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Pharma Cos. Held In Contempt In Trade Secrets Case

By **Nathan Hale**

Law360 (March 3, 2021, 10:09 PM EST) -- A Florida federal court has held U.S. Compounding Inc. and its parent, Adamis Pharmaceuticals Corp., in civil contempt for violating an injunction regarding trade secrets that Nephron Pharmaceuticals Corp. claims they misappropriated through two of its former employees, saying the injunction was clear and unambiguous and covers the alleged violations.

U.S. District Judge Gregory A. Presnell fully adopted a magistrate judge's report and recommendation in his Monday order and found the two companies in civil contempt for failing to abide by a preliminary consent injunction the parties agreed to at the outset of Nephron's lawsuit.

Judge Presnell awarded Nephron recovery of attorney fees and costs it incurred investigating and pursuing its contempt bid; ordered the defendants to comply with requirements to preserve Nephron trade secrets in their possession and to bear the costs of any forensic investigation and preservation; and imposed a coercive daily fine until they prove they are in full compliance. The judge also set an April 6 evidentiary hearing to determine the amounts of the sanctions.

"As I stated at the hearing on this matter, this was a serious motion and it was filed in order to continue to protect Nephron's trade secrets and confidential business information, which goes to the heart of its business," Nephron's lead trial counsel, Nikole Setzler Mergo of Nexsen Pruet LLC, told Law360 on Wednesday. "We are very pleased that the court agreed with Nephron that U.S. Compounding and Adamis Pharmaceuticals violated the consent preliminary injunction and should be held in civil contempt for their actions."

In their 2018 suit, Nephron Pharmaceuticals Corp., Nephron S.C. Inc. and Nephron Sterile Compounding Center LLC claimed that former Nephron employee Jennifer Shelly Hulsey misappropriated trade secrets when she was hired by U.S. Compounding. The suit alleged that U.S. Compounding and Adamis are liable for directing Hulsey to obtain the alleged trade secrets for them, according to the order.

The parties entered into the consent preliminary injunction, which the court entered in October 2018, but Nephron filed a motion to show cause last June alleging the defendants violated the injunction by using trade secrets they acquired from another former Nephron employee, Jessica Lane, according to the order.

Nephron's claims against Hulsey have been stayed since she filed for bankruptcy, and the contempt order does not apply to her, according to the order and Mergo. Lane is not a party to this suit, but has been sued by Nephron in a separate action currently pending in South Carolina, Mergo added.

U.S. Compounding and Adamis raised several objections to U.S. Magistrate Judge Leslie R. Hoffman's findings, including her finding that the injunction applies to their hiring of Lane and use of the data she took from Nephron.

But Judge Presnell pointed to language in the injunction that says they are prohibited from using Nephron's "Protected IP" "in any manner whatsoever," and said that "plainly encompasses" the customer lists and pricing information that Lane took from Nephron and used in her new job.

"Absent from the CPI is any provision even suggesting that the terms of subsections (a) and (j) are

limited to the data [U.S. Compounding] acquired from Hulse,," Judge Presnell said, adding that Judge Hoffman correctly found the court would have to add language to the injunction to fit the interpretation the defendants suggested.

The judge also rejected the defendants' argument that he must also consider the purpose of the injunction, saying that "thrust of the order" analysis is only used when the order is ambiguous and doing so here would "simply serve to create an ambiguity where none exists."

Moreover, Judge Presnell rejected U.S. Compounding and Adamis' argument that the injunction became ambiguous when they hired Lane and used the data she obtained. The order also rejected several objections the defendants raised to the recommended sanctions, saying the court has broad discretion to impose a daily coercive fine.

"The daily fine is appropriate here because defendants have yet to show compliance with the CPI and Nephron is entitled to forensic costs," Judge Presnell said. "Defendants will have an opportunity to demonstrate compliance before they incur the fine, and the amount of the fine will be addressed in a subsequent hearing."

Counsel for U.S. Compounding and Adamis did not immediately respond to a request for comment late Wednesday. James D. Myers of Shaffer Lombardo Shurin PC, an attorney for Hulse, said he had no comment, noting her lack of recent involvement in the case.

Nephron is represented by Nikole Setzler Mergo, James A. Byars and Jennifer S. Cluverius of Nexsen Pruet LLC, and Jaclyn Sara Clark and Mary Ruth Houston of Shutts & Bowen LLP.

Hulse is represented by James D. Myers and Rachael D. Longhofer of Shaffer Lombardo Shurin PC, and Michael J. Furbush of Dean Mead Egerton Bloodworth Capouano & Bozarth PA.

U.S. Compounding and Adamis are represented by Scarlett S. Nokes, R. Brandon Bundren, Jason P. Mehta and Diana N. Evans of Bradley Arant Boult Cummings LLP.

The case is Nephron Pharmaceuticals Corp. et al. v. Hulse et al., case number 6:18-cv-01573, in the U.S. District Court for the Middle District of Florida.

--Editing by Breda Lund.