## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

NATCHITOCHES PARISH HOSPITAL SERVICE DISTRICT and JM SMITH CORPORATION d/b/a SMITH DRUG COMPANY on behalf of themselves and all others similarly situated, Plaintiffs, v. TYCO INTERNATIONAL, LTD.; TYCO INTERNATIONAL (US) INC.; TYCO HEALTHCARE GROUP LP; THE KENDALL HEALTHCARE PRODUCTS COMPANY,

Civil Action No. 05-12024 PBS

JURY TRIAL DEMANDED

Defendants.

## JOINT REQUEST TO WITHDRAW THE MOTIONS TO EXCLUDE THE EXPERT REPORTS AND OPINIONS OF DR. HAL SINGER AND MS. MARGARET GUERIN-CALVERT

Plaintiffs Natchitoches Parish Hospital Service District and JM Smith Corporation d/b/a Smith Drug Company and Defendants Tyco International (US) Inc., Tyco Healthcare Group LP, and The Kendall Healthcare Products Company (collectively the "parties") jointly submit this request to withdraw the following pending *Daubert* motions: (1) Tyco International (US) Inc., Tyco Healthcare Group LP, and The Kendall Healthcare Products Company's Motion to Exclude the Expert Report and Opinions of Dr. Hal Singer filed October 17, 2008 (Docket No. 179) and (2) Plaintiffs' Motion to Exclude the Testimony of Defendants' Expert Margaret Guerin-Calvert filed October 17, 2008 (Docket No. 185). The parties have reached a compromise in which these two motions will be withdrawn and the challenges they contain will be reserved for crossexamination at trial. Objections regarding the cumulative nature of testimony are preserved for resolution at trial. Should the Court deny this joint request, the parties propose to submit these motions to the Court on the papers. The parties' agreement does not affect the *Daubert* motions for Prof. Einer Elhauge and Mr. Thomas Hughes, which remain pending. The parties will proceed with the hearing and presentation of testimony with respect to the motion regarding Prof. Elhauge on January 8, 2009. As the Court previously specified, the motion regarding Mr. Hughes will be submitted on the papers.

Dated: January 6, 2009

Respectfully submitted,

<u>/s/</u><u>Brett Cebulash</u> Brett Cebulash (pro hac) GARWIN GERSTEIN & FISHER LLP 1501 Broadway, Suite 1416 New York, NY 10036 Telephone: (212) 398-0055 e-Mail: bcebulash@garwingerstein.com

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and copies will be sent to those indicated as non-registered participants on January 6, 2009.

<u>/s/ James Donato</u>

James Donato

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