

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:

NEW ENGLAND COMPOUNDING  
PHARMACY, INC.,

Debtor.

Chapter 11

Case No. 12-19882-HJB

**CHAPTER 11 TRUSTEE'S MOTION FOR AN ORDER (I) ESTABLISHING BAR  
DATES FOR FILING PROOFS OF CLAIM; (II) APPROVING CERTAIN  
ADDITIONAL DOCUMENTATION REQUIREMENTS AND PROCEDURES  
FOR PERSONAL INJURY TORT AND WRONGFUL DEATH CLAIMS;  
(III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; AND (IV)  
GRANTING ADDITIONAL RELATED RELIEF**

1. Paul D. Moore, in his capacity as Chapter 11 trustee (the "Trustee") in the Chapter 11 proceeding (the "Chapter 11 Case") of New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center ("NECC" or the "Debtor"), hereby submits this motion ("Motion") for an order, substantially in the form attached hereto as **Exhibit A** (the "Bar Date Order") (I) setting a bar date of 4:00 p.m. (prevailing Eastern time) on **Friday, September 20, 2013** (the "General Bar Date") for all creditors to file proofs of claim and supporting documentation, including claims held by Governmental Units (as defined in 11 U.S.C. § 101(27)) (the "Government Bar Date" and together with the General Bar Date, the "Bar Date"); (II) approving certain additional documentation requirements and confidentiality procedures (the "PITWD Procedures") for personal injury tort and wrongful death claims (each a "PITWD Claim"), including (a) submitting a PITWD Addendum (as defined below) in addition to a proof of claim and (b) prohibiting proofs of claim and PITWD Addenda submitted by holders of PITWD Claims ("PITWD Claimants") from being made available to the general public and

approving procedures to protect such information; (III) approving the form of notice of such matters; and (IV) granting such additional and other relief as this Court deems necessary or appropriate. In support of this Motion, the Trustee respectfully states as follows:

### **Jurisdiction and Venue**

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Sections 105(a), 501, 502(b)(9), 1103(c)(1) and 1109(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 3003(c) and 9009 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Massachusetts (the “Local Rules”).

### **Background**

4. On December 21, 2012 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts (the “Bankruptcy Court”).

5. On January 18, 2013, the Office of the United States Trustee (the “UST”), pursuant to Bankruptcy Code Section 1102(a)(1), appointed a nine-member Official Committee of Unsecured Creditors (the “Committee”), eight of whom are tort claimants of the Debtor.

6. On December 28, 2012, this Court granted the *Debtor’s Application to Retain Donlin, Recano & Company, Inc. as Claims, Noticing and Balloting Agent* (the “DRC Application”) [Dkt. No. 26]. Pursuant to paragraph 10(C)-(H) of the DRC Application, this Court authorized Donlin, Recano & Company, Inc. (“DRC”) to undertake certain tasks related to the claims process, including, but not limited to:

- (C) Maintaining copies of all proofs of claim and proofs of interest filed in the Chapter 11 Case;
- (D) Maintaining official claims registers by docketing all proofs of claim and proofs of interest in claims registers, including the following information:
  - (i) the name and address of the claimant and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
  - (ii) the date received;
  - (iii) the claim number assigned; and
  - (iv) the asserted amount and classification of the claim;
- (E) Implementing necessary security measures to ensure the completeness and integrity of the claims register, including, but not limited to, keeping adequate backups of electronic data;
- (F) Transmitting to the Clerk's Office a copy of the claims register as requested by the Clerk's Office;
- (G) Maintaining an up-to-date mailing list for all entities that have filed a proof of claim, proof of interest, or request for notice, which list shall be available upon request of a party-in-interest or the Clerk's Office; and
- (H) Providing access to the public for examination of copies of the proofs of claim or interest without charge during regular business hours.<sup>1</sup>

See DRC Application, at ¶ 10(C)–(H).

7. On January 25, 2013, this Court granted the UST's *Certificate of Appointment* appointing the Trustee.

8. On February 12, 2013, the Judicial Panel on Multidistrict Litigation (the "JPML") transferred the multidistrict litigation (the "MDL Proceeding") to the District of Massachusetts (the "MDL Court") where the case styled *In re New England Compounding Pharmacy, Inc., Products Liability Litigation*, Case No. 13-02419 ("MDL Proceeding"), is currently pending.

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<sup>1</sup> Through this Motion, the Trustee also seeks modification of the above provisions to the extent necessary to conform the DRC Application with the PITWD Procedures, particularly with respect to the confidentiality procedures described below.

**Basis for Relief Requested**

9. The Trustee submits that the establishment as soon as possible of a bar date will promote the expeditious administration of the Debtor's estate and the successful resolution of the Chapter 11 Case. On May 31, 2013, the MDL Court issued its "Memorandum and Order on Trustee's Motion to Transfer Cases and Related Motions [MDL Docket No. 224] ("Transfer Motion Opinion"). In the Transfer Motion Opinion, the MDL Court noted (at 19) that "an early bar date" might hasten the ultimate resolution of whether claimants intend to assert indemnity or contribution claims against the NECC estate, and whether the concomitant state court litigation filed by such claimants (in which NECC has not yet been named as a defendant or has been dropped as a defendant in an effort to thwart the MDL Court's jurisdiction) should be transferred to the MDL Court and joined in the MDL Proceeding. Accordingly, the establishment of an "early bar date" will further the efficient administration of state court lawsuits by providing a deadline by which the MDL Court and the parties can determine, with certainty, whether a particular claimant intends to seek recovery from the NECC estate, whether a defendant in such action will assert claims against NECC's estate, including claims for indemnification and contribution, and, thus, whether the concomitant state court litigation should be transferred to the MDL Court. More generally, complete and accurate information as to the nature, validity and status of the claims against the Debtor's estate is necessary to ensure the orderly progression of the Chapter 11 Case, the claims resolution process and the formulation of a plan that addresses the resolution of those claims.

**Bar Dates**

10. Bankruptcy Rule 3003(c)(3) provides, in pertinent part, that "the court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed."



Fed. R. Bankr. P. 3003(c)(3). The Trustee requests that the Court establish the following general and specific Bar Dates.

11. General Bar Date: The Trustee requests that this Court establish Friday, September 20, 2013, at 4:00 p.m. (Prevailing Eastern Time) (the “General Bar Date”) as the deadline for each holder of a prepetition claim (including governmental units as defined in 11 U.S.C. § 101(27)) to file a proof of claim and (as applicable) the PITWD Addendum, in accordance with the PITWD Procedures, as described and defined below. The General Bar Date would apply broadly to all alleged claims (as defined in section 101(5) of the Bankruptcy Code) against the Debtor (whether secured, unsecured priority or unsecured nonpriority) that arose prior to the Petition Date, including alleged claims against the Debtor held by governmental units for unpaid taxes, whether such claims arise from prepetition tax years or periods or prepetition transactions to which the Debtor was a party.

12. The Amended Schedules Bar Date. If the Trustee amends the Debtor’s Schedules, other than as to PITWD Claims, the bar date for those claims affected by such amendment shall be the later of: (a) the applicable Bar Date or (b) the date that is thirty (30) days from the date of the notice to the holder of the affected claim that the Debtor’s Schedules have been amended (the later of these dates is referred to herein as the “Amended Schedules Bar Date”).

13. The Rejection Bar Date. The Trustee anticipates that certain entities may assert claims in connection with the Trustee’s rejection of the Debtor’s executory contracts, unexpired leases, or both, pursuant to Section 365 of the Bankruptcy Code (each a “Rejection Damages Claim”). The Trustee requests that the bar date for proofs of claim on account of Rejection Damages Claims be set as the later of: (a) the applicable Bar Date or (b) thirty (30) days after

the entry of an order approving the rejection of the applicable executory contract and/or unexpired lease pursuant to which Rejection Damages Claim arises (the “Rejection Order”) (the later of such dates is referred to herein as the “Rejection Bar Date”).

14. Litigation Bar Date: Pursuant and subject to Fed.R.Bankr.P. 3002(c)(3) and 3003(c)(3), an unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity’s interest in property.

#### **Administrative Expenses**

15. 11 U.S.C. § 503(a) provides that “[a]n entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.” (emphasis added). Nothing in this Motion is intended to establish, alter, impair or extend any deadlines applicable to the filing of a request for payment or allowance of an administrative expense. Among other things, nothing in this Motion is intended to extend or enlarge the deadline for filing of requests for allowance or payment of administrative expenses pursuant to 11 U.S.C. § 503(b)(9). That deadline was set by operation of MLBR 3002-1<sup>2</sup> and

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<sup>2</sup> MLBR 3002-1 states as follows:

Unless the Court orders otherwise, any request for allowance of an administrative expense for the value of goods delivered to a debtor in the ordinary course of the debtor's business within twenty (20) days prior to the commencement of a case pursuant to 11 U.S.C. § 503(b)(9) shall be filed with the Court, in writing, within sixty (60) days after the first date set for the meeting of creditors pursuant to 11 U.S.C. § 341(a). *Failure to file such a request for allowance within the time period specified in this Rule will result in denial of administrative expense treatment for such claim.* (emphasis added).

Fed.R.Bankr.P. 9006(a)(1)(C)<sup>3</sup> as Monday, April 1, 2013, and has expired. “[W]hile Local Rule 3002-1 affords the Court with the flexibility to set the deadline for the filing of § 503(b)(9) claims, Bankruptcy Rule 9006(b) permits the Court to allow such a claim after the deadline, [only] upon a showing of the claimant’s excusable neglect.” *In re J.J. Donovan and Sons, Inc.*, Case No. 11-13958-HJB (Bankr. D. Mass. December 22, 2011) (unpublished mem. op.). The proposed Bar Date Order neither will enlarge or otherwise alter the April 1, 2013 deadline, nor provide any entity with relief from that deadline.

### **The Bar Date Procedures**

16. The various types of creditor claims in the Chapter 11 Case can generally be categorized into the following two groups for purposes of proofs of claim and claims bar date filings: (a) PITWD Claims and (b) all other claims. These two types of claims differ in important respects, and, accordingly, the Trustee requests that certain additional requirements apply to the PITWD Claims as specified below.

17. The proposed Bar Date Order provides that each person or entity (including, without limitation, each individual, partnership, joint venture, limited liability company, corporation, estate, trust or governmental unit) asserting a claim against the Debtor is required to

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<sup>3</sup> Fed.R.Bankr.P. 9006(a)(1)(C) states as follows:

(a) Computing time

The following rules apply in computing any time period specified in . . . any local rule. . . :

(1) Period stated in days or a longer unit

When the period is stated in days or a longer unit of time . . .

(C) include the last day of the period, but if the last day is a . . . Sunday. . . the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

submit an original proof of claim in the Chapter 11 Case. Each proof of claim must substantially comply with Official Bankruptcy Form 10, attached hereto as Exhibit B and must be actually received by DRC on or before the applicable Bar Date.

18. Additionally, pursuant to the proposed PITWD Procedures, described more fully below, each PITWD Claimant is required to submit an original proof of claim and a PITWD Addendum, as defined below and attached hereto as Exhibit C, so as to actually received by DRC on or before the applicable Bar Date.

19. Claimants may submit proofs of claim in person, by courier service, hand delivery or mail. Proofs of claim will be deemed filed only if actually received (together with the PITWD Addendum, if applicable) by DRC on or before the applicable Bar Date, at the following addresses:

If by mail:

Donlin, Recano & Company, Inc.  
Re: New England Compounding Pharmacy, Inc.  
P.O. Box 2053  
Murray Hill Station  
New York, NY 10156

If by overnight courier or hand delivery:

Donlin, Recano & Company, Inc.  
Re: New England Compounding Pharmacy, Inc.  
419 Park Avenue South, Suite 1206  
New York, NY 10016

DRC shall not be required to accept proofs of claim sent by facsimile or electronic mail transmission. For any claim to be properly and validly filed, an original of the completed proof of claim (including a PITWD Addendum, if applicable), signed by the claimant or an authorized agent of the claimant, accompanied by any supporting documentation required by Bankruptcy Rules 3001(c) and (d), must be delivered to DRC on or before the applicable Bar Date. Proofs of



claim must be in the English language and be denominated in lawful United States currency. Any person or entity that files a proof of claim and wishes to receive a copy with a stamp or other marking acknowledging DRC's receipt by return mail must include an additional copy of the proof of claim with a self-addressed envelope, postage pre-paid.

**The PITWD Procedures**

20. The Trustee requests that each PITWD Claimant be required to file a PITWD Addendum as part of its proof of claim. The PITWD Addendum requests that each PITWD Claimant provide detailed information concerning its claims that is not otherwise available to the Trustee and the Debtor's estate and will facilitate the evaluation and resolution of such claims. At the same time, the PITWD Addendum expressly and conspicuously provides as follows:

**IF YOU ARE NOT REPRESENTED BY COUNSEL OR  
OTHERWISE ARE UNABLE TO FURNISH ANY OF THE  
INFORMATION REQUESTED, PLEASE PROVIDE AS  
MUCH INFORMATION AS YOU CAN.**

21. Pursuant to the proposed PITWD Procedures, the Trustee respectfully requests that each PITWD Claimant be required to submit *both* a proof of claim *and* an addendum titled "Plaintiffs Preliminary Disclosure" (the "PITWD Addendum") substantially in the form attached hereto as Exhibit C. Rule 9009 provides that Official Forms "shall be observed and used with alterations as may be appropriate." Fed. R. Bankr. P. 9009. Thus, this Court has the authority to approve modifications of Bankruptcy Form 10 when appropriate. *See In re A.H. Robins Co.*, 862 F.2d 1092 (4th Cir. 1988) (utilizing a questionnaire as part of the required procedure established by the district court for the filing of Dalkon Shield claims); *Order on Ex Parte Application for Order (A) Setting A Claims Bar Date, (B) Establishing Certain Additional Requirements for Ephedra Claims, (C) Approving Form of Notice, and (D) Granting Additional Relief, In re Metabolife Int'l, Inc.*, Case No. 05-6040-H11 (S.D. Cal. Nov. 10, 2005) [Dkt. No. 484] (utilizing

a supplement which was required to be filed in addition to a proof of claim by every creditor holding an ephedra claim).

22. Accordingly, the Trustee requests approval of the following as part of the PITWD Procedures:

(a) PITWD Claimants are directed **not** to file their proofs of claim and PITWD Addenda with the Bankruptcy Court. An original proof of claim and the original PITWD Addendum must be mailed or delivered **to DRC** as follows:

If by mail:

Donlin, Recano & Company, Inc.  
Re: New England Compounding Pharmacy, Inc.  
P.O. Box 2053  
Murray Hill Station  
New York, NY 10156

If by overnight courier or hand delivery:

Donlin, Recano & Company, Inc.  
Re: New England Compounding Pharmacy, Inc.  
419 Park Avenue South, Suite 1206  
New York, NY 10016

Both the proof of claim and the PITWD Addendum must be actually received by DRC on or before the applicable Bar Date. DRC will make available all filed proofs of claim and PITWD Addenda to the Trustee and the Committee, in compliance with applicable law, including HIPAA, but will otherwise restrict access to such PITWD Claims as described below.

#### **Confidentiality Provisions**

23. The Trustee recognizes that PITWD Claimants may wish to avoid unnecessary disclosure of certain sensitive medical information related to their respective PITWD Claims. Courts have approved confidentiality protocols for submitting proofs of claim to protect patient information. *See Motion of the Debtors for an Order (A) Establishing Bar Dates for Filing*

*Proofs of Claim, (B) Approving the Form and Manner of Notice Thereof, and (C) Authorizing Payment of Related Publication Expenses, In re N. Berkshire Healthcare, Inc.*, Case No. 11-31114 (Bankr. D. Mass. July 11, 2011) [Dkt. No. 131] ["NBH Case"]; *see also* Health Insurance Portability and Accountability Act ("HIPAA"), 42 U.S.C. § 1320(d) *et seq.* The proposed confidentiality protocols are in part modeled on those approved by this Court in the NBH Case.

24. To prevent unauthorized or inadvertent disclosure of such sensitive information, the Trustee proposes that the following confidentiality provisions govern the use and disclosure of information provided on the PITWD Addenda:

(a) A proof of claim and PITWD Addendum filed by a PITWD Claimant will not be made available to the general public unless the holder of the PITWD Claim affirmatively indicates in Part VI of the PITWD Addendum that he or she would like his or her proof of claim and PITWD Addendum to be made public, and will be made available only to the Trustee and Committee, solely for the purpose of fulfilling their respective statutory duties. The Trustee may share the PITWD Addenda only with Permitted Parties, as identified in Paragraph 24(c) below.

(b) A proof of claim and PITWD Addendum submitted by a PITWD Claimant shall be held and treated as confidential by DRC, and made available by the Trustee (directly or through DRC, at the Trustee's direction), only to (x) the Trustee's professionals and experts retained by the Trustee and/or his insurers, and (y) one or more of the parties identified in Paragraph 24(c) below (the "Permitted Parties"), subject to the Permitted Party receiving the PITWD Addenda having executed and returned to counsel to the Trustee in advance a written confidentiality agreement in form and substance satisfactory to the Trustee, and such other persons as this Court may order after notice and an opportunity for any such PITWD Claimant to be heard. All parties with access to proofs of claim and PITWD Addenda filed by PITWD

Claimants shall agree to keep confidential the information provided in such proofs of claim and PITWD Addenda.

(c) The Permitted Parties are:

- (i) Insurance companies (and their professionals and third party medical experts) that provide insurance that may cover claims described in the proofs of claim and PITWD Addenda submitted by PITWD Claimants;
- (ii) The Plaintiffs' Steering Committee, Defendants' liaison counsel in the MDL Proceeding, and any counsel for the Affiliated Defendants;<sup>4</sup>
- (iii) Counsel for the Official Committee of Unsecured Creditors of NECC;
- (iv) Any mediator appointed by this Court or the MDL Court;
- (v) Any special arbitrator or claims reviewer appointed by this Court or the MDL Court to review and resolve the PITWD Claims; and
- (vi) Such other persons as this Court or the MDL Court may determine should have the information in order to evaluate the PITWD Claims.

(d) Any proof of claim and PITWD Addendum filed must be a "Single-Claimant PITWD Claim." A "Single-Claimant PITWD Claim" is a proof of claim and PITWD Addendum filed: (i) by an individual claimant on behalf of himself or herself or on behalf of an injured minor child for whom the individual serves as guardian or next friend; (ii) by a claimant and family member claimants; or (iii) on behalf of the estate of a deceased or incompetent individual, together with any family members and/or beneficiaries of such estate. "Multi-Claimant PITWD Claims," or proofs of claim joining or on behalf of two (2) or more claimants may not be filed without Court approval, other than as expressly provided above.

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<sup>4</sup> The "Affiliated Defendants" are Barry Cadden; Lisa Conigliaro Cadden; Carla Conigliaro; Doug Conigliaro; Greg Conigliaro; Ameridose, LLC; Medical Sales Management, Inc.; Alaunus Pharmaceutical, LLC; and GDC Properties Management, LLC.



25. DRC shall maintain the proofs of claim and PITWD Addenda on a server that is housed in a data center hardened against unauthorized access via the Internet or any wireless device. The proofs of claim and PITWD Addenda shall be loaded by DRC to a database that is password-protected and encrypted.

26. DRC shall maintain the proofs of claim and PITWD Addenda for a period of one (1) year after the resolution of all PITWD Claims or as otherwise ordered by this Court or the MDL Court. Unless this Court or the MDL Court orders otherwise, at the conclusion of the one (1) year (or such other time as this Court or the MDL Court may order):

(a) DRC will box and transport to the National Archives and Records Administration, or as otherwise directed by the Clerk of this Court ("Clerk"), provided, however, that DRC shall separately box and label the boxes containing any original proofs of claim, if any, filed by PITWD Claimants with the legend "Confidential Information – Do Not Disclose" before transporting such materials pursuant to this paragraph;

(b) DRC shall purge and destroy all records and reports not handled in accordance with paragraph 26(a) above, including electronic and hard copies, that contain information from PITWD Addenda.

27. The Trustee believes the foregoing provisions will operate to protect and preserve the confidentiality of the PITWD Addenda. The Trustee has consulted with DRC, and has been advised that DRC will be able to comply with the procedures set forth above to handle and maintain the confidentiality of the PITWD Addenda.

#### **Excluded Claims**

28. The proposed Bar Date Order further provides that proofs of claim need not be filed on account of the following claims (the "Excluded Claims"):

- (i) Any claim for which there has already been properly filed a proof of claim against the Debtor with the Clerk of the Bankruptcy Court for the District of Massachusetts, in a form substantially similar to Official Form 10. ***However, any such creditor with a PITWD Claim, or whose previously submitted proof of claim purports to assert PITWD Claims on behalf of other individuals, must submit a new proof of claim and a PITWD Addendum to DRC as specified above.***

- (ii) Any claim listed on the Schedules, provided that: (i) the claim is not listed as disputed, contingent, or unliquidated; and (ii) the holder of such claim agrees with the amount, nature, and priority of the claim as established in the Schedules;
- (iii) Any claim that has been allowed by order of the Bankruptcy Court or for which a specific filing deadline has previously been fixed by the Bankruptcy Court;
- (iv) Any claim that has been satisfied in full, pursuant to the Bankruptcy Code or in accordance with an order of the Bankruptcy Court, prior to the applicable Bar Date;
- (v) Any claim allowable under Section 503(b) of the Bankruptcy Code as an administrative expense; provided, however, that claims under Section 503(b)(9) must have been asserted properly and timely on or before April 1, 2013, otherwise such claims shall not be paid or allowed; or
- (vi) Any claim or interest based on equity securities (including, without limitation, ownership of common or preferred stock, membership interests, partnership interests, or warrant or rights to purchase, sell or subscribe to such a security or interest); provided, however, that any claim (as opposed to ownership interest) against the Debtor based on transactions in the Debtor's securities, including claims for damages or rescission based on the purchase or sale of such securities, must be filed on or before the General Bar Date and, provided, further, that the Trustee reserves all rights with respect to any such claims including, *inter alia*, the right to assert that such claims are subject to subordination pursuant to Section 510(b) of the Bankruptcy Code.

**Effect of Failure to File a Proof of a Claim**

29. The Trustee requests that any holder of a claim that is required to file a proof of claim in the Chapter 11 Case that has actual or constructive notice of the bar dates established by this Motion, but fails to file a proof of claim (and, when necessary, a PITWD Addendum) in compliance with the procedures set forth in the Bar Date Order by the applicable Bar Date, without the express consent of the Trustee: (a) be prohibited from voting to accept or reject any Chapter 11 plan filed in this Chapter 11 Case with respect to such claim; (b) be prohibited from participating in any distribution in this Chapter 11 Case on account of such claims; and (c) be forever barred, estopped, and enjoined from asserting such claims against the Debtor. Moreover,

such persons or entities that fail to file a proof of claim in accordance with the Bar Date Order shall no longer be entitled to further notice from the Trustee regarding such claims or any hearing that directly or indirectly may affect the allowance of such claims.

**Proposed Notice Procedures**

30. The Trustee intends to serve all actually known and reasonably ascertainable creditors with actual notice of the Bar Dates pursuant to the Bar Date Order. *See, City of New York v. New York, N.H. & H. R.R.*, 344 U.S. 293 (1953), *Paging Network, Inc. v. Arch Wireless (In re Arch Wireless)*, 534 F.3d 76 (1<sup>st</sup> Cir. 2008). Accordingly, pursuant to Bankruptcy Rule 2002(a)(7), the Trustee proposes to serve by mail, addressed as set forth in Fed.R.Bankr.P. 2002(g), all known and reasonably ascertainable persons and entities holding potential prepetition claims against the Debtor with the following:

- (i) A proof of claim form substantially in the form attached hereto as **Exhibit B** and incorporated herein by reference;
- (ii) A PITWD Addendum substantially in the form attached hereto as **Exhibit C** and incorporated herein by reference; and
- (iii) A Bar Date Notice<sup>5</sup> substantially in the form of notice attached hereto as **Exhibit D** and incorporated herein by reference.

31. The Trustee seeks an order authorizing and requiring him to cause the mailing of the Bar Date Notice, a proof of claim form and a PITWD Addendum if required (the “Bar Date Package”) by first-class United States mail, postage prepaid, on or before **Friday, July 21, 2013** (or a date to be determined upon approval of this Motion), to:

- (i) The Office of the United States Trustee for Region 1;

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<sup>5</sup> The proposed Bar Date Notice also provides claimants information concerning the Donlin Recano website established in this Chapter 11 Case which will, in turn, have available links providing the above-referenced form of proof of claim and PITWD Addendum.

- (ii) All known holders of claims and their counsel (if known) listed on the Schedules at the addresses stated therein;
- (iii) All counterparties to the Debtor's executory contracts and unexpired leases listed on the Schedules (including all collective bargaining agreements) at the addresses stated therein (to be amended or supplemented as necessary);
- (iv) All parties to litigation with the Debtor (as of the date of the entry of the Bar Date Order);
- (v) Holders of PITWD Claims that are identified in the MDL Proceeding, any party that the Trustee has determined from the records of NECC or from litigation or other public filings may have been exposed to product manufactured by NECC,<sup>6</sup> and any NECC customer (including, without limitation, hospitals, clinics and other health care providers) who received a shipment of NECC product within two (2) years prior to the Petition Date;
- (vi) All parties who have requested notice pursuant to Bankruptcy Rule 2002;
- (vii) All persons or entities that have previously filed proofs of claims in this Chapter 11 Case as of the date of the Bar Date Order;
- (viii) The Internal Revenue Service;
- (ix) All other taxing authorities for the jurisdictions in which the Debtor maintains or conducts business;
- (x) All known Governmental Units in this Chapter 11 Case;
- (xi) The United States Attorney's Office for the District of Massachusetts;
- (xii) All known equity holders of the Debtor as of the Petition Date; and
- (xiii) Such additional persons and entities as deemed appropriate by the Trustee (if any).

32. The Trustee further intends to post a Bar Date Notice, a proof of claim form and a PITWD Addendum on the website established in the Chapter 11 Case and on the section of that

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<sup>6</sup> The Trustee has been working to obtain lists from health care facilities and/or the Center for Disease Control of individuals who received injections of contaminated methyl prednisolone acetate during the relevant period of time.



website maintained by the Committee for purposes of providing information to creditors in this Chapter 11 Case.

**Proposed Notice Procedures for Unknown Creditors**

33. Although the Trustee contemplates known creditors will receive actual written notice of the Bar Dates pursuant to Fed.R.Bankr.P. 2002(a)(7) in accordance with the procedures described above, there are additional, potential creditors that are unknown to the Trustee. The Trustee understands that the Debtor shipped its products to various clinics and other health care providers, who in turn either shipped the products further down the distribution chain or administered these products to patients. The Debtor's records do not include the identities of all of the persons who might have received allegedly tainted products compounded by the Debtor or who might assert claims against the Debtor by virtue of being in the distribution chain of the Debtor's products. As to such parties who have not made claims against the Debtor in other state or federal courts, or otherwise made their identities and claims known to the Debtor, the Trustee cannot determine who these potential creditors are, at least without engaging in lengthy, protracted, costly and burdensome discovery of the Debtor's customers to determine those who received and ultimately were administered the Debtor's products.

34. The Trustee obviously cannot provide actual notice to creditors whose identity is unknown. Thus, the Trustee seeks authority to provide constructive notice by publication to these unknown creditors. Such constructive publication notice, reasonably calculated to provide these unknown creditors with notice of the bar date, is necessary and appropriate here. "For notice purposes, bankruptcy law distinguishes between 'known creditors,' who are entitled to receive direct notice . . . and 'unknown creditors,' for whom publication notice is sufficient." *Paging Network, Inc. v. Arch Wireless (In re Arch Wireless)*, 534 F.3d at 80 (citations omitted). A "known" creditor is one whose claim and identity is either known or "reasonably ascertainable

by the debtor." *Tulsa Professional Collection Serv., Inc. v. Pope*, 485 U.S. 478, 490, 99 L. Ed. 2d 565, 108 S. Ct. 1340 (1988). An "unknown" creditor is one whose "interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor]." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950), *Paging Network, Inc. v. Arch Wireless (In re Arch Wireless)*, 534 F.3d at 81 (citations omitted).

35. The Trustee believes the interests of these unknown parties is either conjectural or future or not in the due course of business made known to the Debtor. Thus, these persons are unknown creditors, unless their identities and claims are "reasonably ascertainable." The Trustee believes they are not "reasonably ascertainable." "A creditor is 'reasonably ascertainable' if its claim can be discovered through 'reasonably diligent efforts' . . . ." *Paging Network, Inc. v. Arch Wireless (In re Arch Wireless)*, 534 F.3d at 81 (citations omitted). While the First Circuit has noted in passing that these reasonably diligent efforts "generally *include* 'a careful search of the debtor's own records'" *Id.* at 81 (citations omitted), other circuit courts have noted that reasonably diligent efforts generally *are limited* "*only* to a careful search of the debtor's own records, and that . . . claimants whose claims are not discoverable therein or otherwise apparent are not "known creditors" for bankruptcy purposes. . ." *Louisiana Department of Environmental Quality v. Crystal Oil Company (In re Crystal Oil Company)* 158 F.3d 291, (5<sup>th</sup> Cir. 1998), *citing Chemtron Corp. v. Jones*, 72 F.3d 341, 348 (3<sup>rd</sup> Cir. 1995) (emphasis added).

36. In *Chemtron*, the Third Circuit affirmed the disallowance of an untimely filed claim by a governmental agency for damages under environmental protection statutes where the agency was not provided with actual notice of the bar date. The agency argued it was a known creditor, entitled to actual notice, notwithstanding that the debtor's alleged violation of the

environmental protection statutes was not apparent to the debtor from a careful review of its records, since the debtor was a sophisticated entity that previously had significant dealings with the governmental agency on environmental matters. The Third Circuit rejected this argument, reasoning that the claimant's identity must be reasonably ascertainable, not that its claim is reasonably foreseeable. Since the alleged claim was not ascertainable from a careful review of the debtor's books and records, the Third Circuit held that the governmental agency received adequate notice through publication and thus was bound by the bar date. The Third Circuit emphasized the practical difficulties, delay and cost of forcing the debtor to search for all such creditors. The Third Circuit ruled that a debtor "cannot be required to provide actual notice to anyone who potentially could have been affected by [its] action[ ]; such a requirement would completely vitiate the important goal of prompt and effectual administration and settlement of debtors' estates." *Id.*

37. Similarly, in *Crystal Oil*, the Fifth Circuit affirmed the disallowance of an untimely filed claim (filed nine years after the bar date) by a potentially liable person for environmental damages seeking to retain its rights to claims for contribution against the Debtor. The Fifth Circuit held that the claim arose prepetition, and that the claimant had received adequate notice of the bar date by publication.

38. In addition to the constructive notice described above, the Trustee seeks an order directing customers who received products from NECC in the past 2 years (as listed on Schedule 1 to this Motion, the "NECC Customers") and health care providers listed on the CDC website at <http://www.cdc.gov/hai/outbreaks/meningitis-facilities-map.html> as having received lots of methylprednisolone acetate recalled from NECC (as listed on Schedule 2 to this Motion, the "NECC HCPs" and, together with the NECC Customers, the "Notice Intermediaries"), requiring

such Notice Intermediaries to provide copies of the Bar Date Notice to all persons whom the Notice Intermediary knows, or has reason to know, were exposed to or received an NECC product in the last two years or, in the alternative, to provide the Trustee the names and addresses of all such patients so that he can provide notice. The Trustee submits that such a procedure, although not constituting actual notice by the Trustee to unknown creditors, will further assist in providing the most complete notice possible under the circumstances.

39. Certainly the Trustee, together with the Committee and the Plaintiff's Steering Committee ("PSC") appointed by the MDL Court, will endeavor to ascertain the identities of these unknown persons, and will err on the side of inclusiveness in providing notice, but there is no assurance that they will succeed or, in any event, that they could do so within any reasonable time that would allow the "prompt and effectual administration and settlement of [the Debtor's] estate[ ]." *In re Chemtron, supra*. Instead, the Trustee submits that publication notice is necessary and appropriate, and sufficient notice for those persons who may have suffered damages allegedly resulting from the Debtor's products, but for whatever reason have neither filed claims nor are known after a careful search of the Debtor's books and records, all at least 10 months after the Debtor last shipped any of its products. Accordingly, the Trustee requests authorization in the Bar Date Order pursuant to Fed.R.Bankr.P. 2002(l) to provide notice by publication and to incur and disburse the funds required to pay for the contemplated publication notice without further order or notice. The Trustee intends to publish notice of the bar date at least twice in the national edition of USA Today to provide notice to potential, unknown creditors. *See, City of N.Y. v. New York, N.H. & H. R.R., supra*. The Trustee also seeks authority to publish other and further notice or notices in such manner and at such times as he, after consultation with the Committee, the PSC, the Office of the United States Trustee and DRC,



believes is reasonably calculated to provide holders of claims (particularly holders of PITWD Claims) with notice of the Bar Dates.

**Conclusion**

**WHEREFORE**, the Trustee respectfully requests that this Court allow this Motion, enter the Bar Date Order, substantially in the form attached hereto as **Exhibit A** (a) establishing Bar Dates for the filing of Proofs of Claim as requested above; (b) approving the PITWD Procedures, including (i) approval of the PITWD Addendum and (ii) prohibiting proofs of claim and PITWD Addenda submitted by PITWD Claimants from being made available to the general public and approving procedures to protect such information as requested above; (c) approving the form and manner of notice thereof; (d) authorizing the Trustee to make actual and constructive notice by publication as described above, and to incur all costs required in connection therewith; and (e) granting the Trustee such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: June 28, 2013  
Boston, Massachusetts

PAUL D. MOORE, AS CHAPTER 11 TRUSTEE

BY: /s/ Jeffrey D. Sternklar  
Jeffrey D. Sternklar (BBO#549561)  
Suite 2400  
100 High Street  
Boston, MA 02110-1724  
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Facsimile: (857) 401-3034  
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Counsel for the Trustee

# **EXHIBIT A**

## **PROPOSED BAR DATE ORDER**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:

NEW ENGLAND COMPOUNDING  
PHARMACY, INC.,

Debtor.

Chapter 11

Case No. 12-19882-HJB

**ORDER (I) ESTABLISHING DEADLINE FOR FILING PROOFS OF CLAIM,  
(II) APPROVING CERTAIN ADDITIONAL DOCUMENTATION REQUIREMENTS  
AND PROCEDURES FOR PERSONAL INJURY TORT AND WRONGFUL DEATH  
CLAIMS AND (III) APPROVING FORM AND MANNER OF NOTICE THEREOF**

Upon the motion dated June 28, 2013 (the "Motion")<sup>1</sup> of Paul D. Moore, as the Chapter 11 trustee (the "Trustee") in the Chapter 11 proceeding (the "Chapter 11 Case") of New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center ("NECC" or the "Debtor"), pursuant to Sections 105, 501, 503, 1103(c)(1) and 1109(b) of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 3003(c) and 9009 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2002-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Massachusetts (the "Local Rules"), for entry of an order (I) establishing bar dates for filing proofs of claim; (II) approving certain additional documentation requirements and procedures for PITWD Claims; and (III) approving the form and manner of notice thereof as more fully described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and there being no objections to the Motion; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is

1. ORDERED that the Motion is granted as provided herein; and it is further
2. ORDERED that, except as otherwise provided herein, the following procedures for filing proofs of claim are approved:
  - a. the General Bar Date is established as **Friday, September 20, 2013 at 4:00 p.m. (prevailing Eastern Time);**
  - b. the Amended Schedule Bar Date is established as **the later of (i) Friday, September 20, 2013 at 4:00 p.m. (prevailing Eastern Time) or (ii) 4:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days after notice of amendment or supplement to Schedules is served; and**
  - c. the Government Bar Date is established as **Friday, September 20, 2013 at 4:00 p.m. (prevailing Eastern Time);**
  - d. the Rejection Bar Date is established as **the later of (i) the applicable bar date (see above) or (ii) thirty (30) days after the entry of an order approving the rejection of the relevant executory contract and/or unexpired lease; and it is further:**
3. ORDERED that each proof of claim must: (a) be written in the English language; (b) denominate the claim in lawful currency of the United States as of the Petition Date; (c) conform substantially with the proof of claim form or Official Bankruptcy Form No. 10 ("Official Form 10"); (d) set forth with specificity the legal and factual basis for the alleged claim; (e) be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant; (f) include supporting documentation (or, if such supporting



documentation is voluminous, include a summary of such documentation) or an explanation as to why such documentation is not available; such documentation must be written in English or if not written in English the claimant must also provide a copy of the documentation translated into English; provided, however, that a proof of claim may be submitted without supporting documentation upon the prior written consent of the Trustee; provided, further, that any creditor that receives such written consent shall be required to transmit such writings to the Trustee, upon request, no later than ten (10) days from the date of such request; and it is further

4. ORDERED that each **original** proof of claim, including supporting documentation, filed against the Debtor, shall be deemed timely filed only if it is **actually received** by Donlin, Recano & Company, Inc. ("DRC"), the court-approved claims and noticing agent in the Chapter 11 Case, on or before the applicable Bar Date, at the following addresses:

If by mail:

Donlin, Recano & Company, Inc.  
Re: New England Compounding Pharmacy, Inc.  
P.O. Box 2053  
Murray Hill Station  
New York, NY 10156

If by overnight courier or hand delivery:

Donlin, Recano & Company, Inc.  
Re: New England Compounding Pharmacy, Inc.  
419 Park Avenue South, Suite 1206  
New York, NY 10016

and it is further

5. ORDERED that the PITWD Procedures are hereby approved in all respects as set forth herein. Every PITWD Claimant must submit **both a proof of claim and a PITWD Addendum**. PITWD Claimants are directed not to file proofs of claim or PITWD Addenda with

the Bankruptcy Court. Each original proof of claim of a PITWD Claimant, including the PITWD Addendum, filed against the Debtor, shall be deemed timely filed only if it is

Actually received by DRC, on or before the applicable Bar Date, at the below addresses:

If by mail:

Donlin, Recano & Company, Inc.

Re: New England Compounding Pharmacy, Inc.  
P.O. Box 2053  
Murray Hill Station  
New York, NY 10156

If by overnight courier or hand delivery:

Donlin, Recano & Company, Inc.  
Re: New England Compounding Pharmacy, Inc.  
419 Park Avenue South, Suite 1206  
New York, NY 10016

(a) A proof of claim and a PITWD Addendum filed by a PITWD Claimant *will not be made available to the general public unless a holder of a PITWD Claim affirmatively indicates that he or she would like his or her proof of claim and PITWD Addendum to be made public in Part VI of the PITWD Addendum and will be made available only to the Trustee, solely for the purpose of fulfilling the statutory duties of the Trustee (see 11 U.S.C. § 1106). The Trustee may share the proofs of claim and PITWD Addenda only with Permitted Parties.*

(b) A proof of claim and a PITWD Addendum submitted by a PITWD Claimant shall be held and treated as confidential by DRC, and made available by the Trustee (directly or from DRC, at the Trustee's direction) only to (i) the Trustee's professionals and experts retained by the Trustee and/or his insurers and (ii) the Permitted Parties, subject to each Permitted Party executing and returning to counsel to the Trustee in advance a written

confidentiality agreement in form and substance satisfactory to the Trustee, and to such other persons as the Bankruptcy Court determines. All parties with access to proofs of claim and PITWD Addenda submitted by PITWD Claimants shall agree to keep the information provided in any proof of claim or PITWD Addendum submitted by PITWD Claimants confidential.

(c) Any proof of claim and PITWD Addenda filed must be a "Single-Claimant PITWD Claim." A "Single-Claimant PITWD Claim" is a proof of claim and PITWD Addendum filed: (i) by an individual claimant on behalf of himself or herself or on behalf of an injured minor child for whom the individual is guardian or next friend; (ii) by a claimant and family member claimants; or (iii) on behalf of the estate of a deceased or incompetent individual, together with any family members and/or beneficiaries of such estate. "Multi-Claimant PITWD Claims," or proofs of claim joining or on behalf of two (2) or more claimants other than as expressly provided above, may not be filed without Bankruptcy Court approval; and it is further

6. ORDERED that DRC shall maintain the proofs of claim and PITWD Addenda on a server that is housed in a data center hardened against unauthorized access via the Internet or any wireless device. The proofs of claim and PITWD Addenda shall be loaded to a database that is password-protected and encrypted; and it is further

7. ORDERED that DRC shall maintain the proofs of claim and PITWD Addenda for a period of one (1) year after the resolution of all PITWD Claims, or as otherwise ordered by this Court or the MDL Court. Unless this Court or the MDL Court orders otherwise, at the conclusion of the one (1) year (or such other time as this Court or the MDL Court may order):

- (a) DRC will box and transport to the National Archives and Records Administration, or as otherwise directed by the Clerk of this Court, provided, however, that DRC shall separately box and label the boxes containing any original proofs of claim, if any, filed by PITWD Claimants with the legend "Confidential Information – Do Not Disclose" before transporting such materials pursuant to this paragraph;

- (b) DRC shall purge and destroy all records and reports not handled in accordance with the preceding paragraph 7(a), including electronic and hard copies, that contain information from the PITWD Addenda; and it is further

8. ORDERED that, to the extent DRC's Application conflicts with this Order specifically as to the PITWD Procedures, this Order governs; and it is further

9. ORDERED that the following persons or entities are **not** required to file a proof of claim on or before the General Bar Date or the Government Bar Date, as applicable:

- a. Any entity that already has filed a signed proof of claim against the Debtor with the Clerk of this Court or the Claims Agent in a form substantially similar to Official Form 10. ***However, any such creditor with a PITWD Claim, or whose previously submitted proof of claim purports to assert PITWD Claims on behalf of other individuals, must submit a new proof of claim and a PITWD Addendum as specified in paragraph 5 above;***
- b. Any entity whose claim is listed on Schedules if (i) the claim is **not** scheduled as "disputed," "contingent" or "unliquidated;" and (ii) such entity agrees with the amount, nature and priority of the claim as set forth in the Schedules;
- c. A holder of a claim that previously has been allowed by Order of the Bankruptcy Court on or before the applicable Bar Date;
- d. A holder of a claim for which a specific deadline previously has been fixed by the Bankruptcy Court;
- e. A holder of a claim that has been paid in full by the Debtor or any other party in accordance with the Bankruptcy Code or an Order of the Bankruptcy Court;
- f. Any holder of a claim allowable under Sections 503(b) of the Bankruptcy Code as an administrative expense; provided, however, that claims under Section 503(b)(9) of the Bankruptcy Code must have been asserted properly and timely on or before April 1, 2013, otherwise such claims shall not be paid or allowed; and
- g. Any entity or person holding a claim or interest based on equity securities (including, without limitation, ownership of common or preferred stock, membership interests, partnership interests, or warrant or rights to purchase, sell or subscribe to such a security or interest); provided, however, that a holder of such an interests who wishes to assert a claim (as opposed to ownership interest) against the Debtor based on transactions in



the Debtor's securities, including claims for damages or rescission based on the purchase or sale of such securities, must file a proof of claim on or before the General Claim Bar Date; and, provided, further, that the Trustee reserves all rights with respect to any such claims including, *inter alia*, the right to assert that such claims are subject to subordination pursuant to Section 510(b) of the Bankruptcy Code; and it is further

10. ORDERED that holders of any claims pursuant to the Debtor's corporate charters and bylaws or other organizational documents, or pursuant to any contracts or agreements, for indemnification of current and former partners, current and former members, current and former officers, current and former directors, current and former employees, current and former agents, current and former representatives, current and former advisors, or current and former professionals of the Debtor with respect to all present and future actions, suits, and proceedings against the Debtor and/or any such partners, members, directors, officers, employees, agents, representatives, advisors and/or professionals, must file proofs of claim with respect to such claims on or before the General Bar Date; and it is further

11. ORDERED that all holders of claims under Section 503(b)(9) of the Bankruptcy Code must file a proof of claim, and such proof of claim must: (a) include the value of goods delivered to and received by the Debtor in the twenty (20) days prior to the Petition Date, (b) attach any documentation identifying the particular invoices for which the Section 503(b)(9) claim is being asserted, and (c) shall be made prior to the expiration of the General Bar Date; and it is further

12. ORDERED that the Bar Date Notice, attached to the Motion as Exhibit D is hereby approved; and it is further

13. ORDERED that the Trustee will publish notice of the bar date at least twice in the national edition of USA Today prior to the General Bar Date, which publication is hereby

approved in all respects and which shall be deemed good, adequate, and sufficient publication notice of the Bar Date; and it is further

14. ORDERED that the Trustee shall post the Bar Date Notice, a proof of claim form, and a PITWD Addendum on the website established in the Chapter 11 Case and maintained by DRC ([www.donlinrecano.com/cases/caseinfo/necp](http://www.donlinrecano.com/cases/caseinfo/necp)) and on the section of that website maintained by the Official Committee of Unsecured Creditors for purposes of providing information to creditors in this case; and it is further

15. ORDERED that any hospital, clinic, physician or other health care provider who injected, administered or otherwise provided NECC's products to any patient or third party (collectively, the "patients") are hereby directed to furnish a copy of the notice to all such patients or, in the alternative, provide the Trustee within \_\_\_\_ days of receipt of the Bar Date Notice the names and addresses of all such patients so that the trustee may provide such notice; and it is further

16. ORDERED that the Trustee retains all rights to (a) object to any proof of claim on any grounds and (b) dispute, or assert offsets or defenses to any claim reflected on the Schedules or any amendments thereto, as to amount, liability, classification, or otherwise; and it is further

17. ORDERED that notification of the relief granted in this Order as provided herein is fair and reasonable and will provide good, sufficient, and proper notice to all creditors of their obligations in connection with claims they may have against the Debtor; and it is further

18. ORDERED that entry of this Order is without prejudice to the rights of the Trustee to seek a further order of this Court fixing the date by which holders of claims, not subject to the Bar Date established herein, must file such claims against the Debtor or be forever barred from voting upon any Chapter 11 plan, from receiving any payment or distribution of

property from the Debtor, its estate, or its successors and assigns with respect to such claims, and from asserting such claims against the Debtor; and it is further

19. ORDERED that, unless otherwise ordered by this Court, any holder of a claim against the Debtor who is required, but fails, to file a proof of claim in accordance with this Order on or before the applicable Bar Date, shall be forever barred, estopped, and enjoined from asserting such claim against the Debtor and its estate shall be forever discharged from any and all indebtedness or liability with respect to such claim. Moreover, such holder shall not be permitted to vote to accept or reject any Chapter 11 plan filed in the Chapter 11 Case, participate in any distribution in the Chapter 11 Case on account of such claim, or receive further notices regarding such claim or any hearing that directly or indirectly may affect the allowance of such claim; and it is further

20. ORDERED that the Trustee shall: (a) mail the Bar Date Package by first-class United States mail, postage prepaid, **on or before Friday, July 21, 2013** (or such other date as the Court may order); and it is further

21. ORDERED that notice of the entry of this Order and the Bar Date Notice in accordance with this Order is approved in all respects and shall be deemed good, adequate and sufficient notice if it is served by deposit in the United States mail, first class postage prepaid, **on or before Friday, July 21, 2013** (or such other date as the Court may order), upon the following Parties:

- a. The Office of the United States Trustee for Region 1;
- b. All known holders of claims and their counsel (if known) listed on the Schedules at the addresses stated therein;
- c. All counterparties to the Debtor's executory contracts and unexpired leases listed on the Schedules (including all collective bargaining agreements) at the addresses stated therein (to be amended or supplemented as necessary);

- d. All parties to litigation with the Debtor (as of the date of the entry of the Bar Date Order);
- e. Holders of PITWD Claims that are identified in the MDL Proceeding, any party that the Trustee has determined from the records of NECC or from litigation or other public filings may have been exposed to product manufactured by NECC,<sup>2</sup> and any NECC customer (including, without limitation, hospitals, clinics and other health care providers) who received a shipment of NECC product within two (2) years prior to the Petition Date;
- f. All parties who have requested notice pursuant to Bankruptcy Rule 2002;
- g. All persons or entities that have previously filed proofs of claims in this Chapter 11 Case as of the date of the Bar Date Order;
- h. The Internal Revenue Service;
- i. All other taxing authorities for the jurisdictions in which the Debtor maintains or conducts business;
- j. All known Governmental Units in this Chapter 11 Case;
- k. The United States Attorney's Office for the District of Massachusetts;
- l. All known equity holders of the Debtor as of the Petition Date; and
- m. Such additional persons and entities as deemed appropriate by the Trustee; and it is further

22. ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2013  
Springfield, Massachusetts

\_\_\_\_\_  
The Honorable Henry J. Boroff  
UNITED STATES BANKRUPTCY JUDGE

<sup>2</sup> The Trustee has been working to obtain lists from health care facilities and/or the Center for Disease Control of individuals who received injections of contaminated methyl prednisolone acetate during the relevant period of time.



## **EXHIBIT B**

### **“PROOF OF CLAIM” OFFICIAL BANKRUPTCY FORM 10**

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor:	Case Number:	
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property):		
Name and address where notices should be sent:		<b>COURT USE ONLY</b>
Telephone number:	email:	<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ <i>(If known)</i>  <b>Filed on:</b> _____
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Telephone number:		email:
<b>1. Amount of Claim as of Date Case Filed:</b> \$ _____  If all or part of the claim is secured, complete item 4.  If all or part of the claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
<b>2. Basis for Claim:</b> _____ (See instruction #2)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
<b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____
<b>Value of Property:</b> \$ _____		<b>Basis for perfection:</b> _____
<b>Annual Interest Rate</b> _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		<b>Amount of Secured Claim:</b> \$ _____  <b>Amount Unsecured:</b> \$ _____
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a).</b> If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
<b>Amount entitled to priority:</b> \$ _____		
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

B10 (Official Form 10) (04/13)

2

**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☐ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.) (See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address and telephone number (if different from notice address above): \_\_\_\_\_

(Signature)

(Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

*Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.*

# INSTRUCTIONS FOR PROOF OF CLAIM FORM

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.*

## Items to be completed in Proof of Claim form

### Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

### Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

### 1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

### 2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

### 3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

### 3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

### 3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

### 4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

### 5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

### 6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

### 7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

### 8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. § 506 (a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. § 507 (a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.



# **EXHIBIT C**

## **PITWD ADDENDUM (PLAINTIFFS' PRELIMINARY DISCLOSURE)**

**NEW ENGLAND COMPOUNDING PHARMACY INC. CHAPTER 11 BANKRUPTCY:**

**Preliminary Personal Injury Disclosure Form**

**CLAIMANT NAME:** \_\_\_\_\_

Please provide the following information for each individual on whose behalf a claim is being made relating to exposure to New England Compounding Center Inc. ("NECC") products. Whether you are completing this Preliminary Personal Injury Disclosure Form for yourself or for someone else, please assume that "You" means the person who was exposed to NECC products on which the claim is based (the "Product"). "Product" means any medication or solution compounded by NECC. In filling out any section or sub-section of this form, please submit additional sheets as necessary to provide complete information. In addition, if you subsequently learn that any of your responses are incomplete or incorrect at any time, please supplement your responses to provide that information as soon as you become aware of this new information. In addition, supplemental detailed information and documentation will likely be requested after the submission of this initial disclosure.

In completing this Claimant's Preliminary Personal Injury Disclosure Form, you shall be deemed to be under oath and must provide information that is true and correct to the best of your knowledge, information and belief. If the response to any question is that the person completing this Form does not know or does not recall the information requested that response should be entered in the appropriate location.

YOU MAY AND SHOULD CONSULT WITH YOUR ATTORNEY IF YOU HAVE ANY QUESTIONS REGARDING THE COMPLETION OF THIS FORM. IF YOU ARE NOT REPRESENTED BY COUNSEL OR OTHERWISE ARE UNABLE TO FURNISH ANY OF THE INFORMATION REQUESTED, PLEASE PROVIDE AS MUCH OF THE INFORMATION AS YOU CAN. PLEASE DO NOT CONTACT THE COURT WITH ANY QUESTIONS OR REQUESTS FOR ADDITIONAL INFORMATION.

\*\*\*\*\*

**I. CASE INFORMATION**

1. Name of person on whose behalf a claim is being made (first, middle name or initial, last), including maiden or other names used: \_\_\_\_\_
2. Name of person signing this form, if different than above: \_\_\_\_\_
  - a. Relationship of signer to party on behalf of whom claim is being made: \_\_\_\_\_
  - b. If you are filling this out on behalf of an individual who is deceased, please attach a copy of the death certificate, and autopsy report, if any.

3. State the injury sustained as a result of exposure to the Product:

- a. ☐ Death
- b. ☐ Fungal Meningitis
- c. ☐ Epidural Abcess
- d. ☐ Cerebral Vascular Accident (Stroke)
- e. ☐ Lumbar Puncture (Spinal Tap), No Subsequent Treatment
- f. ☐ Infection
- g. ☐ Injection only, no symptoms or treatment
- h. ☐ Other (describe): \_\_\_\_\_

4. Please state the following for any civil action that you filed against NECC or any affiliated entity or individual

- a. Case caption: \_\_\_\_\_
- b. Docket Number: \_\_\_\_\_
- c. Name, address, telephone number, fax number and e-mail address of principal attorney representing you, if applicable:  
  
Attorney Name: \_\_\_\_\_  
  
Firm: \_\_\_\_\_  
  
Address: \_\_\_\_\_  
  
City, State, Zip Code: \_\_\_\_\_  
  
Telephone Number: \_\_\_\_\_  
  
Fax Number: \_\_\_\_\_  
  
E-mail Address: \_\_\_\_\_

5. Have you ever filed a lawsuit or made a claim against anyone other than NECC [which does not name NECC] (i.e. hospital/ clinic, physician, NECC related companies / principals / distributors, etc.) related to any injury associated with your exposure to NECC products?

☐ Yes ☐ No

If yes, please provide the following information and attach copies of all pleadings, releases or settlement agreements and deposition transcripts you have:

- a. Case caption: \_\_\_\_\_
- b. Docket Number: \_\_\_\_\_
- c. Name, address, telephone number, fax number and e-mail address of principal attorney representing you:  
  
Attorney Name: \_\_\_\_\_  
  
Firm: \_\_\_\_\_  
  
Address: \_\_\_\_\_  
  
City, State Zip Code: \_\_\_\_\_  
  
Telephone Number: \_\_\_\_\_  
  
Fax Number: \_\_\_\_\_  
  
E-mail Address: \_\_\_\_\_

*THE REST OF THIS FORM REQUESTS INFORMATION ABOUT THE PERSON WHO WAS EXPOSED TO THE PRODUCT*

**II. PERSONAL INFORMATION**

- 6. Current address and date(s) when you lived at this address:  
\_\_\_\_\_
- 7. Social Security Number (last 4 digits): XXX-XX-\_\_\_\_\_
- 8. Date and place of birth: \_\_\_\_\_
- 9. Current marital status: \_\_\_\_\_
- 10. Has your present or former spouse filed a loss of services/consortium or other claim in this case?  
  
[ ] Yes [ ] No

**III. MEDICAL INFORMATION**

- 11. Date(s) you were injected with or exposed to the Product: \_\_\_\_\_
- 12. Product Name, Dosage, Amount: \_\_\_\_\_



- a. Product Lot Number: \_\_\_\_\_
13. Hospital/ clinic/physician's office where you were injected or exposed to the Product:  
(name/full address) \_\_\_\_\_
- a. Name of physician who prescribed/injected product.
14. What was the underlying condition for which you were treated (osteoarthritis, back injury, etc.)  
\_\_\_\_\_
15. How were you notified of your potential exposure to the Product?
- a. ☐ a letter from hospital / clinic/ physician's office where you received the Product. Please attach a copy if available.
- b. ☐ a phone call from hospital/clinic/physician's office administering the injection, medical records documenting the product used.
- c. ☐ a letter or phone call from the State Board of Health, Centers for Disease Control ("CDC"), or other government agency. Please attach a copy if available.
16. Have you been tested for meningitis or fungal infection? ☐ Yes ☐ No
- a. If yes, provide:
1. Where - Name and full address of the facility  
\_\_\_\_\_
2. When - Date(s) of test(s) (mm/dd/yyyy):  
\_\_\_\_\_
3. Did you undergo a spinal tap/lumbar puncture? ☐ Yes ☐ No
- If so, please provide medical records documenting test results.
17. After your injection or exposure, have you been diagnosed with, or treated for, any of the following conditions? (check all that apply)
- a. ☐ Death (provide a copy of death certificate, if available)
- b. ☐ Fungal Meningitis
- c. ☐ Epidural Abscess
- d. ☐ Cerebral Vascular Accident (Stroke)

- e. ☐ Infection
- f. ☐ Other (please describe): \_\_\_\_\_
18. For any condition identified in 17 above, please provide information where diagnosis was made and where treatment was provided:
- a. Where - Name and full address of the facility \_\_\_\_\_
- b. When - Date(s) of test(s) (mm/dd/yyyy): \_\_\_\_\_
- c. Did a health care provider tell you that your condition was related to exposure to an NECC product?
- d. If so, identify (name and address) of first health care provider who told you your condition was related to an NECC product.
19. Are you still being treated for your medical condition? ☐ Yes ☐ No
20. Have you been prescribed or received any of the following drugs? If yes, please provide dose and duration.

	<u>Drug</u>	<u>Dose</u>	<u>Duration</u>
a.	Voriconazole (VFend®)		
b.	Lipsomal Amphotericin B (AmBisome®)		
c.	Itraconazole (Nizoral®)		
d.	Posaconazole (Noxafil®)		

21. Please identify all doctors that have treated you since the date of your injection through the present for the conditions that you believe to be related to the NECC injection. Please include date(s), treater(s), address, and type of physician/medical provider (eg., primary care provider, infectious disease specialist, neurologist, radiologist, rheumatologist, rehab, physical therapy, etc.).

22. Are any of the previously described physical conditions still affecting you?

☐ Yes ☐ No

a. If yes, please list and describe.

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**IV. MEDICAL EXPENSES, ECONOMIC LOSS**

23. Did you have medical insurance for treatment rendered? ☐ Yes ☐ No

a. If yes, please provide the following information for each insurance company. If more than one, please provide information for all:

Name of Health Insurance: \_\_\_\_\_

Policy No.: \_\_\_\_\_

Name of Subscriber: \_\_\_\_\_

Patient Identifying Number: \_\_\_\_\_

Amount Covered by Insurance: \$ \_\_\_\_\_

b. If you have Medicare or Medicaid coverage, please state your ID number:

c. Please provide a calculation of your total medical bills related to your injury or illness. If you do not know the total, please provide your best estimate.

\$ \_\_\_\_\_

d. Has any insurance company asserted a lien on your recovery? ☐ Yes ☐ No

If yes, please provide the name of the lienholder: \_\_\_\_\_

**V. EMPLOYMENT INFORMATION**

24. Are you making a claim for past lost wages or future lost earning capacity or other economic loss, other than for medical bills?

☐ Yes ☐ No

If Yes, please provide the following information based on your employer at the time your condition developed or you experienced any illness of which you complain (if not applicable, please state "N/A"):

- a. Name of Employer
  - b. Hourly Rate of Pay or Annual Salary/Gross Income (at the time of the complained-of injury):
  - c. Amount of lost wages incurred or earning capacity (if applicable):
  - d. Amount of future earnings calculated (if applicable):
25. Have you filed a disability claim with any private insurance company or local/state/federal agency?:
- a. If yes, please provide the following information.
    1. Date Filed and with which company: \_\_\_\_\_

**VI. CONSENT TO PUBLIC DISCLOSURE OF INFORMATION**

26. **DO YOU CONSENT TO THE PUBLIC DISCLOSURE OF THE INFORMATION THAT YOU HAVE PROVIDED IN YOUR PROOF OF CLAIM AND THIS PRELIMINARY PERSONAL INJURY DISCLOSURE FORM?**

**IF YOU ANSWER NO, THE INFORMATION THAT YOU HAVE PROVIDED IN BOTH YOUR PROOF OF CLAIM AND THIS FORM WILL BE MADE AVAILABLE ONLY TO (I) THE TRUSTEE APPOINTED IN NECC'S CHAPTER 11 CASE, SOLELY FOR THE PURPOSE OF FULFILLING HIS STATUTORY DUTIES AND (II) CERTAIN OTHER INDIVIDUALS PERMITTED ACCESS PURSUANT TO COURT ORDER.**

☐ Yes ☐ No



**VERIFICATION**

I declare under penalty of perjury that all of the information provided in this Claimant's Preliminary Disclosure is true and correct to the best of my knowledge upon information and belief, that I have supplied all the documents requested in this Claimant's Preliminary Disclosure, to the extent that such documents are in my possession, custody, or control, or in the possession, custody, or control of my lawyers, and that I have supplied the authorizations attached to this declaration.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

## **EXHIBIT D**

### **PROPOSED BAR DATE NOTICE**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

NOTICE: COPIES OF FORMS OF PROOF OF CLAIM  
AND THE PITWD ADDENDUM ARE AVAILABLE AT:  
<http://www.donlinrecano.com/cases/caseinfo/necp>

In re:

NEW ENGLAND COMPOUNDING  
PHARMACY, INC.,

Debtor.

Chapter 11

Case No. 12-19882-HJB

**NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIM  
AND CLAIM PROCEDURES**

On December 21, 2012 (the "Petition Date"), New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center ("NECC" or the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

On January 18, 2013, the Office of the United States Trustee (the "UST") appointed a nine-member Official Committee of Unsecured Creditors (the "Committee").

On January 25, 2013, the Bankruptcy Court (as defined below) approved the appointment of Paul D. Moore as Chapter 11 Trustee of the Debtor (the "Trustee").

**PLEASE TAKE NOTICE THAT** on July \_\_, 2013, the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court") entered an order (the "Bar Date Order") in the Debtor's chapter 11 case establishing certain claims bar dates in the Debtor's chapter 11 case as set forth below.

**KEY DEFINITIONS**

As used in this Notice, the term "Governmental Unit" shall have the meaning attributed to it in 11 U.S.C. § 101(27) and includes the United States, states, commonwealths, districts, territories, municipalities, foreign states, or departments, agencies or instrumentalities of the foregoing.

As used in this Notice, the term "Claim" shall mean, as to or against the Debtor, and in accordance with 11 U.S.C. § 101(5): (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,

undisputed, legal, equitable, secured or unsecured, or (b) any right to an equitable remedy for breach of performance if such breach gives right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

As used in this Notice, the term "PITWD Claim" shall mean a personal injury tort and wrongful death claim.

As used in this Notice, the term "PITWD Claimant" shall mean a holder of a PITWD Claim.

As used in this Notice, the term "PITWD Addendum" shall mean the addendum titled "Plaintiffs Preliminary Disclosure", attached hereto as Exhibit B or otherwise available on the website maintained in this case by Donlin Recano at <http://www.donlinrecano.com/cases/caseinfo/necp>.

### THE BAR DATES

(a) Pursuant to the Bar Date Order, the Bankruptcy Court established [\_\_\_\_], **2013 at 4:00 p.m. (prevailing Eastern Time)** as the bar date (the "General Bar Date") for all entities, including Governmental Units, to file proofs of claim, along with any supporting documentation required by Fed. R. Bankr. P. 3001(c) and (d), against the Debtor.

*(b) The Bankruptcy Court approved certain additional documentation requirements and procedures for PITWD Claims. Specifically, each PITWD Claimant must submit BOTH a proof of claim and a PITWD Addendum to Donlin, Recano & Company, Inc. ("DRC"), which will NOT be made available to the general public and will be ONLY made available to the Trustee, the Official Committee and certain Permitted Parties (as set forth more fully below) and subject to protections to maintain confidentiality, limit access and safeguard data.*

(c) The General Bar Date applies to all types of Claims against the Debtor that arose prior to December 21, 2012 (the "Petition Date"), including secured claims, unsecured priority claims and unsecured nonpriority claims.

(d) If the Trustee amends the Debtor's Schedules after the date on which this Notice and the accompanying Bar Date Order is served (the "Service Date") to change the amount, nature, classification or characterization of a debt owing to a creditor after the Service Date, the bar date for filing of proofs of claim on account of those affected Claims is on or before the later of: (a) the Bar Date or (b) thirty (30) days from the date that notice of the amended Schedules is given to the holders of the Claims affected.

(e) Proofs of claim for Claims arising out of the entry of an Order approved by this Court rejecting an executory contract and/or an unexpired lease of the Debtor pursuant to section 365 of the Bankruptcy Code (each, a "Rejection Order") prior to the confirmation of a plan of reorganization in the Debtor's chapter 11 case, must be filed on or before the later of: (a) the applicable Bar Date or (b) thirty (30) days after the entry date of the Rejection Order.



### WHO MUST FILE A PROOF OF CLAIM

You **MUST** submit a proof of claim (substantially conforming to Official Form No. 10 attached hereto as **Exhibit A**) if you have a Claim against the Debtor that: (a) arose prior to December 21, 2012 and (b) your Claim is not set forth as an Excluded Claim (defined below).

### HOLDERS OF PITWD CLAIMS

*PITWD Claimants **MUST** submit both a proof of claim and a PITWD Addendum (attached hereto as **Exhibit B**). In order to protect confidential patient information, PITWD Claimants are directed **NOT** to file their proof of claims and PITWD Addenda in the Bankruptcy Court. Instead, an original proof of claim and a PITWD Addendum must be mailed or delivered to DRC (see "When and Where to File" below). A proof of claim and PITWD Addendum filed by a PITWD Claimant will not be made available to the general public unless a holder of a PITWD Claim affirmatively indicates that he or she would like his or her proof of claim and PITWD Addendum to be made public in Part VI of the PITWD Addendum but will be made available only to the Trustee, the Trustee's professionals and experts retained by the Trustee and/or his insurers, and the "Permitted Parties" (subject to the Permitted Party receiving the PITWD Addenda executing and returning to counsel to the Trustee in advance a written confidentiality agreement in form and substance satisfactory to the Trustee). The Permitted Parties are:*

- i. Insurance companies (and their professionals and third party medical experts) that provide insurance that may cover claims described in the proofs of claim and PITWD Addenda submitted by PITWD Claimants;
- ii. The Plaintiffs' Steering Committee, Defendants' liaison counsel in the MDL Proceeding, and any counsel for the Affiliated Defendants;<sup>1</sup>
- iii. Counsel for the Official Committee of Unsecured Creditors of NECC;
- iv. Any mediator appointed by this Court or the MDL Court;
- v. Any special arbitrator or claims reviewer appointed by this Court or the MDL Court to review and resolve the PITWD Claims; and
- vi. Such other persons as this Court or the MDL Court determines should have the information in order to evaluate the PITWD Claims.

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<sup>1</sup> The "Affiliated Defendants" are Barry Cadden; Lisa Conigliaro Cadden; Carla Conigliaro; Doug Conigliaro; Greg Conigliaro; Ameridose, LLC; Medical Sales Management, Inc.; Alaunus Pharmaceutical, LLC; and GDC Properties Management, LLC.

Any proof of claim and PITWD Addenda filed must be a "Single-Claimant PITWD Claim." A "Single-Claimant PITWD Claim" is a proof of claim and PITWD Addenda filed: (i) by an individual claimant on behalf of himself or herself or on behalf of an injured minor child the individual is guardian or next friend; (ii) by a claimant and family member claimants; or (iii) on behalf of the estate of a deceased or incompetent individual, together with any family members and/or beneficiaries of such estate. "Multi-Claimant PITWD Claims," or proofs of claim joining or on behalf of two (2) or more claimants other than as expressly provided above, may not be filed without Court approval.

#### **HEALTH CARE PROVIDERS/NOTICE TO THEIR PATIENTS**

ANY HOSPITAL, CLINIC, PHYSICIAN OR OTHER HEALTH CARE PROVIDER WHO INJECTED, ADMINISTERED OR OTHERWISE PROVIDED NECC'S PRODUCTS TO ANY PATIENT OR THIRD PARTY (COLLECTIVELY, THE "PATIENTS") ARE HEREBY DIRECTED TO FURNISH A COPY OF THIS NOTICE TO ALL SUCH PATIENTS OR, IN THE ALTERNATIVE, PROVIDE THE UNDERSIGNED WITHIN \_\_\_ DAYS OF RECEIPT OF THIS NOTICE THE NAMES AND ADDRESSES OF ALL SUCH PATIENTS SO THAT THE TRUSTEE MAY PROVIDE SUCH NOTICE.

#### **HOLDERS OF EXCLUDED CLAIMS ARE NOT REQUIRED TO FILE A PROOF OF CLAIM ON ACCOUNT OF SUCH CLAIMS**

Proofs of claim need not be filed on account of the following claims (the "Excluded Claims"):

- (i) Any claim for which there has already been properly filed a proof of claim against the Debtor with the Clerk of the Bankruptcy Court for the District of Massachusetts, in a form substantially similar to Official Form 10. *However, any such creditor with a PITWD Claim, or whose previously submitted proof of claim purports to assert PITWD Claims on behalf of other individuals, MUST submit a new proof of claim and a PITWD Addendum to DRC by the General Bar Date in accordance with the PITWD Procedures;*
- (ii) Any claim listed on the Schedules, provided that: (i) the claim is not listed as disputed, contingent or unliquidated; and (ii) the holder of such claim agrees with the amount, nature and priority of the claim as established in the Schedules;
- (iii) Any claim that has been allowed by order of the Court or for which a specific filing deadline has previously been fixed by the Court;
- (iv) Any claim that has been satisfied in full, pursuant to the Bankruptcy Code or in accordance with an order of the Court, prior to the applicable Bar Date;

- (v) Any claim allowable under Section 503(b) of the Bankruptcy Code as an administrative expense; provided, however, that claims or requests for administrative expenses under Section 503(b)(9) must have been asserted properly and timely on or before April 1, 2013, otherwise such claims or requests for administrative expenses, as applicable, shall not be paid or allowed; and
- (vi) Any claim for an interest based on equity securities (including, without limitation, ownership of common or preferred stock, membership interests, partnership interests, or warrant or rights to purchase, sell or subscribe to such a security or interest); provided, however, that any claim (as opposed to ownership interest) against the Debtor based on transactions in the Debtor's securities, including claims for damages or rescission based on the purchase or sale of such securities, must be filed on or before the General Bar Date and, provided, further, that the Trustee reserves all rights with respect to any such claims including, *inter alia*, the right to assert that such claims are subject to subordination pursuant to section 510(b) of the Bankruptcy Code.

#### WHAT TO FILE

An original, completed proof of claim, signed by the claimant or an authorized agent of the claimant, along with any supporting documentation required by Fed. R. Bankr. P. 3001 (c) and (d), must be delivered to DRC, so as to be actually received on or before the applicable Bar Date or any other bar date established by the Bar Date Order, for a Claim to be validly filed. Proofs of claim must be in the English language and denominated in lawful currency of the United States.

Proofs of claim must substantially conform to Official Form 10, a copy of which is being annexed to this Notice, and set forth: (i) the amount of your claim against the Debtor; (ii) whether your Claim has been scheduled by the Debtor as disputed, contingent or unliquidated; and (iii) whether your Claim is a secured, unsecured priority or unsecured nonpriority claim.

***PITWD Claimants are required to submit both a proof of claim and a PITWD Addendum which must be delivered to DRC, so as to be actually received on or before the applicable Bar Date or any other bar date established by the Bar Date Order, for a Claim to be validly filed.***

Any person or entity that files a proof of claim and wishes to receive a copy with a stamp or other marking acknowledging DRC's receipt by return mail must include an additional copy of the proof of claim with a self-addressed envelope with postage pre-paid.



**WHEN AND WHERE TO FILE**

A claimant may submit a proof of claim (and a PITWD Addendum, if applicable) in person, by courier service, by hand delivery or by mail. A proof of claim (and a PITWD Addendum, if applicable) may **NOT** be delivered by facsimile or electronic mail transmission.

A proof of claim (and a PITWD Addendum, if applicable) will be deemed filed only if **actually received** on or before the applicable Bar Date by DRC, at the following addresses:

If by mail:

Donlin, Recano & Company, Inc.

Re: New England Compounding Pharmacy, Inc.  
P.O. Box 2053  
Murray Hill Station  
New York, NY 10156

If by overnight courier or hand delivery:

Donlin, Recano & Company, Inc.  
Re: New England Compounding Pharmacy, Inc.  
419 Park Avenue South, Suite 1206  
New York, NY 10016

**CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE  
APPLICABLE BAR DATE**

Any claimant that fails to timely file and serve a proof of claim (and a PITWD Addendum, if applicable) in accordance with the procedures set forth in this Notice and the Bar Date Order, shall, with respect to such claim(s), be forever barred, estopped and enjoined from participating in the above-captioned chapter 11 case with respect to voting on any proposed plan of reorganization, participating in any distribution in this chapter 11 case and from asserting such claims against the Debtor. Nonetheless, the holder of any such unfiled claims shall be bound by the terms of any Chapter 11 plan confirmed by the Bankruptcy Court.

**THE DEBTOR'S SCHEDULES AND ACCESS THERETO**

You may be listed as the holder of a Claim against the Debtor in the Debtor's Schedules, which were filed with the Bankruptcy Court on January 18, 2013.

If it is unclear from the Schedules whether your claim is disputed, contingent or unliquidated as to amount, or whether your claim is otherwise properly listed and classified, or if you believe you hold a claim against the Debtor which have not been scheduled, you **must** file a proof of claim (and a PITWD Addendum, if applicable) on or before the applicable Bar Date. Any holder of a claim that fails to file a proof of claim (and a PITWD Addendum, if applicable)



in reliance upon the Schedules bears sole responsibility for determining that its claim is accurately listed therein.

Copies of the Schedules may be found on the case website, <http://www.donlinrecano.com/NECC>. Copies of the Schedules may also be examined by interested parties between the hours of 8:30 a.m. and 5:00 p.m., prevailing Eastern time, at the office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the District of Massachusetts, John W. McCormack Post Office and Court House, 5 Post Office Square, Suite 1150, Boston, Massachusetts 02109-3945.

#### **RESERVATION OF RIGHTS.**

The Trustee reserves the right to dispute or assert offsets or defenses against any filed Claim, or any Claim listed or reflected in the Schedules, as to the nature, amount, liability, priority, classification or otherwise of such Claim. Nothing contained in this Notice shall preclude the Trustee from objecting to any Claim, whether scheduled or filed, on any grounds.

**Please note that the fact that you have received this notice does not mean that you have a Claim or that the Trustee, the Official Committee or the Court believes that you have a Claim. If your Claim is not described as disputed, contingent or unliquidated in the Debtor's Schedules, and you agree with such classification, you need not file a proof of claim on account of such Claim.**

**Please note that everyone who was exposed to an NECC product may have a claim which may be a PITWD Claim. However, if you do not file a claim before the applicable Bar Date then you may never be able to recover from NECC's bankruptcy estate. When considering whether to file a proof of claim in the NECC bankruptcy case, you should also be aware that, there is a possibility that a bankruptcy plan and court order will bar you from recovering against *any* other person or entity for *any* injury related to any NECC product, including a claim for mislabeling or malpractice that you may have against a pain clinic or doctor, regardless of whether you have suffered an illness or side effect to date. YOU SHOULD CONSULT WITH YOUR ATTORNEY IF YOU HAVE ANY QUESTIONS ABOUT WHETHER TO FILE A PROOF OF CLAIM OR REGARDING THE CONTENTS OF ANY PROOF OF CLAIM YOU MAY CHOOSE TO FILE.**

If you decide to file a proof of claim (and a PITWD Addendum, if applicable), you must do so before the applicable Bar Date and comply with the procedures outlined in this Notice and the Bar Date Order.

**DO NOT CALL THE COURT OR THE UNDERSIGNED IF YOU HAVE LEGAL QUESTIONS, AS THE COURT AND THE UNDERSIGNED ARE PROHIBITED FROM PROVIDING YOU WITH LEGAL ADVICE. A CLAIMANT SHOULD CONSULT AN ATTORNEY IF THE CLAIMANT HAS ANY QUESTIONS REGARDING ANY CLAIM THE CLAIMANT MAY HAVE AGAINST NECC, INCLUDING WHETHER SUCH CLAIMANT SHOULD FILE A PROOF OF CLAIM (AND A PITWD ADDENDUM, IF APPLICABLE) TO PROTECT ITS INTERESTS.**

Dated: July \_\_, 2013

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*Counsel to the Chapter 11 Trustee*

Exhibit A

PROOF OF CLAIM

Exhibit B

PITWD ADDENDUM