

David E. De Lorenzi
 Charles H. Chevalier
 Christine A. Gaddis
GIBBONS P.C.
 One Gateway Center
 Newark, NJ 07102
 (973) 596-4743

Of Counsel

Wayne M. Barsky
 Robert A. Vincent
 Timothy P. Best
 Katherine Q. Dominguez
 Jaysen S. Chung
 Christine L. Ranney
GIBSON, DUNN & CRUTCHER LLP
 2029 Century Park East, Suite 4000
 Los Angeles, CA 90067
 (310) 557-8183

Attorneys for Defendants and Counterclaimants
EMD Serono, Inc. and Pfizer Inc.

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

		:	
	:	: Civil Action No.: 10-cv-02734(CCC)(JBC)	
	:	:	
	:	: Honorable Claire C. Cecchi	
IN RE BIOGEN '755 PATENT LITIGATION	:	:	
	:	: PROTECTIVE NOTICE OF APPEAL	
	:	:	
	:	:	
	:	:	
	:	:	

Notice is hereby given that Defendants EMD Serono, Inc. and Pfizer Inc. (collectively, “Defendants”) appeal to the United States Court of Appeals for the Federal Circuit from the Order of this Court entered on September 7, 2018 (ECF No. 1044), insofar as that Order may be construed as an appealable judgment. Defendants note that the Order itself requires the submission of proposed forms of judgment, and therefore we anticipate that the Court will enter a final judgment in due course. Defendants are filing this notice before entry of judgment out of an abundance of caution and to forestall any suggestion that they did not timely preserve their appellate rights. *See* FRAP 4(a)(2). Defendants appeal from the Order and its accompanying Opinion (ECF No. 1043 [sealed], ECF No. 1059 [unsealed]), as well as from any and all other adverse judgments, orders, opinions, rulings, and findings that merge therein or are pertinent or ancillary to the foregoing, except with respect to damages issues (which, in light of the new trial ordered by the Court, are not currently appealable). *See* 28 U.S.C. § 1292(c)(2); *Alfred E. Mann Found. v. Cochlear Corp.*, 841 F.3d 1334, 1346-48 (Fed. Cir. 2016).

Payment of the required fee of \$505 is provided with this Notice of Appeal. This fee includes the \$500 fee for docketing a case on appeal as required by 28 U.S.C. § 1913 and Federal Circuit Rule 52(a)(2), and the \$5 fee for filing a notice of appeal as required by 28 U.S.C. § 1917.

Dated: October 9, 2018

Respectfully submitted,

By: s/ David E. De Lorenzi

David E. De Lorenzi
Charles H. Chevalier
Christine A. Gaddis
GIBBONS P.C.
One Gateway Center

Newark, NJ 07102
(973) 596-4743

Of Counsel

Wayne M. Barsky
Robert A. Vincent
Timothy P. Best
Katherine Q. Dominguez
Jaysen S. Chung
Christine L. Ranney

GIBSON, DUNN & CRUTCHER LLP
2029 Century Park East, Suite 4000
Los Angeles, CA 90067-3026
(310) 557-8183

*Attorneys for Defendants and
Counterclaimants
EMD Serono, Inc. and Pfizer Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2018, true and correct copies of **EMD SERONO, INC.'S AND PFIZER INC.'S PROTECTIVE NOTICE OF APPEAL** were caused to be served via electronic mail and ECF upon all counsel of record.

s/ David E. De Lorenzi
David E. De Lorenzi