

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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 JERSEY DENTAL LABORATORIES f/k/a :
 Howard Hess Dental Laboratories Incorporated, and :
 PHILIP GUTTIEREZ d/b/a Dentures Plus, on behalf :
 of themselves and all others similarly situated, :
 :
 Plaintiffs, : Civil Action No. 01-267 (SLR)
 :
 -against- :
 :
 DENTSPLY INTERNATIONAL, INC., et al. And named :
 tooth dealers, :
 :
 Defendants. :
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**STIPULATION AND PROPOSED ORDER AMENDING THE COURT’S PRIOR
MEMORANDUM OPINION AND ORDER TO MAKE THEIR DISMISSAL OF
COUNTS II, III, IV AND V A FINAL JUDGMENT, PURSUANT TO RULE 54(b)**

WHEREAS, by Memorandum Opinion (D.I. 315) and Order (D.I. 316), dated September 26, 2007, the Court dismissed Counts II, III, IV and V in the Amended Complaint (D.I. 259), which are based on Defendants’ alleged exclusive dealing in violation of Section 1 and Section 2 of the Sherman Act;

WHEREAS, by Memorandum Opinion, dated January 8, 2008 (D.I. 327), and Order, dated January 9, 2008 (D.I. 328), the Court granted Plaintiffs’ motion requesting certification pursuant to Rule 54(b) regarding the Court’s dismissal of Counts II, III, IV and V;

WHEREAS, the Court’s Order, dated January 9, 2008 (D.I. 328) states that “Plaintiffs’ motion for a certificate of appealability and for a stay of proceedings during the pendency of any appeal in *Jersey Dental* (Civ. No. 01-267, D.I. 318) is granted”; and

WHEREAS, the Court's Order, dated January 9, 2008 (D.I. 328), also directs that, "[o]n or before January 31, 2008, the parties shall submit either a stipulation or competing orders in [the related case,] *Hess* [,] and [this case,] *Jersey Dental* [,] in order to accommodate a consolidated appeal,"

THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE THAT:

1. For the reasons stated in the Court's Memorandum Opinion, dated January 8, 2008 (D.I. 327), and the Court's Order, dated January 9, 2008 (D.I. 328), "there is no just reason for delay" of Plaintiffs' appeal from the Court's Memorandum Opinion, dated January 8, 2008 (D.I. 327), and Order, dated January 9, 2008 (D.I. 328), regarding the dismissal of Counts II, III, IV and V in *Jersey Dental Labs., et al. v. Dentsply Int'l, Inc., et al.* 01-267-SLR (D. Del.);

2. The Court's Memorandum Opinion (D.I. 315) and Order (D.I. 316), dated September 26, 2007, are amended by adding to the Order a direction that, pursuant to Rule 54(b), final judgment shall be entered dismissing with prejudice each of the Counts II, III, IV and V only, in *Jersey Dental Labs., et al. v. Dentsply Int'l, Inc., et al.* 01-267-SLR (D. Del.); and

3. As they regard Counts II, III, IV and V only, in *Jersey Dental Labs., et al. v. Dentsply Int'l, Inc., et al.* 01-267-SLR (D. Del.), the Court's Memorandum Opinion (D.I. 315) and Order (D.I. 316), dated September 26, 2007, taken together and as amended by this Order, are intended to be a final decision and final judgment by this Court, within 28 U.S.C. § 1291.

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SO ORDERED this _____ day of _____, 2008

United States District Judge