

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 16-CI-867**

**COMMONWEALTH OF KENTUCKY, EX REL.
DANIEL CAMERON, ATTORNEY GENERAL**

PLAINTIFF

v.

JOHNSON & JOHNSON, *et al.*

DEFENDANTS

FINAL CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE

The Commonwealth of Kentucky *ex rel.* Daniel Cameron, Attorney General (the “Commonwealth”) and Ethicon, Inc., Ethicon US, LLC, and Johnson & Johnson (collectively, “Defendants”) (together with the Commonwealth, the “Parties,” and each a “Party”) have entered into a consensual resolution of the above-captioned litigation (the “Action”). The Parties have agreed to the entry of this Final Consent Judgment (the “Judgment”) by the Court without trial or adjudication of any issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

RECITALS:

1. The Parties agree that the Court has jurisdiction over the subject matter of the Action and over the Parties with respect to the Action and this Judgment.
2. The terms of this Judgment shall be governed by the laws of the Commonwealth of Kentucky.
3. Entry of this Judgment is in the public interest and reflects an agreement negotiated among the Parties in good faith.

4. The Commonwealth has asserted claims against Defendants, alleging deceptive and unlawful marketing of Ethicon's past and current polypropylene pelvic mesh surgical devices intended for implantation into the pelvic floor to treat stress urinary incontinence (SUI) and/or pelvic organ prolapse (POP) (the "Mesh Products"), including Prolift, Prolift+M, Prosima, Prolene Mesh/Prolene Soft Mesh, Gynemesh, Gynemesh PS, TVT, TVT Obturator, TVT Secur, TVT Exact, TVT Abbrevo, and Artisyn, in violation of the Kentucky Consumer Protection Act ("KCPA"), KRS §§ 367.170, *et seq.*, as set forth in the Complaint filed on or about August 16, 2016 and First Amended Complaint filed on or about July 14, 2017, and captioned *Commonwealth of Kentucky ex rel. Daniel Cameron, Attorney General v. Johnson & Johnson, et al.*, Civil Action No. 16-CI-867 (Cir. Ct., Franklin Cty.).

5. Defendants deny the Commonwealth's allegations and, specifically, deny that they violated any applicable law or regulation or breached any legal duty to the Commonwealth or its citizens in connection with the Commonwealth's claims.

6. Defendants are entering into this Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Defendants expressly deny. Defendants do not admit any violation of the KCPA or of Kentucky law, and do not admit any wrongdoing that was or could have been alleged by the Commonwealth before the date of the Judgment under those laws. No part of this Judgment shall constitute evidence of any liability, fault, or wrongdoing by Defendants. This Judgment is not intended for use by any third party for any purpose, including submission to any court for any purpose.

7. This Judgment shall not be construed or used as a waiver or limitation of any

defense otherwise available to Defendants in any action, or of Defendants' right to defend themselves from, or make any arguments in, any private individual, regulatory, or governmental action or investigation, or class claims or suits relating to the subject matter or terms of this Judgment. This Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind.

8. It is the intent of the Parties that this Judgment not be admissible in other cases other than in connection with the enforcement of this Judgment.

9. No part of this Judgment shall create a private cause of action or confer any right to any third party, including, without limitation, for violation of any federal or state statute or common law.

10. The Parties recognize that the outcome of the Action is uncertain and a final resolution through the adversarial process likely will require protracted litigation.

11. The Parties now mutually consent to the entry of this Judgment and agree to dismissal of this Action with prejudice to avoid the delay, expense, inconvenience, and uncertainty of further litigation.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

In consideration of the mutual promises, terms, and conditions set forth herein, the adequacy of which is hereby acknowledged by all Parties, it is agreed by and between Defendants and the Commonwealth, and adjudicated by the Court, as follows:

1. The foregoing Recitals are incorporated herein and constitute an express term of this Judgment.

2. The Parties have entered into a full and final settlement of all Released Claims against the Released Parties (defined in Paragraph 5 below).

3. The Court finds that entry of this Judgment is in the public interest and reflects a negotiated settlement agreed to by the Parties in good faith. The Action is dismissed with prejudice, subject to a retention of jurisdiction by the Court as provided herein.

4. **EFFECTIVE DATE.** The “Effective Date” of this Judgment is the date on which a copy of the Judgment, duly executed by Defendants and by the Commonwealth, is entered by the Court.

5. **RELEASE AND DISCHARGE BY THE COMMONWEALTH.** By its execution of this Judgment, the Commonwealth (on behalf of itself and its agencies, departments, instrumentalities, officers, employees, servants, attorneys, and agents claiming through it) releases and forever discharges, to the fullest extent permitted by law, Defendants and all of their past and present officers, directors, employees, representatives, agents, affiliates, parents, subsidiaries, predecessors, attorneys, assigns, and successors (collectively, the “Released Parties”) of and from all civil or administrative claims, actions, suits, charges, causes of action, arbitrations; debts, demands, obligations, damages (including compensatory and punitive damages), disgorgement, restitution, liens, fines, penalties, interest, costs, expenses, and attorneys’ fees, as may have been recoverable, whether arising from, in, or through law, equity, administrative procedures, subrogation, or any other source that the Commonwealth (or its agencies, departments, instrumentalities, officers, employees, servants, attorneys, or agents), to the extent permitted by law, asserted or could have asserted against the Released Parties by reason of any conduct occurring through and including this Judgment’s Effective Date, arising from or relating to marketing, promotion, manufacture, or sale of the Mesh Products, whether such conduct was known or unknown, claimed or concealed, suspected or unsuspected, fixed or contingent, or

matured or un-matured (the “Released Claims”), except that the following are specifically reserved and excluded from the Released Claims:

- a. Any civil or administrative liability that any person and/or entity, including the Released Parties, has or may have to the Commonwealth of Kentucky for: (1) state or federal antitrust violations; (2) Medicaid claims, including but not limited to Medicaid fraud or abuse and/or kickback violations related to the Commonwealth’s Medicaid program; and (3) claims to enforce the terms and conditions of this Judgment;
 - b. Actions on behalf of state program payors of the Commonwealth of Kentucky arising from the reimbursement of claims for the Mesh Products;
 - c. Any criminal liability that any person or entity, including the Released Parties, has or may have to the Commonwealth of Kentucky;
 - d. Claims involving “best price,” “average wholesale price,” “wholesale acquisition cost,” or any reporting practices;
 - e. State false claims violations; and
 - f. Claims individual consumers may have against the Released Parties arising from or relating to the Mesh Products.
6. The Commonwealth (on behalf of itself and its agencies, departments, instrumentalities, officers, employees, servants, attorneys, and agents), to the extent permitted by law, further agrees to fully and finally release and refrain from instituting, recommending, directing, causing, or attempting to cause any administrative action or sanction, including debarment, by any Commonwealth agency based on the conduct covered by Paragraph 5.

7. The Commonwealth expressly acknowledges and agrees that the release in Paragraph 5 is a general release of the matters alleged in the Complaint and First Amended Complaint. The Commonwealth expressly waives and assumes the risk of any and all claims for damages that exist as of the Effective Date, but which the Commonwealth does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise and which, if known, would materially affect the Commonwealth's decision to stipulate to this Judgment. The Commonwealth further agrees the Payment in Paragraph 8 is a complete compromise of matters involving disputed issues of law and fact, and the Commonwealth assumes the risk that the facts or law may be other than the Commonwealth believes.

8. **PAYMENT BY DEFENDANTS.** No more than 30 days after the Effective Date of this Judgment, Defendants shall pay the Commonwealth the total sum of \$9,900,000 ("Settlement Amount" or "Settlement Payment"). The payment to the Commonwealth shall be a check payable to the Kentucky State Treasurer.

Remit to: Attn Stacy Woodrum

1024 Capital Center Drive, Frankfort, KY 40601.

The Kentucky Office of the Attorney General will retain \$1,980,000.00 as its reasonable cost of investigation and litigation.

9. The Parties acknowledge and agree that the Settlement Payment described herein is not a fine, penalty, or payment in lieu thereof.

10. **PAYMENTS TO NON-PARTIES BY THE COMMONWEALTH.** To the extent a third party not a party to this agreement (including, without limitation, the Commonwealth's outside counsel, the federal government or any federal agency, a *qui tam* relator, a private citizen, or a private insurer) claims entitlement to any portion of the Settlement

Amount or to any other compensation in connection with the subject matter, investigation, or prosecution of the Action, the Commonwealth shall be solely responsible for the proper allocation of those funds from the Settlement Amount.

11. **EFFECT OF PAYMENT.** The Parties agree that the Kentucky Medicaid program suffered no actual harm or damages as a result of the conduct complained of by the Commonwealth in the Action. No part of the Settlement Payment represents payments for monies expended by the Commonwealth of Kentucky's Medicaid Program, nor does it concern any payment made thereunder, nor does the Settlement Payment represent payments for any federal money or any state matching funds. Payment of the Settlement Amount by Defendants will fulfill all obligations that this Judgment imposes on Defendants. Payment of the Settlement Amount also is intended to, and does, fully resolve all of the Commonwealth's claims or potential claims against Defendants as provided in Paragraph 7.

12. **COSTS AND FEES.** Each Party to this Judgment will bear all of that Party's attorneys' fees and costs incurred through the Effective Date.

13. **JURISDICTION.** This Court retains jurisdiction of this Judgment and the Parties hereto for the purpose of enforcing and modifying this Judgment.

14. **WAIVER.** Any failure by any Party to this Judgment to insist upon the strict performance by any other Party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment.

15. **ENTIRE AGREEMENT.** This Judgment represents the full and complete terms of the settlement entered into by the Parties. The Parties acknowledge that no other promises,

representations, or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Judgment constitutes a single and entire agreement and is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect. In any action undertaken by the Parties, no prior versions of this Judgment and no prior versions of any of its terms that were not entered by the Court in this Judgment may be offered or introduced for any purpose whatsoever.

16. **MODIFICATION**. The Judgment may be modified by a stipulation of the Parties, once it is approved by, and becomes a judgment of the Court, or by court proceedings resulting in a modified judgment of the Court.

17. **CAPTIONS**. The bold-faced paragraph captions in this Judgment are for convenience only and do not add to, detract from, or change the substantive language or terms of this Judgment.

18. **EXECUTION IN COUNTERPARTS**. This Judgment may be executed in counterparts. The Parties agree that facsimile or PDF signatures shall be deemed as effective as original signatures.

APPROVAL BY COURT

APPROVED FOR FILING and SO ORDERED this ____ day of ____, 2023.

Thomas Wingate, Judge
 Franklin Circuit Court

APPROVED, AGREED TO, AND PRESENTED BY:


FOR THE COMMONWEALTH OF KENTUCKY

Jonathan E. Farmer
Deputy Executive Director
Office of Consumer Protection
Kentucky Office of the Attorney General
1024 Capital Plaza Drive
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Date: _____

On behalf of the Commonwealth of Kentucky ex rel. Daniel Cameron, Attorney General

FOR DEFENDANTS



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Date: February 10, 2023

On behalf of Defendants Johnson & Johnson, Ethicon US, LLC, and Ethicon, Inc.

APPROVED, AGREED TO, AND PRESENTED BY:

FOR THE COMMONWEALTH OF KENTUCKY



Date: 2-10-23

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On behalf of the Commonwealth of Kentucky ex rel. Daniel Cameron, Attorney General

FOR DEFENDANTS

Date: _____

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On behalf of Defendants Johnson & Johnson, Ethicon US, LLC, and Ethicon, Inc.

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
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ELECTRONICALLY FILED

COMMONWEALTH OF KENTUCKY,
ex rel. DANIEL CAMERON, ATTORNEY GENERAL

PLAINTIFF

v.

JOHNSON & JOHNSON, *et al.*

DEFENDANTS

COMMONWEALTH OF KENTUCKY'S
NOTICE OF FILING FINAL CONSENT JUDGMENT

Plaintiff Commonwealth of Kentucky, *ex rel.* Daniel Cameron, Attorney General, (the “Commonwealth”) submits this Notice of Filing Consent Judgment. The parties have resolved this matter and now submit the attached Final Consent Judgment and Dismissal with Prejudice to the Court.

Dated: February 13, 2023

Respectfully submitted,

Daniel Cameron, Attorney General
Commonwealth of Kentucky

By: /s/ Jonathan Farmer
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify today February 13, 2023, that a true and correct copy of the foregoing was emailed to all counsel of record.

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