

FILED

Apr 28 2021

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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Attorneys for Plaintiff EMERGENT BIOSOLUTIONS INC.

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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 EMERGENT BIOSOLUTIONS INC.

20 Plaintiff,

21 v.

22 vs.

23 MUTUAL HOLISTIC, INC., JOHN
DOES 1 THROUGH 50, and JOHN DOE
24 ENTITIES 1 THROUGH 10,

25 Defendants.

Case No. 5:20-cv-09452-NC

**STIPULATED REQUEST FOR ENTRY OF
CONSENT DECREE AND DISMISSAL;
ORDER**

Judge: Hon. Nathanael M. Cousins
Complaint Filed: December 30, 2020

1 The following Consent Decree is entered by and between Plaintiff Emergent BioSolutions
2 Inc. (“Emergent” or “Plaintiff”), Defendant Mutual Holistic, Inc. (“Mutual Holistic”), and Mutual
3 Holistic’s officer Brad Moore (“Moore,” and collectively with Mutual Holistic, “Defendants”),
4 having agreed upon a basis for settlement of the matters in dispute and having agreed upon the
5 entry of this Consent Decree, it is hereby ordered, adjudged, and decreed as follows, and the
6 Court makes the following findings of fact and conclusion of law:

7 1. This Court has jurisdiction over the subject matter of this action and over the
8 parties hereto.

9 2. Venue properly lies in this District.

10 3. Emergent is a Delaware corporation with a principal place of business in
11 Gaithersburg, Maryland.

12 4. Mutual Holistic is a non-profit mutual benefit corporation organized under the
13 laws of California with a principal place of business in Sebastopol, California.

14 5. Moore is an individual with an address c/o Attorney Richard Freeman, 703 2nd
15 Street, Suite 350, Santa Rosa, CA 95404.

16 6. Emergent has for many years used the trademarks and service marks EMERGENT
17 and EMERGENT BIOSOLUTIONS, alone and in connection with other words and designs (the
18 “EMERGENT Marks”), in connection with various goods and services, including
19 biopharmaceutical related products and services.

20 7. In addition to its common law rights, Emergent is the owner of numerous federal
21 trademark and service mark registrations and applications for the EMERGENT Marks, including
22 but not limited to, Reg. Nos. 3,934,662; 4,020,248; 3,446,708; 5,129,287; 5,211,622; and App.
23 Serial No. 88/884,324.

24 8. Mutual Holistic and Moore have promoted their herbal medicine products and
25 services, including Respiratory Immune Syrups, under the name and mark EMERGENT
26 BOTANICALS, without any authorization or consent from Emergent. The EMERGENT Marks
27 are valid, subsisting and in full force and effect as to Defendants.
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1 9. Defendants' use of the name and mark EMERGENT BOTANICALS in
2 connection with herbal medicine products and services is likely to cause confusion, or to cause
3 mistake, or to deceive the relevant public and the trade, such that the relevant public and the trade
4 are likely to believe that Defendants and their goods and services originate with or are related to
5 Emergent.

6 10. Defendants and any of their officers, agents, servants, employees, attorneys,
7 successors, related companies and assigns and their business or businesses, and all those in active
8 concert or participation with them, are hereby permanently enjoined from using the name and
9 mark EMERGENT BOTANICALS, any mark incorporating the term EMERGENT, or any other
10 mark confusingly similar to the EMERGENT Marks, in connection with the provision of goods
11 and services.

12 11. Each party shall bear its own attorney's fees and costs incurred in connection with
13 this action and all rights of appeal are waived.

14 12. This Consent Decree may be executed in any number of counterparts, all of which
15 together shall constitute one original document. Electronic copies of original signatures shall be
16 deemed to be originally executed counterparts of this Consent Decree.

17 13. Subject only to the express restrictions contained in this Consent
18 Decree, all of the rights, duties and obligations contained in this Consent Decree shall inure to the
19 benefit of and shall be binding upon Plaintiff and Defendants and their successors and assigns.

20 14. Plaintiff and Defendants have negotiated this Consent Decree, and agree that it
21 shall not be construed against the party preparing it, but shall be construed as if the parties jointly
22 prepared this [Proposed] Consent Decree and any uncertainty and ambiguity shall not be
23 interpreted against any one party.

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26 15. Each signatory of this Consent Decree signing on behalf of another,
27 warrants that he or she has the authority to sign on behalf of said person or entity and all persons
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covered by this Consent Decree, and is fully authorized by the party whom he or she represents to enter into the terms and conditions of this [Proposed] Consent Decree.

16. This Court shall retain jurisdiction over this matter for purposes of enforcing the provisions of this Consent Decree, including over any claim that the Defendants have violated any term of this Consent Decree.

17. Emergent and Defendants hereby respectfully request that this Court promptly approve and enter this Consent Decree. If this [Consent Decree is not approved by the Court, it shall be of no force and effect, and it may not be used in any proceeding for any purpose.

IT IS SO AGREED AND STIPULATED.

Dated: March ____, 2021

EMERGENT BIOSOLUTIONS, INC.

By: J. Fox Electronically signed by: Jennifer Fox
Reason: I approve this document
Date: Apr 24, 2021 18:37 EDT
Name: Jennifer Fox
Title: SVP and Deputy General Counsel

Dated: April 8, 2021

MUTUAL HOLISTIC INC.

By: [Signature]
Name: [Signature]
Title: [Signature]

Dated: April 8, 2021

[Signature]
Brad Moore

APPROVED AS TO FORM:

Dated: April 26, 2021

CROWELL & MORING LLP

By: [Signature]
Molly A. Jones
Valerie M. God

Attorneys for Plaintiff
EMERGENT BIOSOLUTIONS INC.

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Dated: April 21, 2021

THE LAW OFFICES OF RICHARD
FREEMAN

By: [Signature]
Richard Freeman

Specially appearing on behalf of
Defendants
MUTUAL HOLISTIC, INC. and BRAD
MOORE

FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that the other above-named signatories concur in this filing.

Dated: April 26, 2021

By: [Signature]
Molly A. Jones

ORDER

IT IS HEREBY ORDERED that the foregoing Consent Decree is fully incorporated herein by reference and is entered as an Order of the Court.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over the Parties for the sole purpose of enforcing compliance by the Plaintiff and Defendant with the terms of the Consent Decree.

IT IS FURTHER ORDERED that upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between Emergent and the Defendants. The above-captioned action against Defendants is dismissed with prejudice and all calendared dates are hereby vacated.

IT IS SO ORDERED.

Dated: April 28, 2021



Honorable
United States