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FILED
Superior Court of California
County of Los Angeles
FEB 13 2014
Sherri R. Carter, Executive Officer/Clerk
By _____ Deputy
C. Wilson

RECD
AUG 12 2013
FILING WINDOW

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP, INC., in the public interest, Plaintiff, v. TELEFLEX MEDICAL, INC., and DOES 1-50; Defendants.	CASE NO. BC479564 **STIPULATED CONSENT JUDGMENT [~~PROPOSED~~]** Dept: 30 Judge: Hon. Barbara M. Scheper Complaint filed: February 24, 2012

1. INTRODUCTION

1.1 This Stipulated Consent Judgment ("Consent Judgment") is entered into by and between plaintiff Consumer Advocacy Group, Inc. ("CAG"), acting on behalf of itself and in the interest of the public, and defendant Teleflex Medical, Incorporated, on its own behalf and as successor to Inmed Corporation doing business as "Rusch, Inc." or "Rusch" ("Teleflex Medical"), with each a Party and collectively referred to as the "Parties."

CIT/CASE: BC479564
LEA/DEF#:
RECEIPT #: CCH439933120
DATE PAID: 08/12/13 03:19 PM
PAYMENT: $20.00
REFUND: $20.00
CHECK: $0.00
CASH: $0.00
CHANGE: $0.00
310

1.2 This Consent Judgment settles claims asserted by CAG against Teleflex Medical in this action, which was brought pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

1.3 Notices of Violation.

1.3.1 On or about May 6, 2011, CAG served Teleflex Medical and various public enforcement agencies with a document entitled "Sixty-Day Notice of Intent to Sue For Violation of the Safe Drinking Water And Toxic Enforcement Act of 1986" (the "May 6, 2011 Notice"), pursuant to which CAG provided the recipients with notice of alleged violations of California Health & Safety Code § 25249.6 for allegedly failing to warn individuals in California of exposures to di(2-ethylhexyl)phthalate ("DEHP") contained in vinyl gloves in certain urology procedure trays and kits.

1.3.2 No public enforcer has commenced or diligently prosecuted the allegations set forth in the May 6, 2011 Notice.

1.4 Complaint

1.4.1. Prior to filing the instant action, CAG and Teleflex Medical engaged in settlement negotiations regarding the May 6, 2011 Notice which nearly resulted in a settlement, but ultimately those negotiations broke down and CAG then filed the instant lawsuit.

1.4.2 On February 24, 2012, CAG filed its Complaint for Civil Penalties and Injunctive Relief ("Complaint"). The Complaint alleges, among other things, that Teleflex Medical violated Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP from vinyl gloves in certain urology procedure trays and kits.

1.5 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations of Proposition 65 contained in the Complaint and personal jurisdiction over Teleflex Medical as to the matters alleged in the Consent Judgment, that venue is proper in the City and County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and final resolution of the allegations

contained in the Complaint and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related to or arising out of the May 6, 2011 Notice.

1.6 No Admission

This Consent Judgment resolves claims that are denied and disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any material allegation of the May 6, 2011 Notice or the Complaint, each and every allegation of which Teleflex Medical denies, nor shall it serve as an admission by either of the Parties of any fact, conclusion of law, issue of law or violation of law. This Consent Judgment or compliance with it also may not be used as evidence of any fact, conclusion of law, issue of law, or violation of law or of fault, wrongdoing, misconduct, culpability or liability on the part of Teleflex Medical or its predecessors, successors, officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Teleflex Medical reserves all rights and defenses with regard to any claim by any person under Proposition 65 or otherwise. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument or defense either of the Parties may have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

2. DEFINITIONS

2.1 "Covered Product(s)" means vinyl gloves in "Rusch" Foley urology procedure trays and kits sold by Teleflex Medical.

2.2 "Effective Date" means the date that this Consent Judgment is entered by the Court.

3. INJUNCTIVE RELIEF/REFORMULATION

3.1 Within thirty (30) days of the Effective Date, Teleflex Medical will not sell or offer for sale in California any Covered Products that contain DEHP at a concentration greater than 0.10% by weight without providing a "clear and reasonable warning" under Proposition 65 pursuant to 27 Cal. Code Regs. § 25603.

4. SETTLEMENT PAYMENT

4.1 Within fifteen (15) business days of the Effective Date, Teleflex Medical shall pay a total of Eighty-Nine Thousand Five Hundred Dollars ($89,500.00) by separate checks apportioned as set forth below.

4.1.1 **Reimbursement of Attorneys' Fees and Costs:** Teleflex Medical shall pay Fifty-Five Thousand Dollars ($55,000.00) to "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs, expert fees, attorneys' fees, and other litigation costs and expenses for all work performed through the approval of this Consent Judgment. Thereafter, Yeroushalmi & Associates will donate $5,000.00 of this award of attorneys' fees to the Cedars-Sinai's Medical Center to be used for research to cure Leukemia.

4.1.2 **Civil Penalties.** Teleflex Medical shall issue two separate checks for a total amount of Twenty-One Thousand Dollars ($21,000.00) as penalties pursuant to California Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of Fifteen Thousand Seven Hundred and Fifty Dollars ($15,750.00), representing 75% of the total penalty; and (b) one check made payable to "Consumer Advocacy Group, Inc." in the amount of Five Thousand Two Hundred and Fifty Dollars ($5,250.00), representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of $15,750.00. The second 1099 shall be issued in the amount of $5,250.00 to CAG and sent to CAG, c/o Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

4.1.3 **Payment In Lieu of Civil Penalties:** Teleflex Medical shall pay Thirteen Thousand and Five Hundred Dollars ($13,500.00) in lieu of civil penalties pursuant to California Health and Safety Code § 25249.7(b), by a check made payable to "Consumer Advocacy Group, Inc." CAG will use this payment for investigation of the public's exposure to Proposition 65 listed chemicals through various means, laboratory fees for testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through various mediums, including but not limited to consumer product, occupational, and environmental exposures to Proposition 65 listed chemicals, costs of administration aimed at reducing public exposures to known carcinogens and reproductive toxins and the cost of hiring consulting and retained experts who assist with the extensive scientific analysis necessary for those files in litigation, in order to reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to be responsible for such exposures and attempting to persuade those persons and/or entities to reformulate their products or the source of exposure to completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the instant action. Further, should the court require it, CAG will submit under seal, an accounting of these funds as described above as to how the funds were used. The check shall be made payable to "Consumer Advocacy Group, Inc." and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Blvd, Suite 610E, Beverly Hills, CA 90212.

4.2 Payments to be made to CAG shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

5. MATTERS COVERED AND RELEASED BY THIS CONSENT JUDGMENT

5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on behalf of itself and in the public interest, and Teleflex Medical and its officers, directors, insurers, attorneys, employees, owners, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister and related companies, predecessors, successors, and assigns (collectively, "Released Parties"), and each person or entity to which any of them have

directly or indirectly provided, distributed or sold the Covered Products or may do so, including but not limited to each of its suppliers, customers, distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, distribute or sell the Covered Products ("Downstream Released Parties"), for any and all claims asserted, or that could have been asserted, in the May 6, 2011 Notice or the Complaint or arising from alleged violations of Proposition 65 based on exposure to DEHP from Covered Products.

5.2 Teleflex Medical's compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to DEHP in the Covered Products.

5.3 CAG, in its individual capacity and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all past, present, and future rights, actions, and causes of action, in law or in equity, suits, liabilities, injunctive relief, declaratory relief, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Released Parties and Downstream Released Parties arising from any violation of Proposition 65 or any other statutory or common law violation alleged in the May 6, 2011 Notice or the Complaint or regarding the failure to warn about exposure to DEHP in Covered Products manufactured, distributed, or sold by Released Parties and Downstream Released Parties, which shall be effective as a full and final accord and satisfaction of and bar to such Claims. In furtherance of the foregoing, CAG hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any other statutory or common law violation alleged in the May 6, 2011 Notice or the Complaint or regarding the failure to warn about exposure to DEHP from the Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

CAG understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that even if CAG or the public suffers future damages arising out of the released Claims or arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to DEHP from Covered Products, CAG will not be able to make any claim for those damages against Teleflex Medical or any of the Released Parties or Downstream Released Parties. Furthermore, CAG acknowledges that it intends these consequences for any Claims, any violations of Proposition 65, or any other statutory or common law violation regarding the failure to warn about exposure to DEHP in the Covered Product as may exist as of the date of the entry of this Consent Judgment but which CAG does not know exist, and which, if known, would materially affect its decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

6. ENFORCEMENT OF CONSENT JUDGMENT

6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. Either Party may, by noticed motion or an order to show cause before the Superior Court of California, City and County of Los Angeles, giving the notice required by law, enforce the terms and conditions contained in this Consent Judgment. A Party may enforce any of the terms and conditions of this Consent Judgment only after that Party first provides sixty (60) days' notice to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good faith manner.

6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other proceeding to enforce this Consent Judgment, CAG shall provide a Notice of Violation ("NOV") to Teleflex Medical. The NOV shall include for each Covered Product: the name of

the product, the date(s) the alleged violation(s) was observed and the location at which the Covered Product was offered for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Product, including an identification of the component(s) of the Covered Product that were tested.

6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the alleged violation if, within 30 days of receiving such NOV, Teleflex Medical serves a Notice of Election ("NOE") that meets one of the following conditions:

(a) The Covered Product is contained in a urology procedure kit or tray that was produced or shipped for sale in California prior to 30 days after the Effective Date, or

(b) Since receiving the NOV, Teleflex Medical has taken corrective action by either (i) requesting that its customers in California remove the Covered Product identified in the NOV from sale in California and destroy or return the Covered Product to Teleflex Medical, or (ii) providing a "clear and reasonable warning" under Proposition 65 for the Covered Product identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

6.2.2 **Contested NOV.** Teleflex Medical may serve an NOE informing CAG of its election to contest the NOV within 30 days of receiving the NOV.

(a) In its election, Teleflex Medical may request that the sample(s) Covered Products tested by CAG be subject to confirmatory testing at an EPA-accredited laboratory acceptable to it.

(b) If the confirmatory testing establishes that the Covered Products do not contain DEHP in excess of the level allowed in Section 3.1, CAG shall take no further action regarding the alleged violation. If the testing does not establish compliance with Section 3.1, Teleflex Medical may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 6.2.1.

(c) If Teleflex Medical does not withdraw an NOE to contest the NOV, the Parties shall meet and confer for a period of no less than 30 days before CAG may seek an order enforcing the terms of this Consent Judgment.

6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such Party may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation of Proposition 65 or this Consent Judgment.

7. ENTRY OF CONSENT JUDGMENT

7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and Teleflex Medical waive their respective rights to a hearing or trial on the allegations of the Complaint.

7.2 If this Consent Judgment is not approved by the Court: (a) this Consent Judgment and any and all prior agreements between the Parties merged herein shall terminate and become null and void, and the actions shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

8. MODIFICATION OF CONSENT JUDGMENT

8.1 This Consent Judgment may be modified only upon written agreement of the Parties by stipulation and entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as provided by law and entry of a modified Consent Judgment by the Court thereon.

8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

9. RETENTION OF JURISDICTION

9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms of this Consent Judgment.

10. DUTIES LIMITED TO CALIFORNIA

This Consent Judgment shall have no effect on Covered Products sold outside the State of California.

11. SERVICE ON THE ATTORNEY GENERAL AND COURT APPROVAL

11.1 CAG shall comply with California Health and Safety Code § 25249.7(f) and with 11 Cal. Code Regs. § 3003 and serve a copy of this Consent Judgment, signed by both Parties, on the California Attorney General so that the Attorney General may review this Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney General has received the aforementioned copy of this Consent Judgment, and in the absence of any written objection by the Attorney General to the terms of this Consent Judgment, the Parties may then submit it to the Court for approval.

11.2 The Court shall either approve or disapprove this Consent Judgment in its entirety, without alteration, deletion, or amendment, unless otherwise so stipulated by the Parties and their counsel. If this Consent Judgment is not approved by the Court, it shall be of no further force or effect.

12. ATTORNEY FEES

12.1 Except as specifically provided in Section 4.1, each Party shall bear its own costs and attorney fees in connection with this action.

13. ENTIRE AGREEMENT

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof and any and all

prior discussions, negotiations, commitments and understandings related hereto, if any, are deemed merged. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

14. GOVERNING LAW

14.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

14.2 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

15. EXECUTION AND COUNTERPARTS

15.1 This Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

16. NOTICES

16.1 Any notices under this Consent Judgment shall be by personal delivery or First Class Mail.

<u>If to CAG</u>:

Reuben Yeroushalmi
9100 Wilshire Boulevard, Suite 610E

(310) 623-1926

If to Teleflex Me[redacted]:

Teleflex Medical, Inc.
155 S. Limerick Road
Limerick, PA 19468
Attention: General Counsel

With a copy to:

Sonja Inglin, Esq.
Baker Hostetler LLP
12100 Wilshire Blvd., 15th Floor
Los Angeles, CA 90025-7120
(310) 820-8800

The contact and/or addresses above may be amended by a Party by giving written notice to the other Party.

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the Party represented and to legally bind that Party.

AGREED TO:	AGREED TO:
Date: 8-9, 2013	Date: 8/7/13, 2013
By: Michel Sassoon	By: Greg Wurtz
Plaintiff, CONSUMER ADVOCACY GROUP, INC.	Defendant, TELEFLEX MEDICAL, INCORPORATED

DOES 1-20 are dismissed.

IT IS SO ORDERED.

Date: FEB 13 2014

Barbara M. Scheper

JUDGE OF THE SUPERIOR COURT
BARBARA M. SCHEPER