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6 Attorneys for Plaintiff,  
7 Consumer Advocacy Group, Inc.

**REC'D**  
AUG 12 2013  
**FILING WINDOW**

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

11  
12 CONSUMER ADVOCACY GROUP, INC.,  
13 in the public interest,

14 Plaintiff,

15 v.

16 TELEFLEX MEDICAL, INC., and  
17 DOES 1-50;

18 Defendants.  
19

CASE NO. BC479564

**STIPULATED CONSENT  
JUDGMENT [PROPOSED]**

Dept: 30  
Judge: Hon. Barbara M. Scheper  
Complaint filed: February 24, 2012

20 **1. INTRODUCTION**

21 1.1 This Stipulated Consent Judgment ("Consent Judgment") is entered into by and  
22 between plaintiff Consumer Advocacy Group, Inc. ("CAG"), acting on behalf of itself and in  
23 the interest of the public, and defendant Teleflex Medical, Incorporated, on its own behalf and  
24 as successor to Inmed Corporation doing business as "Rusch, Inc." or "Rusch" ("Teleflex  
25 Medical"), with each a Party and collectively referred to as the "Parties."  
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**COPY**

1           1.2     This Consent Judgment settles claims asserted by CAG against Teleflex Medical  
2 in this action, which was brought pursuant to the Safe Drinking Water and Toxic Enforcement  
3 Act of 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”).

4           **1.3     Notices of Violation.**

5           1.3.1   On or about May 6, 2011, CAG served Teleflex Medical and various  
6 public enforcement agencies with a document entitled “Sixty-Day Notice of Intent to Sue For  
7 Violation of the Safe Drinking Water And Toxic Enforcement Act of 1986” (the “May 6, 2011  
8 Notice”), pursuant to which CAG provided the recipients with notice of alleged violations of  
9 California Health & Safety Code § 25249.6 for allegedly failing to warn individuals in  
10 California of exposures to di(2-ethylhexyl)phthalate (“DEHP”) contained in vinyl gloves in  
11 certain urology procedure trays and kits.

12           1.3.2   No public enforcer has commenced or diligently prosecuted the  
13 allegations set forth in the May 6, 2011 Notice.

14           **1.4     Complaint**

15           1.4.1.   Prior to filing the instant action, CAG and Teleflex Medical engaged in  
16 settlement negotiations regarding the May 6, 2011 Notice which nearly resulted in a settlement,  
17 but ultimately those negotiations broke down and CAG then filed the instant lawsuit.

18           1.4.2   On February 24, 2012, CAG filed its Complaint for Civil Penalties and  
19 Injunctive Relief (“Complaint”). The Complaint alleges, among other things, that Teleflex  
20 Medical violated Proposition 65 by failing to give clear and reasonable warnings of exposure to  
21 DEHP from vinyl gloves in certain urology procedure trays and kits.

22           **1.5     Consent to Jurisdiction**

23           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
24 jurisdiction over the allegations of violations of Proposition 65 contained in the Complaint and  
25 personal jurisdiction over Teleflex Medical as to the matters alleged in the Consent Judgment,  
26 that venue is proper in the City and County of Los Angeles and that this Court has jurisdiction  
27 to enter this Consent Judgment as a full settlement and final resolution of the allegations  
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1 contained in the Complaint and of all claims which were or could have been raised by any  
2 person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or  
3 arising therefrom or related to or arising out of the May 6, 2011 Notice.

4 **1.6 No Admission**

5 This Consent Judgment resolves claims that are denied and disputed. The Parties enter  
6 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
7 the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not  
8 constitute an admission with respect to any material allegation of the May 6, 2011 Notice or the  
9 Complaint, each and every allegation of which Teleflex Medical denies, nor shall it serve as an  
10 admission by either of the Parties of any fact, conclusion of law, issue of law or violation of  
11 law. This Consent Judgment or compliance with it also may not be used as evidence of any  
12 fact, conclusion of law, issue of law, or violation of law or of fault, wrongdoing, misconduct,  
13 culpability or liability on the part of Teleflex Medical or its predecessors, successors, officers,  
14 directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or  
15 judicial proceeding or litigation in any court, agency, or forum. Teleflex Medical reserves all  
16 rights and defenses with regard to any claim by any person under Proposition 65 or otherwise.  
17 Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,  
18 argument or defense either of the Parties may have in any other or future legal proceeding,  
19 except as expressly provided in this Consent Judgment.  
20

21 **2. DEFINITIONS**

22 2.1 "Covered Product(s)" means vinyl gloves in "Rusch" Foley urology procedure  
23 trays and kits sold by Teleflex Medical.

24 2.2 "Effective Date" means the date that this Consent Judgment is entered by the  
25 Court.  
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1 **3. INJUNCTIVE RELIEF/REFORMULATION**

2 3.1 Within thirty (30) days of the Effective Date, Teleflex Medical will not sell or offer  
3 for sale in California any Covered Products that contain DEHP at a concentration greater than  
4 0.10% by weight without providing a "clear and reasonable warning" under Proposition 65  
5 pursuant to 27 Cal. Code Regs. § 25603.

6 **4. SETTLEMENT PAYMENT**

7 4.1 Within fifteen (15) business days of the Effective Date, Teleflex Medical shall  
8 pay a total of Eighty-Nine Thousand Five Hundred Dollars (\$89,500.00) by separate checks  
9 apportioned as set forth below.

10 4.1.1 **Reimbursement of Attorneys' Fees and Costs:** Teleflex Medical shall pay  
11 Fifty-Five Thousand Dollars (\$55,000.00) to "Yeroushalmi & Associates" as reimbursement  
12 for the investigation fees and costs, testing costs, expert fees, attorneys' fees, and other  
13 litigation costs and expenses for all work performed through the approval of this Consent  
14 Judgment. Thereafter, Yeroushalmi & Associates will donate \$5,000.00 of this award of  
15 attorneys' fees to the Cedars-Sinai's Medical Center to be used for research to cure Leukemia.

16 4.1.2 **Civil Penalties.** Teleflex Medical shall issue two separate checks for a total  
17 amount of Twenty-One Thousand Dollars (\$21,000.00) as penalties pursuant to California  
18 Health & Safety Code § 25249.12: (a) one check made payable to the State of California's  
19 Office of Environmental Health Hazard Assessment (OEHHA) in the amount of Fifteen  
20 Thousand Seven Hundred and Fifty Dollars (\$15,750.00), representing 75% of the total  
21 penalty; and (b) one check made payable to "Consumer Advocacy Group, Inc." in the amount  
22 of Five Thousand Two Hundred and Fifty Dollars (\$5,250.00), representing 25% of the total  
23 penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be  
24 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount  
25 of \$15,750.00. The second 1099 shall be issued in the amount of \$5,250.00 to CAG and sent to  
26 CAG, c/o Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills,  
27 California 90212.  
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1           4.1.3 **Payment In Lieu of Civil Penalties:** Teleflex Medical shall pay Thirteen  
2 Thousand and Five Hundred Dollars (\$13,500.00) in lieu of civil penalties pursuant to  
3 California Health and Safety Code § 25249.7(b), by a check made payable to “Consumer  
4 Advocacy Group, Inc.” CAG will use this payment for investigation of the public’s exposure  
5 to Proposition 65 listed chemicals through various means, laboratory fees for testing for  
6 Proposition 65 listed chemicals, expert fees for evaluating exposures through various mediums,  
7 including but not limited to consumer product, occupational, and environmental exposures to  
8 Proposition 65 listed chemicals, costs of administration aimed at reducing public exposures to  
9 known carcinogens and reproductive toxins and the cost of hiring consulting and retained  
10 experts who assist with the extensive scientific analysis necessary for those files in litigation, in  
11 order to reduce the public’s exposure to Proposition 65 listed chemicals by notifying those  
12 persons and/or entities believed to be responsible for such exposures and attempting to  
13 persuade those persons and/or entities to reformulate their products or the source of exposure to  
14 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing  
15 the same public harm as allegedly in the instant action. Further, should the court require it,  
16 CAG will submit under seal, an accounting of these funds as described above as to how the  
17 funds were used. The check shall be made payable to “Consumer Advocacy Group, Inc.” and  
18 delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Blvd, Suite 610E,  
19 Beverly Hills, CA 90212.  
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21           4.2     Payments to be made to CAG shall be delivered to: Reuben Yeroushalmi,  
22 Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

23     **5.     MATTERS COVERED AND RELEASED BY THIS CONSENT JUDGMENT**

24           5.1     This Consent Judgment is a full, final, and binding resolution between CAG, on  
25 behalf of itself and in the public interest, and Teleflex Medical and its officers, directors,  
26 insurers, attorneys, employees, owners, parents, shareholders, divisions, subdivisions,  
27 subsidiaries, partners, affiliates, sister and related companies, predecessors, successors, and  
28 assigns (collectively, “Released Parties”), and each person or entity to which any of them have

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

8           5.2 Teleflex Medical’s compliance with the terms of this Consent Judgment  
9 constitutes compliance with Proposition 65 with respect to DEHP in the Covered Products.

10           5.3 CAG, in its individual capacity and on behalf of itself, its past and current  
11 agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to  
12 institute or participate in, directly or indirectly, any form of legal action and releases all claims,  
13 including, without limitation, all past, present, and future rights, actions, and causes of action,  
14 in law or in equity, suits, liabilities, injunctive relief, declaratory relief, demands, obligations,  
15 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
16 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,  
17 fixed or contingent (collectively “Claims”), against Released Parties and Downstream Released  
18 Parties arising from any violation of Proposition 65 or any other statutory or common law  
19 violation alleged in the May 6, 2011 Notice or the Complaint or regarding the failure to warn  
20 about exposure to DEHP in Covered Products manufactured, distributed, or sold by Released  
21 Parties and Downstream Released Parties, which shall be effective as a full and final accord  
22 and satisfaction of and bar to such Claims. In furtherance of the foregoing, CAG hereby  
23 waives any and all rights and benefits which it now has, or in the future may have, conferred  
24 upon it with respect to the Claims arising from any violation of Proposition 65 or any other  
25 statutory or common law violation alleged in the May 6, 2011 Notice or the Complaint or  
26 regarding the failure to warn about exposure to DEHP from the Covered Products by virtue of  
27 the provisions of Section 1542 of the California Civil Code, which provides as follows:  
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
3 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.

4 CAG understands and acknowledges that the significance and consequence of this waiver of  
5 California Civil Code Section 1542 is that even if CAG or the public suffers future damages  
6 arising out of the released Claims or arising from any violation of Proposition 65 or any other  
7 statutory or common law regarding the failure to warn about exposure to DEHP from Covered  
8 Products, CAG will not be able to make any claim for those damages against Teleflex Medical  
9 or any of the Released Parties or Downstream Released Parties. Furthermore, CAG  
10 acknowledges that it intends these consequences for any Claims, any violations of Proposition  
11 65, or any other statutory or common law violation regarding the failure to warn about  
12 exposure to DEHP in the Covered Product as may exist as of the date of the entry of this  
13 Consent Judgment but which CAG does not know exist, and which, if known, would materially  
14 affect its decision to enter into this Consent Judgment, regardless of whether its lack of  
15 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

16 **6. ENFORCEMENT OF CONSENT JUDGMENT**

17 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
18 hereto. Either Party may, by noticed motion or an order to show cause before the Superior  
19 Court of California, City and County of Los Angeles, giving the notice required by law, enforce  
20 the terms and conditions contained in this Consent Judgment. A Party may enforce any of the  
21 terms and conditions of this Consent Judgment only after that Party first provides sixty (60)  
22 days' notice to the Party allegedly failing to comply with the terms and conditions of this  
23 Consent Judgment and attempts to resolve such Party's failure to comply in an open and good  
24 faith manner.

25 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
26 proceeding to enforce this Consent Judgment, CAG shall provide a Notice of Violation  
27 ("NOV") to Teleflex Medical. The NOV shall include for each Covered Product: the name of  
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1 the product, the date(s) the alleged violation(s) was observed and the location at which the  
2 Covered Product was offered for sale, and shall be accompanied by all test data obtained by  
3 CAG regarding the Covered Product, including an identification of the component(s) of the  
4 Covered Product that were tested.

5           6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the  
6 alleged violation if, within 30 days of receiving such NOV, Teleflex Medical serves a  
7 Notice of Election (“NOE”) that meets one of the following conditions:

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

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

17           6.2.2 **Contested NOV.** Teleflex Medical may serve an NOE informing CAG  
18 of its election to contest the NOV within 30 days of receiving the NOV.

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

22           (b) If the confirmatory testing establishes that the Covered Products  
23 do not contain DEHP in excess of the level allowed in Section 3.1, CAG shall take no  
24 further action regarding the alleged violation. If the testing does not establish  
25 compliance with Section 3.1, Teleflex Medical may withdraw its NOE to contest the  
26 violation and may serve a new NOE pursuant to Section 6.2.1.  
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1 (c) If Teleflex Medical does not withdraw an NOE to contest the  
2 NOV, the Parties shall meet and confer for a period of no less than 30 days before CAG  
3 may seek an order enforcing the terms of this Consent Judgment.

4 6.3 In any proceeding brought by either Party to enforce this Consent Judgment,  
5 such Party may seek whatever fines, costs, penalties or remedies as may be provided by law for  
6 any violation of Proposition 65 or this Consent Judgment.

7 **7. ENTRY OF CONSENT JUDGMENT**

8 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
9 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
10 Teleflex Medical waive their respective rights to a hearing or trial on the allegations of the  
11 Complaint.

12 7.2 If this Consent Judgment is not approved by the Court: (a) this Consent  
13 Judgment and any and all prior agreements between the Parties merged herein shall terminate  
14 and become null and void, and the actions shall revert to the status that existed prior to the  
15 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
16 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
17 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
18 purpose in this action, or in any other proceeding; and (c) the Parties agree to meet and confer  
19 to determine whether to modify the terms of the Consent Judgment and to resubmit it for  
20 approval.

21 **8. MODIFICATION OF CONSENT JUDGMENT**

22 8.1 This Consent Judgment may be modified only upon written agreement of the  
23 Parties by stipulation and entry of a modified Consent Judgment by the Court thereon, or upon  
24 motion of any Party as provided by law and entry of a modified Consent Judgment by the Court  
25 thereon.  
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1           8.2    Any Party seeking to modify this Consent Judgment shall attempt in good faith  
2 to meet and confer with the other Party prior to filing a motion to modify the Consent  
3 Judgment.

4   **9.    RETENTION OF JURISDICTION**

5           9.1    This Court shall retain jurisdiction of this matter to implement and enforce the  
6 terms of this Consent Judgment.

7   **10.   DUTIES LIMITED TO CALIFORNIA**

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

10   **11.   SERVICE ON THE ATTORNEY GENERAL AND COURT APPROVAL**

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

18           11.2   The Court shall either approve or disapprove this Consent Judgment in its  
19 entirety, without alteration, deletion, or amendment, unless otherwise so stipulated by the  
20 Parties and their counsel. If this Consent Judgment is not approved by the Court, it shall be of  
21 no further force or effect.

22   **12.   ATTORNEY FEES**

23           12.1   Except as specifically provided in Section 4.1, each Party shall bear its own  
24 costs and attorney fees in connection with this action.

25   **13.   ENTIRE AGREEMENT**

26           13.1   This Consent Judgment contains the sole and entire agreement and  
27 understanding of the Parties with respect to the entire subject matter hereof and any and all  
28

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

5 **14. GOVERNING LAW**

6 14.1 The validity, construction and performance of this Consent Judgment shall be  
7 governed by the laws of the State of California, without reference to any conflicts of law  
8 provisions of California law.

9 14.2 The Parties, including their counsel, have participated in the preparation of this  
10 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
11 This Consent Judgment was subject to revision and modification by the Parties and has been  
12 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
13 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
14 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
15 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are  
16 to be resolved against the drafting Party should not be employed in the interpretation of this  
17 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

18 **15. EXECUTION AND COUNTERPARTS**

19 15.1 This Consent Judgment may be executed in counterparts and by means of  
20 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
21 one document.

22 **16. NOTICES**

23 16.1 Any notices under this Consent Judgment shall be by personal delivery or First  
24 Class Mail.  
25

26 If to CAG:

27 Reuben Yeroushalmi  
28 9100 Wilshire Boulevard, Suite 610E

If to Teleflex Medical:

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., 15<sup>th</sup> 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 Sasson*  
Plaintiff, CONSUMER ADVOCACY  
GROUP, INC.

By: *Guy Wint*  
Defendant, TELEFLEX MEDICAL,  
INCORPORATED

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT