



**A. DISMISSAL UPON AFFIDAVIT OF NONINVOLVEMENT**

2. Any defendant (the "Noninvolved Defendant") which can establish that it did not have FDA approval to sell Paxil or any generic product of paroxetine hydrochloride in the United States prior to the birth of the Minor-Plaintiff may seek dismissal from the action in accordance with the procedures set forth here.

3. The Noninvolved Defendant seeking dismissal shall provide notice to the Court and all parties of its intention to seek dismissal in the form of Exhibit A attached hereto. The notice shall include as an attachment a true and correct copy of the Noninvolved Defendant's Praeceptum for Dismissal Based on Noninvolvement which will be filed with the Court. The Notice shall be filed and served in accordance with mass tort procedure.

4. The Praeceptum for Dismissal Based on Noninvolvement shall be substantially in the form attached hereto as Exhibit B and include correspondence from the FDA establishing the date on which the Noninvolved Defendant was first approved to sell Paxil or paroxetine hydrochloride in the United States.

5. Any party opposing the dismissal must file a response within twenty-one (21) days of receipt of the Noninvolved Defendant's notice.

6. If the dismissal is not opposed within twenty-one (21) days after service, the moving Noninvolved Defendant may submit to the Court its Praeceptum for Dismissal Based on Noninvolvement, whereby that Defendant shall be dismissed without prejudice from the action.

7. If no party has moved to re-join the Noninvolved Defendant to the action or filed a subsequent action against the Noninvolved Defendant within ninety (90) days of filing of the

Order dismissing the Noninvolved Defendant, the dismissal will automatically become a dismissal with prejudice.

8. If the dismissal is opposed, the Noninvolved Defendant shall file a motion notifying the Court of the dismissal request and opposition thereto, and requesting the Court enter a briefing Order and schedule oral argument on the Praecipe for Dismissal Based on Noninvolvement, as deemed appropriate by the Court. The motion shall be substantially in the form attached hereto as Exhibit C.

9. If argument is scheduled by the Court, it shall be limited to the sole issue of whether the party opposing the Praecipe has produced evidence which, when considered in a light most favorable to that party, would require the issue of the involvement of any party seeking dismissal to be submitted to a jury.

**B. RE-JOINING DISMISSED DEFENDANT UPON DISCOVERY OF CONTRADICTIONARY EVIDENCE**

10. In the event that a defendant is dismissed from an action in accordance with the procedure set forth above, and, within ninety (90) days of the filing of the Order dismissing the Noninvolved Defendant, facts emerge which, had they been known earlier, would have provided a basis for a party to oppose the Noninvolved Defendant's motion for dismissal on the basis of noninvolvement, any party may petition the Court to strike the dismissal and re-join the Noninvolved Defendant, upon a showing that: (a) the facts were not known at the time of the dismissal; (b) the recently discovered facts contradict facts in the Praecipe for Dismissal; and (c) the moving party has acted promptly after discovery of such facts. Any party other than Plaintiff may petition the Court to extend this 90-day period on the grounds that Plaintiff has failed to submit either a birth certificate or properly executed authorizations and Fact Sheets sufficient to

allow the parties to verify the minor plaintiff's birth date. If such a motion to strike dismissal is entertained by the Court, there shall also be consideration given to any case scheduling which must be altered to accommodate the re-joinder of the Noninvolved Defendant to the action. If the Court grants the motion to strike the dismissal and the Noninvolved Defendant is re-joined, all alleged rights or claims that plaintiff had asserted in the Complaint against the Noninvolved Defendant will be deemed tolled and preserved as they existed as of the original filing of the Complaint naming said Defendant. Similarly, all of the Noninvolved Defendant's rights and defenses to the Complaint, including but not limited to the right to file Preliminary Objections, will be deemed tolled and preserved as they existed as of the original filing of the Complaint naming said Defendant.

October 29, 2008

BY THE COURT:

Tereshko  
The Honorable Allan Tereshko

[Date]

To: All Counsel of Record

**Re: *Paxil Pregnancy Cases***

**Philadelphia Court of Common Pleas, *February Term 2007, No. 03220***

**[INDIVIDUAL CASE CAPTION AND DOCKET NUMBER]**

**NOTICE OF INTENT TO SEEK DISMISSAL FOR NONINVOLVEMENT**

Dear Counsel:

Pursuant to Case Management Order No. 2 Governing All "Paxil Pregnancy" Cases, enclosed please find [Defendant's] Praecipe for Dismissal Based on Noninvolvement in the above-referenced case. You have twenty-one (21) days within which to object to this Praecipe. If no objections are received within that time, the Praecipe will be submitted to the Court for approval.

Very truly yours,

Enclosure

cc: The Honorable Allan Tereshko (w/encl.)

**EXHIBIT A TO CMO NO. 2**

[Firm]  
Attorney  
Identification No.  
Address

Attorney for [Defendant]

\_\_\_\_\_  
*Plaintiff* : COURT OF COMMON PLEAS  
: :  
: PHILADELPHIA COUNTY  
*v.* : :  
: CIVIL ACTION – PAXIL PREGNANCY CASES  
*Defendants* : :  
: CASE NO. \_\_\_\_\_  
: :  
: :  
: :  
: :  
: :  
: :

**DEFENDANT’S PRAECIPE FOR DISMISSAL BASED UPON NONINVOLVEMENT**

[Defendant], by and through its undersigned counsel, hereby requests that this Honorable Court enter an Order dismissing the present matter as to [Defendant] only. In support thereof, [Defendant] avers as follows:

1. Plaintiff in the above-captioned matter filed a Complaint naming [Defendant] as one of several defendants.
2. The Complaint alleges that Minor-Plaintiff’s date of birth was \_\_\_\_\_.
3. [Defendant’s] abbreviated new drug application (ANDA) was not approved until \_\_\_\_\_ [Defendant’s] ANDA Letter is attached hereto as Exhibit A. Therefore, [Defendant’s] product could not have been sold in the U.S. before that date and could not be at issue in this case.

**EXHIBIT B TO CMO NO. 2**

4. **[Defendant]** provided all parties with twenty-one (21) days notice prior to filing this Praecipe for Dismissal.

5. No party has filed an objection to this Praecipe.

6. Pursuant to Case Management Order No. 2 Governing All "Paxil Pregnancy" Cases, **[Defendant]** respectfully requests that this Honorable Court grant this Praecipe for Dismissal Based Upon Noninvolvement and dismiss without prejudice all claims by the Plaintiff against **[Defendant]**.

7. In addition, pursuant to paragraph 7 of Case Management Order No. 2 Governing All "Paxil Pregnancy" Cases, **[Defendant]** respectfully requests that, if no party has moved to re-join **[Defendant]** or filed a subsequent action against **[Defendant]** within ninety (90) days of the date of filing of the attached Order, this dismissal shall automatically become a dismissal with prejudice.

Date: \_\_\_\_\_, 200\_

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**[Attorney]**

Attorney for **[Defendant]**

*Plaintiff*

v.

*Defendants*

: COURT OF COMMON PLEAS  
 :  
 : PHILADELPHIA COUNTY  
 :  
 : CIVIL ACTION – PAXIL PREGNANCY CASES  
 :  
 : CASE NO. \_\_\_\_\_  
 :  
 :  
 :  
 :

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, upon consideration of [Defendant's] Praecipe for Dismissal Based Upon Noninvolvement, it is hereby ORDERED, ADJUDGED and DECREED that said Praecipe is GRANTED. [Defendant] is DISMISSED from this matter without prejudice and all claims and crossclaims by all parties are dismissed as to this Defendant only. If no party has moved to re-join [Defendant] or filed a subsequent action against [Defendant] within ninety (90) days of this Order, this dismissal shall automatically become a dismissal **with prejudice** without the need for further Orders from this Court.

BY THE COURT:

\_\_\_\_\_  
 The Honorable Allan Tereshko

[DATE]

**VIA HAND DELIVERY**

The Honorable Allan Tereshko  
Philadelphia County Court of Common Pleas  
City Hall, Room 622  
Philadelphia, Pennsylvania 19107  
Attn: Donna Candelora, Esquire

Re: *Paxil Pregnancy Cases*  
Phila. Court of Common Pleas, *February Term 2007, No. 03220*  
**[INDIVIDUAL CASE CAPTION AND DOCKET NUMBER]**

**MOTION TO ACQUIRE ARGUMENT DATE FOR DISMISSAL OF [DEFENDANT]  
BASED UPON NONINVOLVEMENT**

Dear Judge Tereshko:

Pursuant to Case Management Order No. 2, [Defendant] hereby moves this Honorable Court for an Order scheduling oral argument on [Defendant's] Praecept for Dismissal Based on Noninvolvement.

**FACTUAL STATEMENT**

Plaintiff in the above-captioned matter filed a Complaint naming [Defendant] as one of several defendants. The Complaint alleges that Minor-Plaintiff's date of birth was \_\_\_\_\_.

[Defendant's] abbreviated new drug application (ANDA) was not approved until \_\_\_\_\_. See Defendant's ANDA Letter attached hereto as Exhibit A. Therefore, [Defendant's] product could not have been sold in the U.S. before that date and could not be at issue in this case.

[Defendant] provided all parties twenty-one (21) days notice of its intention to file its Praecept for Dismissal Based on Noninvolvement. See [Defendant's] letter to all parties

**EXHIBIT C TO CMO NO. 2**

regarding **[Defendant's]** intention to file its Praecept attached hereto as Exhibit B. During the twenty-one (21) day notice period, **[Defendant]** received objections to the filing of its Praecept for Dismissal Based on Noninvolvement.

### **LEGAL ARGUMENT**

Case Management Order No. 2 Governing All "Paxil Pregnancy" Cases provides that if the Praecept for Dismissal Based on Noninvolvement is opposed by any party, the Court will set a briefing schedule and set a date for oral argument, if deemed appropriate by the Court.

### **CONCLUSION**

For the above reasons, **[Defendant]** moves this Honorable Court to enter an Order scheduling a briefing schedule and date for oral argument of **[Defendant's]** Praecept for Dismissal Based on Noninvolvement.

Respectfully,

**[Firm]**

BY: \_\_\_\_\_

Attorney for **[Defendant]**

cc: All Counsel of Record

|                   |   |                                |
|-------------------|---|--------------------------------|
|                   | : | COURT OF COMMON PLEAS          |
|                   | : |                                |
| <i>Plaintiff</i>  | : | PHILADELPHIA COUNTY            |
|                   | : |                                |
| v.                | : | CIVIL ACTION – PAXIL PREGNANCY |
|                   | : | CASES                          |
| <i>Defendants</i> | : |                                |
|                   | : | CASE NO. _____                 |
|                   | : |                                |
|                   | : |                                |
|                   |   |                                |

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, upon consideration of [Defendant's] Motion to Acquire Argument Date for Dismissal Based Upon Noninvolvement and any Reply thereto, it is hereby ORDERED, ADJUDGED and DECREED that [Defendant's] Brief in Support of the Praecipe to Dismiss shall be due \_\_\_\_\_, 200\_\_, and any Brief in Opposition shall be due \_\_\_\_\_, 200\_\_. Oral argument will be held with respect to said [Defendant's] Praecipe for Dismissal Based Upon Noninvolvement on \_\_\_\_\_, 200\_\_, before the Honorable Allan Tereshko at \_\_\_\_\_ o'clock.

BY THE COURT:

\_\_\_\_\_  
The Honorable Allan Tereshko