed on Intron A, even if the doctors submitted incomplete data. One liver specialist referred to these clinical trials as “purely marketing gimmicks.” *Id.* As such, if doctors prescribed competitors’ drugs or attempted clinical trials using competitors’ drugs, Schering would no longer provide this funding to them.

78. Further, unlike conventional clinical trials, patients were not provided the drugs for free; rather, they and/or their insurer had to pay the complete purchase price for therapy, which costs thousands of dollars. Therefore, the illegal kickbacks paid to doctors did not cut into Schering’s profit but, rather, enhanced them as an increasing number of doctors were induced to prescribe Intron A. *Id.*

79. The clinical trials were so successful in inducing doctors to prescribe additional Intron A, Schering sales representatives lobbied to have the maximum number of trials in their district to help them meet their sales quotas. Indeed, many sales representatives helped physicians fill out the clinical trial forms and consulted with project managers to check the status of the number of patients involved in clinical trials.

80. Project managers in charge of the clinical trials outwardly admitted that their primary role was to generate sales of Intron A, not to produce scientific

results. Project managers were given bonuses based on increased sales of Intron A and the number of patients that were enrolled in these phony clinical trials.

81. Many of these fraudulent clinical trials were ostensibly conducted to study the effect of Intron A on superficial bladder cancer. Defendant Schering, however, withdrew its application to get Intron A approved by the FDA for superficial bladder cancer in the early 90s. Additionally, the phony clinical trials did not meet FDA criteria to be used in the approval process. Thus, through the phony clinical trials, doctors were given \$1,000 to \$1,500 to prescribe Intron A for off-label use.

82. Similarly, for Temodar, Rebetrone, and Peg Intron/Rebetol, Schering paid doctors to conduct phony clinical trials to promote the off-label use of the drugs.

5. Free Drugs For Physicians

83. To further induce doctors to prescribe Intron A, Schering provided doctors with free samples of the drug. Doctors then charged patients and/or third-party payors \$500 for each of these “free samples” that they prescribed. Thus, doctors were further incentivised to prescribe Intron A whether patients needed the drug or not. These free samples accounted for 10-12% of all sales.

84. Schering further induced doctors to prescribe Intron A by devising a scheme whereby doctors could bill for more Intron A than they purchased. In this

scheme, which Schering used for multiple years up to 1999, doctors purchased three vials of Intron A, each labeled as containing 25 MIU of the drug. These vials, however, were intentionally overfilled by Schering and contained 32 MIU of Intron A. Schering sales representatives told doctors that they could purchase three vials of Intron A and bill for four because 96 MIU was close enough to 100 MIU.

85. Additionally, to promote Intron A for the on-label use to treat melanoma, Schering devised the “Melanoma First Start Program” in which a physician was given one free 50 MIU vial of Intron A for each new melanoma patient that a physician started on Intron A. Intron A is indicated for patients who had surgery to remove melanoma to prevent its recurrence. The label states that persons with melanoma should initially take 20 MIU of Intron A daily for four weeks and continue taking 10 MIU of the drug weekly for 48 weeks. Thus, Schering was incentivized to bribe doctors to begin Intron A for melanoma because once started on the drug, patients had to undergo almost a year of therapy.

6. Phony Investigator Meetings

86. Schering paid physicians, who it called investigators, to talk about off-label uses of Temodar and Intron Franchise drugs to other physicians. The funds to pay the doctors came directly from the Company’s home office, and sales persons were instructed to spend lavishly on physicians, both speakers and attendees. The speeches, which lasted about two hours, were held at exclusive

resorts and luxury hotels. Schering footed the bill for physicians and often paid for golf, spa treatments, fishing trips, and free gifts including satellite television dishes. This compensation was designed to incentivize doctors to prescribe Intron Franchise drugs and Temodar for off-label use.

7. Phony Advisor Board Meetings

87. Schering paid doctors to form advisory boards for the ostensible purpose to get feed back about drug performance and how physicians treat diseases. However, the advisory board meetings were just another way to line doctors' pockets, inducing them to prescribe Temodar and Intron Franchise drugs for off-label uses. For attending advisory board meetings, doctors received honorariums, lavish entertainment, and travel expenses.

8. Free Physician Assistant for Doctors

88. To reward doctors who prescribed Rebetrone for Hepatitis C, Schering provided doctors with a free physician assistant ("PA") for a year. While the ostensible purpose of the program was to train PAs to treat Hepatitis C, Schering gave the PAs to physicians as a reward for frequently prescribing Rebetrone.

C. Schering Paid PBMs To Place Intron Franchise Drugs and Temodar On Formularies

89. Schering paid PBMs grants, ostensibly for research or educational purposes. For example, Schering gave PBMs money for the stated purpose of studying medication compliance, chronic disease management, and preventative

healthcare. In reality, these payments to PBMs were made to incentivize them to place Temodar and Intron Franchise drugs on TPP formularies. Therefore, rather than weighing the costs and benefits of Schering drugs for TPPs and their beneficiaries, PBMs were improperly influenced by Schering kickbacks.

D. Schering Uses Third Parties To Market Temodar and Intron Franchise Drugs For Off-Label Uses

90. Because Schering was prohibited from marketing Intron Franchise drugs and Temodar for off-label use, it set up an illegal, parallel marketing operation, using seemingly independent companies to market Intron Franchise drugs and Temodar for off-label uses. In reality, these third-party entities were entirely controlled by Schering.

1. ProEd

91. Specifically, Schering used a company named ProEd Communications (“ProEd”) to promote and conduct CME courses that touted the benefits of off-label uses of Temodar and Intron A. In these programs, doctors, chosen as speakers by Schering, “educated” their peers about the benefits of the off-label uses of Temodar and Intron A.

92. While seemingly independent of Schering, all aspects of the CME programs were designed and implemented by the Company. Additionally, Schering provided funding for the CME programs.

93. In addition to promoting off-label uses of Temodar and Intron A, Schering ensured that ProEd paid both physician-speakers and physician-attendees at the CME conferences. Physician speakers received compensation for all expenses associated with speaking, including payment of so-called honorariums. Physician attendees had their travel expenses reimbursed in the form of phony preceptorships, honorariums, and grant money. Schering actively encouraged payment to doctors to influence their prescribing decisions.

2. Documedics

94. Schering funded a program titled Commitment to Care (“CTC”) which purportedly offered patients money to pay for drugs that they otherwise could not afford. CTC was managed by a third party, Documedics Inc. (“Documedics”), that ostensibly was independent from Schering. However, Documedics was, at all relevant times during the Class Period, controlled by Schering.

95. While set up to resemble a charity program to help the indigent, CTC was used to promote off-label use of Intron Franchise drugs and Temodar. Under the CTC program, a consumers’ insurance coverage was assessed. Where the patient had out of pocket expenses, CTC paid physicians directly to decrease consumer costs.

96. The program paid for Schering drugs, even in instances where the drugs were not being prescribed in accordance to a medically acceptable indication. Schering, therefore, used CTC as another method to cause third-party payors to pay for drugs for off-label use by ensuring that patients bore little or no cost of the drug when used in instances where its safety and efficacy had not been established.

E. Defendant Schering's Unlawful Scheme Was Devised, Coordinated And Implemented At The Company's New Jersey Headquarters

97. From the Company's headquarters in New Jersey, top management devised and implemented Schering's vast illegal marketing scheme. In its guilty plea to criminal violations, Schering Sales admitted that its vast off-label campaign was orchestrated from the company's home office in New Jersey. Information, ¶ 37. The message from top management to marketers was this: Engage in off-label marketing, but "be smart" so that the Company would not be caught in engaging in illegal activity.

98. First, top management incentivized Schering's sales force to market Intron Franchise drugs and Temodar for off-labels use, paying salespersons based on the amount of off-label sales that they could generate. Also, salespersons were paid based on their ability to generate schemes to meet goals for promoting Temodar and Intron Franchise drugs for off-label use.

99. Second, top management at Defendant Schering ensured its sales force was well educated in how to market Temodar and Intron Franchise drugs for off-label use. The sales force was instructed by management to engage in an off-label marketing campaign via training classes, “ride-alongs” with managers, district meetings, teleconferences and sales meetings.

100. Third, the Company’s New Jersey Corporate headquarters provided Schering’s sales force with scientific articles and abstracts that discussed the benefits of off-label use of Temodar and Intron Franchise drugs and were meant to encourage doctors to prescribe Temodar and Intron Franchise drugs for both on and off-label use.

101. Fourth, the doctor kickback scheme was devised at the Company’s headquarters in New Jersey by the Company’s top management, who ensured that funds were available to illegally pay doctors to prescribe Temodar and Intron Franchise drugs.

F. Defendant Schering’s Illegal Activity Harms Third-Party Payors, Including Lead Plaintiffs And Class Members

102. Third-party payors footed the bill as doctors, influenced by Defendant Schering’s off-label marketing and illegal remunerations, prescribed an increasing number of Temodar and Intron Franchise drugs. Unaware of Schering’s scheme, Lead Plaintiffs and the Class paid billions of dollars that they otherwise would not have paid absent Schering’s scheme. Schering’s scheme increased expenses of

Lead Plaintiffs and the Nationwide Class by (1) increasing the number of off-label prescriptions of Temodar and Intron Franchise drugs that third-party payors paid for; (2) increasing the number of on-label prescriptions of Temodar and Intron Franchise drugs that third-party payors paid for; (3) causing third-party payors to pay for Temodar and Intron Franchise drugs where there were cheaper alternative medications; and (4) increasing the purchase price of Temodar and Intron Franchise drugs.

1. Lead Plaintiffs And The Nationwide Class Suffered Ascertainable Loss Where Schering's Scheme Increased the Number Of Off-Label Prescriptions That They Paid For

103. Schering's illegal marketing scheme, which involved bribing doctors and marketing Temodar and Intron Franchise drugs for off-label use, caused doctors to prescribe Temodar and Intron Franchise drugs at an increased frequency for uses not approved as safe and effective by the FDA.

104. By conducting and concealing the illegal marketing scheme from the FDA and third-party payors, such payors were prevented from recognizing the risks of over-prescription, and thus did not take precautionary measures reserved for drugs with a high propensity for use in medically unnecessary ways, such as by requiring pre-authorization, or requiring prescribing physicians to contact a benefit plan's administrator to ensure that the patient's symptoms meet certain criteria before approving coverage for the prescription.

105. While third-party payors believed that they were paying for drugs primarily for uses approved as safe and effective by the FDA, in reality, Schering's scheme caused third-party payors to pay for a substantial number of prescriptions written for off-label uses that had never been approved by the FDA.

106. During the Class Period, sales of Temodar increased almost ten-fold, even though the drug was approved for use by approximately 2,000 to 3,000 people nationwide, as a result of Schering's illegal schemes:

Year	Sales of Temodar in Millions of Dollars
1999	\$38
2000	\$121
2001	\$180
2002	\$278
2003	\$324

107. Similarly, sales of drugs in the Intron Franchise grew exponentially as a direct result of Defendant Schering's off-label marketing campaign and illegal remunerations to doctors:

Year	Sales of Intron Franchise Drugs in Billions of Dollars
1999	\$1.119
2000	\$1.36
2001	\$1.447
2002	\$2.736

108. In 2003, Pegasys and Copegus, competing Hepatitis C drugs manufactured by Hoffmann-La Roche Inc., came on the market and were priced significantly lower than comparable Intron Franchise drugs. As a result, sales of Intron Franchise drugs declined to \$1.851 billion; however, but for Defendant Schering's illegal schemes, sales of Intron Franchise drugs would have declined more precipitously.

109. Unaware of Schering's illegal marketing scheme, Lead Plaintiffs and the Nationwide Class paid for an increased number of prescriptions of Temodar and Intron Franchise drugs that were not approved as safe and effective by the FDA.

2. Lead Plaintiffs And The Nationwide Class Suffered Ascertainable Loss From Schering's Scheme To Bribe Doctors To Pay For Drugs For On-Label Use

110. Schering bribed doctors to prescribe Intron Franchise drugs and Temodar for on-label uses. Even where a drug is FDA-approved to treat a certain illness, doctors must use their clinical judgment to decide if they should prescribe

it to patients. Schering unduly influenced physician prescribing decisions by paying doctors illegal remunerations. Physicians, therefore, did not consider only their patients best interest when prescribing drugs, but also their own pocketbooks. As a result, Schering's illegal marketing scheme caused Lead Plaintiffs and the Nationwide Class to pay for drugs for on-label uses where they otherwise would not have.

3. Lead Plaintiffs And The Class Suffered Ascertainable Loss Where Schering's Scheme Caused Doctors To Prescribe Schering Drugs Over Cheaper Alternatives.

111. Schering illegally marketed its drugs where there were lower cost alternative treatments, causing Lead Plaintiffs and the Nationwide Class to suffer ascertainable loss in the amount of the difference between the cost of Schering's drugs and the less expensive alternatives.

112. For example, Pegasys and Copegus, competing Hepatitis C drugs manufactured by Hoffmann-La Roche Inc., were priced significantly lower than comparable Intron Franchise drugs. *See* BUSINESSWEEK ONLINE, *Schering-Plough Rating Lowered*, Dec. 17, 2003. Doctors prescribed Intron Franchise drugs over Pegasys because of Defendant Schering's illegal payments.

113. Further, where there were no alternatives to Schering's off-label drugs, Lead Plaintiffs and the Nationwide Class suffered ascertainable loss in the full amount of the monies paid for Schering's off-label drugs. For example,

Schering suffered ascertainable loss where doctors prescribed Intron A along with BCG to treat superficial bladder cancer, when only BCG alone was approved to treat the disease.

4. Lead Plaintiffs And The Nationwide Class Suffered Ascertainable Loss Because Schering's Scheme Inflated the Price of Temodar and Intron Franchise Drugs

114. Schering's drugs were also priced at higher, premium prices, based on the assumption of limited, on-label usage, rather than what would have been a market-determined price reflecting the wider usage for which Defendant Schering illegally marketed the drugs. As a result, Lead Plaintiffs had to pay premium prices, rather than market-determined prices reflective of the wider usage for which Schering illegally marketed the drugs. Lead Plaintiffs' and the Nationwide Class' ascertainable loss is the difference between the premium prices actually paid for the drugs, and what would have been market-determined prices reflecting the wide spread usage.

G. Defendant Schering Uses Its Subsidiary Schering Sales To Escape The Consequences Of Illegal Activity

115. Defendant Schering created its subsidiary, Schering Sales, which pled guilty to federal criminal charges of violating 18 U.S.C. § 1001, for the sole purpose of avoiding criminal liability on behalf of itself. Brent Saunders, Schering's senior vice president of global compliance and business practices, publicly stated that "[Schering Sales] is an entity whose sole purpose is to plead

guilty in these matters.” Silvia Pagan Westphal, *Schering-Plough Settles Charges for \$435 Million*, WALL ST. J., Aug. 30, 2006, A2.

116. In the past, Defendant Schering has used Schering Sales to similarly avoid the consequences of its criminal wrongdoing. On July 30, 2004, Defendant Schering caused Schering Sales to plead guilty to illegally paying an HMO a kickback to keep its drug Claritin on the HMO’s formulary.

117. As a result of its federal criminal guilty plea on August 29, 2006, Schering Sales was excluded permanently from participation in any government healthcare programs. *See* Press Release, *Schering To Pay \$435 Million For The Improper Marketing Of Drugs And Medicaid Fraud*, U.S. Attorney’s Office District of Massachusetts, Aug. 26, 2006. Had Defendant Schering been convicted instead of Schering Sales, it could have suffered the same fate and lost significant revenue from Medicare, Medicaid, and other federal programs. *See* 42 U.S.C. § 1320a-7 (barring entities convicted of health care fraud from participating in federal healthcare programs).

118. However, the federal criminal conviction of Schering Sales did not negatively impact Defendant Schering’s ability to sell drugs to the U.S. Government. Although Schering Sales was excluded from doing business with the federal government, “its marketing functions have been taken over by other parts of [Schering], which are permitted to continue doing business with Medicare and

Medicaid.” Silvia Pagan Westphal, *Schering-Plough Settles Charges for \$435 Million*, WALL ST. J., Aug. 30, 2006, A2. Therefore, Defendant Schering used its subsidiary, Schering Sales, to shield itself from the consequences of its unlawful actions.

119. As part of the federal criminal guilty plea, Schering Sales also agreed to pay a \$180 million fine. No criminal charges were filed against Defendant Schering; rather, the Company settled the U.S. Government’s civil claims based on, *inter alia*, the illegal actions described herein, without admitting or denying wrongdoing, for \$255 million.

VI. CLASS ACTION ALLEGATIONS

120. Lead Plaintiffs brings this action as a class action pursuant to Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) on behalf of the Nationwide Class. Lead Plaintiffs seek class certification under Fed. R. Civ. P. 23(b)(2) as to declaratory and equitable relief sought herein, and under Fed. R. Civ. P. 23(b)(3) as to the damages sought herein. The Lead Plaintiffs asserts claims under RICO, New Jersey RICO, the CFA, civil conspiracy, unjust enrichment, fraudulent and negligent misrepresentation and seeks an equitable accounting of Defendant Schering’s gains from the off-label promotion of Temodar and Intron Franchise drugs.

121. Upon information and belief, thousands of third-party payors were induced to pay for Temodar and Intron Franchise drugs through Defendant

Schering's schemes, which illegally promoted the drugs for off-label use and bribed doctors to prescribe the drugs. The members of the Nationwide Class are so numerous and dispersed throughout the United States and the State of New Jersey that joinder of all members is impracticable. The Class members can be identified by, *inter alia*, records maintained by Defendant Schering, pharmacies, and PBMs.

122. Common questions of law and fact exist as to all members of the Nationwide Class and predominate over any questions affecting solely individual members of the Nationwide Class. Among the questions of law and fact common to the Nationwide Class are:

- a. whether Defendant Schering illegally marketed, promoted, and advertised Temodar and Intron Franchise drugs for off-label uses;
- b. whether Defendant Schering concealed material information regarding the off-label marketing, promoting, and advertising of Temodar and Intron Franchise drugs from third-party payors, and to their financial detriment;
- c. whether Defendant Schering misrepresented the efficacy and/or cost effectiveness and/or economic efficiency of Temodar and Intron Franchise drugs, to the third-party payors' financial detriment;
- d. whether the acts and omissions of Defendant Schering violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*;
- e. whether the acts and omissions of Defendant Schering violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*;
- f. whether Defendant Schering was unjustly enriched by its acts and omissions, at the expense of the third-party payors;

- g. whether Defendant Schering made material misrepresentations of fact, or omitted to state material facts to Lead Plaintiffs and the Nationwide Class regarding the off-label marketing, promoting, and advertising of Temodar and Intron Franchise drugs, which material misrepresentations or omissions operated as a fraud and deceit upon Lead Plaintiffs and the Nationwide Class;
- h. whether Lead Plaintiffs and members of the Nationwide Class sustained damage and loss thereby;
- i. the scope, extent, and measure of damages and equitable relief that should be awarded;
- j. whether the Defendant Schering's acts and omissions were sufficiently wrongful so as to entitle Lead Plaintiffs and the Nationwide Class to attorneys' fees, prejudgment interest, and costs of suit; and
- k. whether the Defendants' acts and omissions were sufficiently wrongful to entitle Lead Plaintiffs and the Nationwide Class to punitive damages.

123. Lead Plaintiffs' claims against Defendant Schering are typical of the claims of the members of the Nationwide Class because both sustained damages arising out of the Company's wrongful conduct as detailed herein. Specifically, Lead Plaintiffs' claims and the Class members' claims arise from Defendant Schering's scheme to illegally inflate the number of prescriptions for Temodar and Intron Franchise drugs during the Class Period.

124. Lead Plaintiffs will fairly and adequately protect the interests of the Nationwide Class and have retained counsel competent and experienced in class action lawsuits. Lead Plaintiffs have no interests antagonistic to or in conflict with

those of the Nationwide Class and therefore should be adequate as representatives for the Nationwide Class.

125. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Nationwide Class is impracticable. Furthermore, because the damages suffered by individual members of the Nationwide Class may in some instances be relatively small, the expense and burden of individual litigation make it impossible for such Class members individually to redress the wrongs done to them. Also, the adjudication of this controversy through a class action will avoid the possibility of inconsistent and possibly conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

VII. CAUSES OF ACTION

COUNT I Violations Of RICO

126. Lead Plaintiffs repeat and reallege the allegations contained in each of the foregoing paragraphs as if fully set forth herein.

127. Schering, Lead Plaintiffs, and members of the Nationwide Class are each a “person,” as that term is defined in 18 U.S.C. § 1961(3). During the Class Period, Schering Sales constituted an “enterprise,” as that term is defined in 18 U.S.C. § 1961(4).

128. Additionally, during the Class Period, an association-in-fact between Schering and ProEd constituted an “enterprise,” as that term is defined in 18 U.S.C. § 1961(4).

Schering-Schering Sales Enterprise

Schering’s Participation in the Conduct of An Enterprise

129. As described herein, during the Class Period, Defendant Schering participated in the conduct of an “enterprise,” namely, Schering Sales, a corporation that Defendant Schering created to avoid the consequences of its pattern of racketeering activity.

130. Schering Sales is a wholly-owned subsidiary of Defendant Schering. Schering Sales pled guilty to willfully making false statements to the federal government about its role in Schering’s off-label marketing campaign. During the Class Period, Defendant Schering caused its subsidiary, Schering Sales, to market drugs for uses that were not proven to be safe and effective to the FDA and also paid doctors to influence their prescribing decisions.

131. During the Class Period, Defendant Schering controlled Schering Sales by virtue of the fact that Schering Sales was a wholly-owned subsidiary of the Company. However, as detailed herein, Schering Sales did more than merely act at the behest of Defendant Schering to further the illegal Scheme. As evidenced by the federal guilty criminal pleas, Defendant Schering used the

separate corporate identity of Schering Sales to avoid the full consequences of its own criminal actions. Defendant Schering caused Schering Sales to plead guilty to making false statements to the federal government so that Defendant Schering could continue to do business with government entities.

132. Although Defendant Schering and Schering Sales purported to and did engage in the legitimate business of legally selling prescription medications, they also illegally compensated doctors and unlawfully marketed prescription drugs for off-label use.

Pattern of Racketeering Activity

133. During the Class Period, Schering engaged in numerous instances of “racketeering activity,” as that term is defined in 18 U.S.C. § 1961(1) & (5).

134. During the Class Period, Schering violated 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343, relating to wire fraud, by representing to third-party payors that Defendant was only marketing Temodar and Intron Franchise drugs for on-label use. For example, during the Class Period, Defendant Schering represented on Temodar’s label that it only intended that Temodar be used to treat refractory anaplastic astrocytoma. Further, when Defendant Schering purported to list all intended uses of Intron A on the drug’s label, it neglected to mention that it intended the drug be used to treat superficial bladder cancer.

135. Additionally, Defendant Schering used the mails and interstate wire facilities to misrepresent to doctors that Temodar was a safe and effective treatment for tumors other than refractory anaplastic astrocytoma and that Intron A was a safe and effective treatment for superficial bladder cancer.

136. Further, Defendant Schering engaged in numerous acts of commercial bribery, constituting “racketeering activity” under 18 U.S.C. 1961(1). Schering paid doctors to prescribe Temodar and Intron Franchise drugs whether their patients needed the drugs or did not need them. These bribes were intended to and did cause doctors to violate their duty of fidelity to patients.

137. During the Class Period, Defendant Schering violated the Travel Act, 18 U.S.C. § 1952, which also constitutes “racketeering activity” under 18 U.S.C. § 1961(1). The Travel Act prohibits travel in interstate commerce or the use of the mails with the intent to facilitate commercial bribery. From its corporate headquarters in New Jersey, Schering and Schering Sales caused its agents and employees to travel nationwide to bribe doctors to prescribe Intron Franchise drugs and/or Temodar.

138. Many of the precise dates and times of Defendant Schering’s violations of mail and wire fraud statutes, violations of state bribery laws, and violations of the Travel Act are not known. Indeed, an essential part of the successful operation of the RICO scheme alleged herein depended upon secrecy,

and, Defendant Schering took deliberate steps to conceal its wrongdoing. However, given the massive scope of Defendant Schering's scheme, Schering and Schering Sales likely committed thousands of acts of racketeering activity.

Schering's Scheme Caused Lead Plaintiffs' Injuries

139. Lead Plaintiffs were proximately harmed by Defendant Schering's and Schering Sales illegal conduct. Believing that Defendant Schering and Schering Sales were only engaged in legal marketing, Lead Plaintiffs placed Temodar and Intron Franchise drugs on their formularies without taking appropriate measures to ensure that such drugs were not being over-prescribed or being prescribed for off-label uses.

140. Lead Plaintiffs were injured by reason of Defendant Schering's illegal conduct, which caused doctors to prescribe Temodar and Intron Franchise drugs in instances where they otherwise would not have, often where it provided little or no benefit to patients. Lead Plaintiffs and other third-party payors paid the purchase price of the drugs that were prescribed because of Schering's illegal scheme, and suffered losses as a result.

Schering-ProEd Enterprise

Schering's Participation in the Conduct of An Enterprise

141. As described herein, during the Class Period, Defendant Schering participated in the conduct of an "enterprise," namely, an association-in-fact

enterprise consisting of itself and ProEd, a purportedly independent organization that Schering used to market Temodar and Intron A for off-label uses.

142. During the Class Period, Defendant Schering controlled ProEd by virtue of the fact that Schering designed the structure and created the content of CME courses implemented by ProEd. It ensured that ProEd would carry out instructions to market Schering's drugs for off-label uses and further ensured that ProEd would pay illegal remunerations to doctors through payments made by Schering to the company.

Pattern of Racketeering Activity

143. During the Class Period, Schering and ProEd engaged in numerous instances of "racketeering activity," as that term is defined in 18 U.S.C. § 1961(1) & (5).

144. During the Class Period, Schering violated 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343, relating to wire fraud, by using ProEd to fraudulently represent to doctors that Temodar and Intron Franchise drugs were beneficial when prescribed for off-label use.

145. Further, Defendant Schering and ProEd engaged in numerous acts of commercial bribery, constituting "racketeering activity" under 18 U.S.C. 1961(1). Schering caused ProEd to pay doctors remuneration, in the form of phony

honorariums and preceptorships, to cause doctors to prescribe Intron Franchise drugs and Temodar for off-label use.

146. During the Class Period, Defendant Schering and ProEd violated the Travel Act, 18 U.S.C. § 1952, which also constitutes “racketeering activity” under 18 U.S.C. § 1961(1). The Travel Act prohibits travel in interstate commerce or the use of the mails with the intent to facilitate commercial bribery. From its corporate headquarters in New Jersey, Schering caused agents and employees of ProEd to travel nationwide to make payments to doctors to influence their prescription decisions.

147. Many of the precise dates and times of Defendant Schering’s and ProEd’s violations of mail and wire fraud statutes, violations of state bribery laws, and violations of the Travel Act are not known. Indeed, an essential part of the successful operation of the RICO scheme alleged herein depended upon secrecy, and, Defendant Schering took deliberate steps to conceal its wrongdoing. However, given the massive scope of Defendant Schering’s scheme, Schering and ProEd likely committed thousands of acts of racketeering activity.

Schering’s Scheme Caused Lead Plaintiffs’ Injuries

148. Lead Plaintiffs were proximately harmed by Defendant Schering’s and ProEd’s illegal conduct. Because Schering and ProEd engaged in off-label marketing and paid illegal remunerations to doctors, Lead Plaintiffs and other

third-party payors paid for the off-label use of Temodar and Intron Franchise drugs, in many cases where it was not beneficial to plan participants.

Schering-CTC Enterprise

Schering's Participation in the Conduct of An Enterprise

149. As described herein, during the Class Period, Defendant Schering participated in the conduct of an “enterprise,” namely, an association-in-fact enterprise consisting of itself and CTC, a purportedly independent organization that Schering used to market Temodar and Intron Franchise drugs for off-label uses.

150. During the Class Period, Defendant Schering controlled CTC by virtue of the fact that Schering decided the eligibility criteria of who would get discounted medication. Schering did not limit payment assistance to indigent patients, but rather designed criteria to boost off-label sales of Temodar and Intron Franchise drugs.

Pattern of Racketeering Activity

151. During the Class Period, Schering and CTC engaged in numerous instances of “racketeering activity,” as that term is defined in 18 U.S.C. § 1961(1) & (5).

152. During the Class Period, Schering violated 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343, relating to wire fraud, by using CTC to pay

for uses of Temodar and Intron Franchise drugs that were not beneficial when prescribed for off-label use.

153. Many of the precise dates and times of Defendant Schering's and CTC's violations of mail and wire fraud statutes are not known. Indeed, an essential part of the successful operation of the RICO scheme alleged herein depended upon secrecy, and, Defendant Schering took deliberate steps to conceal its wrongdoing. However, given the massive scope of Defendant Schering's scheme, Schering and CTC likely committed thousands of acts of racketeering activity.

Schering's Scheme Caused Lead Plaintiffs' Injuries

154. Lead Plaintiffs were proximately harmed by Defendant Schering's and CTC's illegal conduct. Schering and CTC paid for consumers' drugs in a manner that increased sales of off-label use of Temodar and Intron Franchise drugs for non-medically accepted indications causing Lead Plaintiffs and other third-party payors to pay for drugs which they would not have otherwise paid for.

COUNT II
Violations Of NJ RICO

155. Lead Plaintiffs repeat and reallege the allegations contained in each of the foregoing paragraphs as if fully set forth herein.

156. Schering, Lead Plaintiffs, and members of the Nationwide Class are each a "person" as that term is defined in N.J.S.A. 2C:41-1(b). During the Class

Period, Schering Sales constituted an “enterprise,” as that term is defined in N.J.S.A. 2C:41-1(c). Also, during the Class Period, an association-in-fact between Schering and ProEd constituted an “enterprise,” as that term is defined in N.J.S.A. 2C:41-1(c). Additionally, during the Class Period, an association-in-fact between Schering and CTC constituted an “enterprise,” as that term is defined in N.J.S.A. 2C:41-1(c).

157. For the reasons set forth ¶¶ 129-132, 141-42, 149-50 Defendant Schering participated in the conduct of three enterprises, Schering Sales, an association-in-fact enterprise consisting of itself and ProEd, and an association-in-fact enterprise between itself and CTC.

158. As set forth in ¶¶ 133-38, 143-47, 151-53 Defendant Schering engaged in a “pattern of racketeering activity,” as that term is defined in N.J.S.A. 2C:41-1(d).

159. Lead Plaintiffs were damaged in their business or property by reason of Defendant Schering’s violations of N.J.S. 2C:41-2.

COUNT III
Violations Of CFA

160. Lead Plaintiffs repeat and reallege the allegations contained in each of the foregoing paragraphs as if fully set forth herein.

161. At all times relevant and material hereto, Defendants conducted trade and commerce within the meaning of the New Jersey Consumer Fraud Act (“CFA”), N.J.S.A. 56:8-1, *et seq.*

162. Lead Plaintiffs, the Nationwide Class, and Defendants are each a “person” within the meaning of N.J.S.A. 56:8-1.

163. Section 56:8-2 of the CFA states that, in connection with the sale or marketing of a product:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice ...

164. Defendant Schering’s off-label marketing scheme concerning Temodar and Intron Franchise drugs violates the CFA for, *inter alia*, one or more of the following reasons:

- a. Defendant Schering illegally marketed, promoted, and advertised Temodar and Intron Franchise drugs for off-label uses that were not approved by the FDA, to the third-party payors’ financial detriment;
- b. Defendant Schering knowingly concealed, suppressed, or omitted material information regarding the off-label marketing, promoting, and advertising of Temodar and Intron Franchise drugs from third-party payors and to their financial detriment,

with the intent to induce reliance upon such concealment, suppression, or omission;

- c. Defendant Schering knowingly misrepresented the efficacy and/or cost effectiveness and/or economic efficiency of Temodar and Intron Franchise drugs from the third-party payors and to their financial detriment, with the intent to induce reliance upon such misrepresentation;
- d. Defendant Schering marketed, promoted, and advertised Temodar and Intron Franchise drugs for off-label uses when the purported efficacy of such off-label uses was unfounded; and
- e. Defendant Schering engaged in unconscionable marketing, promotion, and advertising practices of Temodar and Intron Franchise drugs for off-label uses and on label uses.

165. Defendant Schering's unlawful conduct arose, was directed, and emanated from New Jersey to the detriment of third-party payors in New Jersey and throughout the United States.

166. Defendant Schering's concealment, suppression, omissions, misrepresentations, deceptions, and unconscionable and fraudulent practices had the tendency, capacity, and likelihood to deceive Lead Plaintiffs and the Nationwide Class.

167. Defendant Schering intended, or consciously disregarded, that Lead Plaintiffs and the Nationwide Class would rely on its concealment, suppression, omissions, misrepresentations, deceptions, and unconscionable and fraudulent practices, so that they would authorize the purchase of and payment for Temodar and Intron Franchise drugs.

168. Defendant Schering's concealment, suppression, omissions, misrepresentations, deceptions, and unconscionable and fraudulent practices caused Lead Plaintiffs and the Nationwide Class to suffer ascertainable losses in the amount of the monies they expended in paying for Temodar and Intron Franchise drugs for off-label uses, without knowing the existence and extent of Schering's illegal off-label marketing scheme.

169. Defendant Schering's concealment, suppression, omissions, misrepresentations, deceptions, and unconscionable and fraudulent practices caused Plaintiff and the Nationwide Class to suffer ascertainable losses in the amount of the monies they expended in paying for Temodar and Intron Franchise drugs for off-label uses, without knowing the drugs' efficacy or lack thereof for the off-label uses for which they were marketed, promoted, or advertised.

170. Lead Plaintiffs and the Nationwide Class would not have expended such monies for off-label Temodar and Intron Franchise drug prescriptions had they known of Schering's illegal off-label marketing scheme, or the extent of said scheme.

171. Lead Plaintiffs and the Nationwide Class would not have expended such monies for off-label Temodar and Intron Franchise prescriptions had they known of those drugs' efficacy or lack thereof regarding the off-label uses for which they were marketed, promoted, and advertised.

172. Lead Plaintiffs and third-party payors were accordingly harmed by the Defendant Schering's conduct in violation of the CFA.

COUNT IV
Unjust Enrichment

173. Lead Plaintiffs repeat and reallege the allegations contained in each of the foregoing paragraphs as if fully set forth herein.

174. Defendant Schering has been enriched by their fraudulent acts and omissions alleged herein.

175. These fraudulent acts and omissions allowed Defendant Schering to gain billions of dollars in profits that would not have been gained but for Defendant Schering's fraudulent acts and omissions.

176. Lead Plaintiffs and similarly situated third-party payors paid Defendant Schering an amount that exceeds the value of the products identified herein as a result of Defendant Schering's fraudulent acts and omissions.

177. Lead Plaintiffs and the Nationwide Class suffered damages due to Defendant Schering's acts and omissions as alleged herein.

178. Defendant Schering has been unjustly enriched as a result of their fraudulent acts and omissions.

179. Defendant Schering lacks any legal justification for having engaged in a course of fraudulent acts and omissions as alleged herein at Lead Plaintiffs' and the Nationwide Class' expense.

180. No other remedy at law can adequately compensate plaintiff for the damages occasioned by Defendant Schering's conscious choice to engage in a course of fraudulent acts and omissions.

COUNT V
Civil Conspiracy

181. Lead Plaintiffs repeat and reallege the allegations contained in each of the foregoing paragraphs as if fully set forth herein.

182. Defendant Schering entered into an agreement with third-party marketers to illegally promote Temodar and the Intron Franchise drugs for off-label marketing

183. The marketing firms, which knew it was illegal for Defendant Schering to promote Temodar and Intron Franchise drugs for off-label use, promoted these drugs to doctors nationwide for off-label use, in furtherance of the conspiracy.

184. The marketing firms received compensation from Defendant Schering to promote Temodar and Intron Franchise drugs for off-label use.

185. Further, Defendant Schering entered into an agreement with doctors in which doctors were illegally compensated in exchange for prescribing Temodar and the drugs in the Intron Franchise.

186. As a direct and proximate result of the conspiracies, Lead Plaintiff and Nationwide Class members suffered harm because they paid for additional prescriptions of Temodar and Intron Franchise drugs.

COUNT VI
Fraud

187. Lead Plaintiffs repeat and reallege the allegations contained in each of the foregoing paragraphs as if fully set forth herein.

188. As detailed above, Defendant Schering made material misrepresentations of fact while marketing Temodar and Intron Franchise drugs to Lead Plaintiffs and the Nationwide Class. Defendant Schering represented that Intron Franchise drugs and Temodar would be marketed for certain uses approved as safe and effective by the FDA, but then marketed the drugs for a variety of uses not in accordance with its on label indications for safe and effective use. Additionally, Schering failed to disclose that it was paying doctors kickbacks and bribes to prescribe Temodar and Intron Franchise drugs.

189. Further, Defendant Schering misled doctors about the benefits that Temodar and Intron Franchise drugs provide to patients.

190. Defendant Schering concealed from Lead Plaintiffs, the Nationwide Class, and the FDA, truthful and complete information regarding the illegal off-label marketing, promotion, and advertising of Temodar and Intron Franchise drugs.

191. Defendant Schering provided, disseminated, marketed, and otherwise distributed information to Lead Plaintiffs and the Nationwide Class that omitted material information regarding the illegal off-label marketing of Temodar and Intron Franchise drugs.

192. Defendant Schering provided, disseminated, marketed, and otherwise distributed information to prescribing physicians that omitted material information or made material misrepresentations regarding the off-label uses of Temodar and Intron Franchise drugs.

193. Defendant Schering affirmatively misrepresented to Lead Plaintiffs and the Nationwide Class the efficacy, cost effectiveness, and economic efficiency of Temodar and Intron Franchise drugs.

194. Defendant Schering marketed, promoted, and advertised Temodar and Intron Franchise drugs for off-label uses when the efficacy of such off-label uses was unfounded.

195. The foregoing fraudulent omissions and misrepresentations caused Lead Plaintiffs and the Nationwide Class to suffer ascertainable losses in the amount of the monies they expended in paying for Temodar and Intron Franchise drugs for off-label uses, without knowing the existence and extent of Schering's illegal off-label marketing scheme.

196. The foregoing fraudulent omissions and misrepresentations caused Plaintiff and the Nationwide Class to suffer ascertainable losses in the amount of the monies they expended in paying for Temodar and Intron Franchise drugs for off-label uses, without knowing the drugs' efficacy or lack thereof regarding the off-label uses for which they were marketed, promoted, and advertised.

197. Defendant Schering's fraudulent omissions and misrepresentations had the tendency, capacity, and likelihood to deceive Lead Plaintiffs and the Nationwide Class.

198. Defendant Schering intended, or consciously disregarded, that Lead Plaintiffs and the Nationwide Class would rely on its fraudulent omissions and misrepresentations, so that they would expend monies and authorize the purchase of and payment for Temodar and Intron Franchise drugs.

199. Defendant Schering had superior knowledge regarding the illegal off-label marketing, promotion, and advertising scheme for Temodar and Intron Franchise drugs, as well as those drugs' efficacy, cost effectiveness, and economic efficiency, to which knowledge Lead Plaintiffs and the Nationwide Class had no access.

200. Lead Plaintiffs and the Nationwide Class reasonably relied to their detriment on Defendant Schering's fraudulent acts, misrepresentations and omissions and suffered ascertainable losses thereby.

201. Lead Plaintiffs and the Nationwide Class would not have expended such monies for off-label Temodar and Intron Franchise drug prescriptions had they known of Schering's illegal off-label marketing scheme, or the extent of said scheme.

202. Lead Plaintiffs and the Nationwide Class would not have expended such monies for off-label Temodar and Intron Franchise drug prescriptions had they known of the drugs' efficacy or lack thereof regarding the off-label uses for which they were marketed, promoted and advertised.

203. Lead Plaintiffs and the Nationwide Class would not have expended such monies but for mistaken facts arising from Defendant Schering's fraudulent concealment and/or suppression of its illegal off-label marketing scheme of Temodar and Intron Franchise drugs, or Defendant Schering's fraudulent concealment and/or suppression of the efficacy, cost effectiveness, and economic efficiency regarding the off-label uses for which such drugs were marketed.

204. Lead Plaintiffs and the Nationwide Class were accordingly harmed by Defendant Schering's fraudulent concealment and/or suppression.

COUNT VII
Negligent Misrepresentation

205. Lead Plaintiffs repeat and reallege the allegations contained in each of the foregoing paragraphs as if fully set forth herein.

206. As detailed above, Schering made material misrepresentations of fact regarding the marketing of Temodar and Intron Franchise drugs to the Nationwide Class. Schering represented that the drug would be marketed for certain uses approved as safe and effective by the FDA, but then marketed the drug for a variety of uses not in accordance with its on label indications for safe and effective use. Schering also failed to disclose that it was paying kickbacks and bribes to doctors to prescribe Temodar and Intron Franchise drugs.

207. Schering also misled doctors about the risks and benefits of Temodar and Intron Franchise drugs.

208. Schering's material misrepresentations concerning Temodar and Intron Franchise drugs were negligently made.

209. All Class members similarly relied on Schering's misrepresentations when paying for Intron Franchise drugs and Temodar.

210. The Class members' reliance on Schering's misrepresentations was justifiable.

211. As a direct and proximate result of Schering's negligent misrepresentations, Class members suffered recoverable damages.

COUNT VIII
Equitable Accounting

212. Lead Plaintiffs repeats and reallege the allegations contained in each of the foregoing paragraphs as if fully set forth herein.

213. Lead Plaintiffs assert a claim for equitable accounting because they do not have an adequate remedy at law.

214. Through the fraudulent acts identified herein, Schering extracted millions of dollars in unjust profits from the Nationwide Class.

215. Once the unjust profits were extracted from the Nationwide Class, Schering commingled the ill-gotten funds with legitimate proceeds from legal on-label sales of Temodar and Intron Franchise drugs.

216. Schering's commingling of ill-gotten gains with legitimate proceeds from on-label sales of Temodar and Intron Franchise drugs concealed (and continues to conceal) the entire value of unjust payments Schering extracted from the Nationwide Class.

217. Accordingly, Lead Plaintiff and the Nationwide Class should be awarded an equitable accounting of all proceeds received from the sale of Temodar and Intron Franchise drugs in order to permit Lead Plaintiffs to determine the precise amount of ill-gotten gains Schering obtained through its fraudulent scheme.

PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiff demands judgment on behalf of itself and similarly situated third-party payors as follows:

A. Awarding Lead Plaintiffs and the Nationwide Class compensatory damages against Schering in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law;

B. Awarding Lead Plaintiffs and the Nationwide Class any amount by which Schering has been unjustly enriched;

C. Awarding Lead Plaintiffs and the Nationwide Class punitive or exemplary damages in an appropriate amount to be determined at trial;

D. Awarding Lead Plaintiffs and the Nationwide Class all statutorily available damages under the RICO and NJ RICO;

E. Awarding Lead Plaintiffs and the Nationwide Class all statutorily available damages under the CFA;

F. Awarding Lead Plaintiffs and the Nationwide Class the costs of this suit, including reasonable attorneys' fees and other disbursements;

G. Awarding Lead Plaintiffs and the Nationwide Class compensation based on an equitable accounting of Schering's profits from the sale of Temodar and Intron Franchise drugs.

H. Enjoining Schering from continuing the illegal and deceptive activities alleged herein; and

I. Awarding Lead Plaintiffs and the Nationwide Class such other and further relief as this Court may deem just and proper.


JURY DEMAND

Plaintiff demands a trial by jury.


DATED: April 20, 2007

Respectfully Submitted,

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