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16 SUPERIOR COURT OF CALIFORNIA - COUNTY OF LOS ANGELES
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18 WILLIAM FISK BOTHWELL, et al.) CASE NO. BC310338
19 vs.) [PROPOSED] CONSENT JUDGMENT AS TO
20 AKORN, INC., et al.) FEDERATED FOODS, INC.
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CONSENT JUDGMENT AS TO FEDERATED FOODS, INC.

1 **1. INTRODUCTION**

2 1.1 On February 9, 2004, Plaintiffs William Fisk Bothwell, a minor, by and through
3 his guardian Claire Bothwell, on behalf of the general public, filed a Complaint under
4 Proposition 65 The Safe Drinking Water & Toxic Enforcement Act (“Proposition 65”),
5 California Health & Safety Code §§ 25249.5 et seq., and Unfair Business Practices provisions of
6 the Business & Professions Code §§ 17200 et seq. (“Complaint,” attached hereto as Exhibit A).
7 Plaintiff seeks Injunctive Relief, Civil Penalties and Restitution in the Los Angeles Superior
8 Court (the “Action”) arising from alleged violations of the foregoing laws, by Defendants
9 including Federated Foods, Inc., which are persons in the course of doing business with more
10 than ten employees and therefore are subject to the requirements of Proposition 65 and the
11 Business & Professions Code. The purpose of this Consent Judgment is to resolve all of the
12 claims raised in the Action with respect to Federated Foods, Inc. (“Federated” or “Defendant”)
13 on the terms set forth below.

14 1.2 Plaintiff William Fisk Bothwell is an individual diagnosed with autism he
15 contends was caused by thimerosal in vaccines, a mercury-based preservative, and together with
16 his guardians is prosecuting this action on behalf of the public interest in having fair and
17 reasonable warning of exposures to mercury or mercury compounds. Beginning on or about July
18 24, 2003, Plaintiffs served 60-day notices of their intent to sue under Proposition 65. Such
19 notices were served on defendant and on the Attorney General and District Attorney or City
20 Attorney pursuant to the private enforcement provision of Proposition 65 at 25249.7(d) as
21 required by law and in compliance with the regulation governing such notices at 22 CCR §
22 12903. The Notice served on Federated is attached hereto as Exhibit “B.” Prior to sending its
23 notices, Plaintiffs contend that they conducted substantial investigation to determine that the
24 entities that received notices employed 10 or more individuals and had placed products
25 containing thimerosal or mercury or mercury compounds into the stream of commerce. It is and
26 was Plaintiffs’ contention that Defendants, including Federated, placed various consumer
27 products into the stream of commerce, including nasal sprays, that contained thimerosal, mercury
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1 or mercury compounds, that caused consumers to be exposed to such substances in amounts
2 which required a warning pursuant to Proposition 65 (Health & Safety Code § 25249.6). Such
3 exposures form the basis of the lawsuit herein.

4 1.3 Neither the Attorney General nor any of the other public officials served has
5 commenced any action in response to Plaintiffs' Notice. For purposes of this Consent Judgment,
6 Plaintiff acts on behalf of the general public as to those matters described in the Complaint and
7 Notice attached hereto.

8 1.4 The Complaint alleges that Defendants violated Proposition 65 and the Business
9 & Professions Code by exposing individuals in California to mercury or mercury compounds,
10 chemicals known by the State of California to cause cancer or reproductive toxicity for purposes
11 of Proposition 65, without first providing a clear and reasonable warning to such individuals.

12 1.5 Plaintiffs and Federated have elected to settle this matter by entering into this
13 Consent Judgment to settle disputed claims between them and avoid prolonged litigation, to
14 provide Federated with claims for *res judicata* protection against future claims based on the same
15 or similar allegations, and to ensure that the objectives of Proposition 65 are expeditiously
16 carried out. By execution of this Consent Judgment, Federated does not admit any violations of
17 Proposition 65 or the Business and Professions Code or any other law or standard applicable to
18 warning or disclosure concerning exposure to mercury. Nothing in this Consent Judgment shall
19 be construed as an admission by the Parties of any fact, issue of law, or violation of law; nor
20 shall compliance with this Consent Judgment constitute or be construed as an admission by the
21 Parties of any fact, issue of law, or violation of law. This Consent Judgment is not admissible in
22 any court of law for any purpose except to assert the rights of any party concerning compliance
23 with this Judgment, or to support claims for *res judicata* for the subject matter covered herein.

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25 1.6 For purposes of this Consent Judgment, the Parties stipulate that this court has
26 subject matter jurisdiction over the allegations contained in the Complaint. Without conceding
27 that this Court has personal jurisdiction over Federated, Federated does not contest the exercise
28 of personal jurisdiction by this Court or venue in the County of Los Angeles solely and

1 exclusively for the purposes of this Consent Judgment; or the exercise of jurisdiction by this
2 Court to enter this Consent Judgment as a resolution of the claims which were or could have
3 been raised in the Complaint based on the facts alleged therein. The Parties further stipulate that
4 and that the Court may enter this Consent Judgment only as a full and final settlement of the
5 Action with respect to Defendant, and all claims that were or could have been asserted by
6 Plaintiff against Defendant.

7 **2. ECONOMIC TERMS OF SETTLEMENT**

8 2.1 The Parties have agreed on economic terms of settlement including payment and
9 distribution of 100% of settlement funds to an entity engaged in activities with a nexus to this
10 litigation, namely, conducting research into cures for autism, which Plaintiffs contend is a public
11 harm caused by exposure to mercury. The recipient of the funds shall be the National Autism
12 Association (“NAA”), whose purpose is to raise public and professional awareness of autism
13 spectrum disorders, and to further advancement of preventative studies, therapy and research of
14 individuals with autism. The Parties have agreed to payment of \$4,000 to NAA, contingent upon
15 court approval of this Consent Judgment, as full and final settlement of Plaintiffs’ action against
16 Federated, which amount shall be paid within 15 days of notice of entry of this Consent
17 Judgment.

18 2.2 Each party shall bear all of its own costs and attorneys fees incurred in connection with
19 this Action.

20 **3. MODIFICATION OF CONSENT JUDGMENT**

21 3.1 This Consent Judgment may be modified only by written agreement of the
22 Plaintiff and Federated, or upon a duly noticed motion, and the entry of a modified Consent
23 Judgment by the Court.

24 **4. ENFORCEMENT OF CONSENT JUDGMENT**

25 4.1 The Parties may enforce the terms and conditions of this Consent Judgment by
26 motion or order to show cause before the Superior Court of Los Angeles. In any action brought
27 by any party to enforce this Consent Judgment, or to remedy a breach of this Consent Judgment,
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1 the prevailing party may seek whatever fines, penalties or remedies that are provided for by law,
2 and shall be entitled to recover its attorney's fees and costs.

3 **5. APPLICATION OF CONSENT JUDGMENT**

4 5.1 This Consent Judgment shall apply to and be binding upon the Plaintiff, acting on
5 behalf of the general public, and Federated including its owners, subsidiaries, divisions, partners,
6 and officers, and their successors.

7 **6. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

8 6.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
9 by the party he or she represents to stipulate to this Consent Judgment, and to execute the
10 Consent Judgment on behalf of the Party represented, and to legally bind that party.

11 **7. CLAIMS COVERED, RELEASE, AND COVENANT NOT TO SUE**

12 7.1 The Consent Judgment is a full, final and binding resolution between Plaintiff and
13 Federated of any violation of Proposition 65, Business & Professions Code sections 17200 *et*
14 *seq.*, or any other statutory or common law claims that have been or could have been asserted in
15 the complaint against Federated or its predecessors, successors, corporate parent, subsidiaries
16 and affiliates, along with the officers, directors, employees, agents and assigns of such persons or
17 entities, for failure to provide clear and reasonable warnings to consumers of exposure to
18 mercury in Nasal sprays as set forth in Plaintiff's 60-Day Notice of Violation (Exhibit B), or any
19 other claim based on the facts or conduct alleged in the Complaint.

20 Further, Plaintiff, on its own behalf, and to the extent of its authority to sue on behalf of the
21 People of the State of California under Proposition 65, and all of their past, present, and future
22 successors in interest, predecessors, agents, representatives, employees, officers, directors,
23 executors, descendants, dependents, heirs, assignors, assignees, and privities (collectively
24 "Releasing Parties"), by this Consent Judgment, hereby covenants not to sue, and releases and
25 forever discharges, Federated and all its past, present and future assigns, predecessors, successors
26 in interest, alter egos, parent companies, subsidiaries, affiliates, agents, employees, shareholders,
27 representatives, officers, directors, and attorneys (collectively "Released Parties") from any and
28 all claims (whether based in tort, contract, statute or otherwise), actions, obligations, damages,

1 judgments, costs, losses, liens, liabilities, indebtedness and demands of any kind or character
2 whatsoever whether known or unknown, anticipated or not anticipated, actual or contingent,
3 suspected or unsuspected, related to the Defendant (collectively "Released Claims"). This
4 release of any and all claims includes the release of all rights to institute any form of legal action
5 under Proposition 65 or Business & Professions Code § 17200 *et seq.*, and any other statutory or
6 common law claim, that was or could have been asserted in the Action against any Released
7 Party based on any past, present, or future act or omission that allegedly caused, created,
8 permitted and/or contributed to the exposure of any person to nasal sprays containing mercury
9 and/or phenylmercuric acetate, including but not limited to, Long Acting Nasal Spray, without
10 first providing any required warning.

11 **8. RETENTION OF JURISDICTION**

12 8.1 This Court shall retain jurisdiction of this matter to implement the Consent
13 Judgment.

14 **9. ENTIRE AGREEMENT**

15 9.1 This Consent Judgment is the sole and entire agreement and understanding of the
16 parties with respect to the entire subject matter hereof and any and all prior discussions,
17 negotiations, commitments and understandings related hereto. No representations, oral or
18 otherwise, express or implied, other than those contained herein have been made by any party
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
20 deemed to exist or to bind any of the parties.

21 **10. COURT APPROVAL**

22 10.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
23 effect and cannot be used in any proceeding for any purpose.

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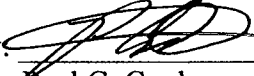
1 **11. EXECUTION IN COUNTERPARTS**

2 11.1 The stipulations to this Consent Judgment may be executed in counterparts and/or
3 by facsimile, which taken together shall be deemed to constitute one document.

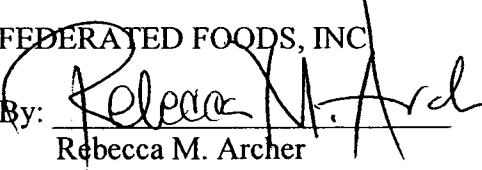
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6 **IT IS SO STIPULATED:**

7 Dated: 8/19/05

WILLIAM F. BOTHWELL, a minor, by and
through his guardian CLAIRE BOTHWELL

8 By: 
9 Paul C. Cook
10 WATERS & KRAUS, LLP

11 Dated: August 1, 2005

FEDERATED FOODS, INC
12 By: 
13 Rebecca M. Archer
14 COBLENTZ, PATCH, DUFFY & BASS, LLP

15 **IT IS SO ORDERED:**

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17 Judge Victoria G. Chaney

Dated

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