

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
NATIONAL UROLOGICAL GROUP, INC., <i>et al.</i> ,)
)
Defendants.	1:04-CV-3294-CAP)
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(Proposed)
FINAL JUDGMENT IMPOSING CONTEMPT SANCTIONS

On October 10, 2017, after two bench trials, from January 21 to 24, 2014, and from March 27, 2017 to April 7, 2017, this Court issued an Order (Dkt. No. 966) holding defendants Hi-Tech Pharmaceuticals, Inc., Jared Wheat, and Stephen Smith in contempt of Sections II, VI, and VII of the Final Judgment and Permanent Injunction Against National Urological Group, Inc., Hi-Tech Pharmaceuticals, Inc., Jared Wheat, Thomasz Holda, and Stephen Smith (Dkt. No. 230) (“Hi-Tech Injunction”). In that same Order, this Court also held Dr. Terrill Mark Wright in contempt for violating Section II of the Final Judgment and Permanent Injunction Against Terrill Mark Wright, M.D. (Dkt. No. 229) (“Wright Injunction”). The Court ordered compensatory sanctions against Hi-

Tech, Wheat, Smith, and Wright, and ordered Hi-Tech, Wheat, and Smith to recall from retail outlets all Fastin, Lipodrene, Benzedrine, and Stimerex-ES with violative product packaging and labels.

The Court directed the Federal Trade Commission (“FTC” or “Commission”) to file a proposed judgment implementing its ruling within 20 days of its decision, after affording the Defendants an opportunity to review the proposed judgment as to form. The FTC provided that draft to Defendants for their review as ordered and submitted its final proposal to the Court on October 24, 2017. Based on the record established in this case, the Court enters this Final Judgment Imposing Contempt Sanctions pursuant to Federal Rules of Civil Procedure 52 and 58.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this case and each of the parties. Venue lies properly with this Court.
2. On October 10, 2017, this Court held that from January 1, 2009 through early January 2014, defendants Hi-Tech Pharmaceuticals, Wheat, and Smith violated Sections II and VII of the Hi-Tech Injunction through their unsubstantiated advertisements for Fastin, Lipodrene, Benzedrine, and Stimerex-ES. *See* Dkt. No. 966.

3. This Court further held that from January 1, 2009 through December 21, 2012, defendants Hi-Tech Pharmaceuticals, Wheat, and Smith violated Section VI of the Hi-Tech Injunction by failing to include the required Yohimbine Health Risk Warning on packages of Fastin, Lipodrene, Benzedrine, and Stimerex-ES.
4. This Court also held that from September 1, 2010 through at least August 26, 2013, defendant Wright violated Section II of the Wright Injunction through his unsubstantiated endorsement appearing in the Fastin print ad.
5. This Court found that the gross receipts for the sale of the violative products from January 1, 2009 through August 31, 2013 totaled \$40,120,950 and ordered that Hi-Tech Pharmaceuticals, Wheat, and Smith were jointly and severally liable in the amount of \$40,000,950 and Wright was liable in the amount of \$120,000. The Court ordered those amounts disgorged from Defendants into the Registry of the Court.
6. Because there are no remaining disputes of material fact to be tried between the parties, entry of judgment against Hi-Tech Pharmaceuticals, Wheat, and Smith in the amount of \$40,000,950 and against Wright in the amount of \$120,000 is proper.

7. Entry of this Final Judgment is in the public interest. There being no just reason to delay, the Clerk is directed to enter judgment immediately.

I. MONETARY JUDGMENT FOR COMPENSATORY CONTEMPT RELIEF

IT IS ORDERED that:

- A. Judgment is entered in the amount of forty million, nine hundred fifty dollars (\$40,000,950) plus post-judgment interest in favor of the Commission jointly and severally against Hi-Tech Pharmaceuticals, Inc., Jared Wheat, and Stephen Smith, as compensatory contempt relief for their violations of Sections II and VII of the Hi-Tech Injunction. Hi-Tech Pharmaceuticals, Inc., Jared Wheat, and Stephen Smith are ordered to pay this amount immediately into the Court Registry upon entry of this Judgment.
- B. Judgment is entered in the amount of one hundred twenty thousand dollars (\$120,000.00) plus post-judgment interest in favor of the Commission against Terrill Mark Wright, as compensatory contempt relief. Wright is ordered to pay this amount immediately into the Court Registry upon entry of this Judgment.

- C. All other sums collected pursuant to this Judgment shall be deposited into the Court Registry.

II. ADMINISTRATION OF CONSUMER REDRESS

IT IS FURTHER ORDERED that:

- A. Periodically, and at such intervals as are necessary to administer redress to consumers who purchased Fastin, Lipodrene, Benzedrine, and Stimerex-ES, the FTC may apply to the Court for disbursement of funds from the Court Registry and will provide defendants with notice of any such application. The FTC may apply to use such funds not only to reimburse consumers but also to cover the administrative costs of the redress program, including, but not limited to, locating affected consumers. Upon approval of the FTC's application, in whole or in part, the Court will direct the Clerk to release the funds to the FTC to be deposited into a Redress Fund administered by the FTC or its designee.
- B. In the event that direct restitution to consumers becomes wholly or partially impracticable or money remains after redress is complete, the Commission shall so certify to the Court and provide a final report to both the Court and the defendants detailing its

administration of the Redress Fund and identifying any undistributed amounts within ninety (90) days after completion of its redress program. At that time, the Court will issue such further orders as are necessary and proper regarding the appropriate distribution of any such amounts, after affording the parties an opportunity to be heard on that issue.

III. RECALL OF FASTIN, LIPODRENE, BENZEDRINE, AND STIMEREX-ES

IT IS FURTHER ORDERED that Defendants Hi-Tech Pharmaceuticals, Inc., Wheat, and Smith shall recall from all retail outlets all Fastin, Lipodrene, Benzedrine, and Stimerex-ES that bear violative product packaging and labels to the extent such products have not already been recalled. Defendants shall certify to the Court when such recall has been completed and detail what steps were taken to effectuate such recall. If no such recall is necessary, Defendants shall certify that fact.

IV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Final Judgment Imposing Contempt Sanctions.

SO ORDERED this ___ day of _____, 2017.

CHARLES A. PANNELL, JR.
United States District Judge