

**ORIGINAL
FILED
JUL 15 2013**

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA**

1 MELINDA HAAG (CSBN 132612)
United States Attorney
2 ALEX G. TSE (CSBN 152348)
Chief, Civil Division
3 ERICA BLACHMAN HITCHINGS (MABN 669825)
Assistant United States Attorney
4 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
5 Telephone: (415) 436-7015
6 Facsimile: (415) 436-6927
e-mail: erica.hitchings@usdoj.gov

7 Attorneys for the United States of America

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

12 UNITED STATES *ex rel.* PRIEVE, et al.,
13 Plaintiffs and Relator,
14 v.
15 MALLINCKRODT, INC.; COVIDIEN, INC.;
and TYCO INTERNATIONAL (US), INC.
16 Defendants.
17

No. C 08-1863 TEH

**UNITED STATES' AND SETTLING
FCA STATES' NOTICE OF ELECTION
TO INTERVENE; [~~PROPOSED~~]
ORDER**

FILED UNDER SEAL

19 1. Pursuant to 31 U.S.C. §3730 (b)(4), the United States hereby notifies the Court that
20 the United States elects to intervene in this action.

21 2. The State of California, on its behalf and behalf of the states of Maryland, New York
22 and Rhode Island ("Settling FCA States"),¹ and pursuant to the respective provisions of each
23 states' false claims act, hereby notify the Court that they elect to intervene in this action.

24 3. The parties have entered into multiple settlement agreements in this case, including a
25

26 ¹The States of Missouri, Ohio, Utah and West Virginia are also settling with
27 Mallinckrodt; however, these states do not have false claims acts and do not need to intervene in
28 this action. Missouri, Ohio, Utah and West Virginia, along with the Settling FCA States, are
collectively referred to as the "Settling States."

1 federal settlement agreement with an effective date of July 3, 2013 and several state settlement
2 agreements (together, the Agreements). Defendant's payments under the various agreements
3 should all be complete by August 2, 2013. After receiving payment of the settlement amounts,
4 the United States, the Settling States, and Relator will file a stipulation of dismissal in this action
5 pursuant to the terms and conditions of the Agreements.

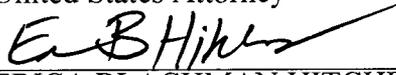
6 4. Finally, the United States requests that the Court unseal: (1) Relator's Complaint, First
7 Amended Complaint, and Second Amended Complaint; (2) the summons; (3) the scheduling
8 order; (4) this Notice of Election to Intervene, with (Proposed) Order to Unseal; and (5) all other
9 matters occurring in this action after the date the Court enters the unsealing order. The United
10 States requests that all other contents of the Court's file in this matter (including, but not limited
11 to, any applications filed by the United States and/or States for extensions of the sixty-day
12 investigative period, any applications for partial lifting of the seal, and any orders previously
13 entered in this matter) remain under seal and not be made public or served upon Defendant.

14
15 Respectfully submitted,

16 MELINDA HAAG
17 United States Attorney

18 Dated: July 10, 2013

By:


19 ERICA BLACHMAN HITCHINGS
Assistant United States Attorney

20 Attorneys for the United States

21 KAMALA D. HARRIS
Attorney General of the State of California

22 Dated: July __, 2013

By:

23 BERNICE L. LOUIE YEW
Deputy Attorney General

24 Attorneys for the State of California
25
26
27
28

1 federal settlement agreement with an effective date of July 3, 2013 and several state settlement
2 agreements (together, the Agreements). Defendant's payments under the various agreements
3 should all be complete by August 2, 2013. After receiving payment of the settlement amounts,
4 the United States, the Settling States, and Relator will file a stipulation of dismissal in this action
5 pursuant to the terms and conditions of the Agreements.

6 4. Finally, the United States requests that the Court unseal: (1) Relator's Complaint, First
7 Amended Complaint, and Second Amended Complaint; (2) the summons; (3) the scheduling
8 order; (4) this Notice of Election to Intervene, with (Proposed) Order to Unseal; and (5) all other
9 matters occurring in this action after the date the Court enters the unsealing order. The United
10 States requests that all other contents of the Court's file in this matter (including, but not limited
11 to, any applications filed by the United States and/or States for extensions of the sixty-day
12 investigative period, any applications for partial lifting of the seal, and any orders previously
13 entered in this matter) remain under seal and not be made public or served upon Defendant.

14
15 Respectfully submitted,

16 MELINDA HAAG
17 United States Attorney

18 Dated: July __, 2013

By:

19 ERICA BLACHMAN HITCHINGS
Assistant United States Attorney

20 Attorneys for the United States

21 KAMALA D. HARRIS
Attorney General of the State of California

22 Dated: July 10, 2013

By:

23 BERNICE L. LOUIE YEW
Deputy Attorney General

24 Attorneys for the State of California
25
26
27
28

PROPOSED ORDER

1
2 Upon consideration of the United States' and Settling FCA States' Notice of Election to
3 Intervene, the Court rules as follows. IT IS ORDERED that:

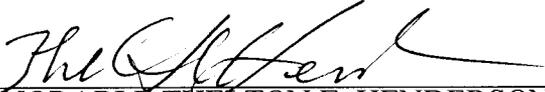
4 1. The seal shall be lifted as to Relator's Complaint, First Amended Complaint, and
5 Second Amended Complaint; the summons; the scheduling order; this Order and accompanying
6 Notice of Election to Intervene; and all subsequent filings in this action.

7 2. All other previously filed contents of the Court's file in this action shall remain under
8 seal and not be made public or served upon the Defendants.

9
10 IT IS SO ORDERED.

11
12 Dated: _____

7/15/13


HONORABLE THELTON E. HENDERSON
United States District Judge

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that she is an employee of the Office of the United
3 States Attorney for the Northern District of California and is a person of such age and discretion
4 to be competent to serve papers. The undersigned further certifies that she is causing a copy of
5 the following:

6 **UNITED STATES' AND SETTLING FCA STATES' NOTICE OF ELECTION TO
7 INTERVENE; [PROPOSED] ORDER**

8 to be served this date upon the person indicated below at the address shown:

9 Marcella Auerbach, Esq.
10 Nolan & Auerbach, P.A.
435 N. Andrews Ave, Suite 401
Fort Lauderdale, FL 33301

11 **BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope
12 with postage thereon fully prepaid in the designated area for outgoing U.S. mail in
accordance with this office's practice.

13 **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully
14 prepaid in the designated area for outgoing U.S. mail in accordance with this
office's practice.

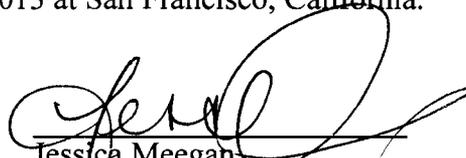
15 **BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be
16 delivered by hand to the person or offices of each addressee above.

17 **BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to
the person or offices of each addressee above.

18 **BY E-MAIL:** I caused each such document to be sent by e-mail to the person or
19 offices of each address above.

20 **BY FEDERAL EXPRESS**

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed July 10, 2013 at San Francisco, California.

23
24 
25 Jessica Meegan
26 Legal Assistant (Contractor)
27
28