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Nephron To Receive \$7.9M To End Trade Secrets Case

By **Nathan Hale**

Law360 (May 6, 2021, 6:21 PM EDT) -- U.S. Compounding Inc. and its parent Adamis Pharmaceuticals Corp. have agreed to pay \$7.9 million as part of a deal to end a lawsuit by Nephron Pharmaceuticals Corp. claiming they stole its trade secrets through a former employee.

In a motion filed late Wednesday, the companies and former Nephron employee Jennifer Shelly Hulse asked U.S. District Judge Gregory A. Presnell to sign off on a permanent injunction and stipulated final judgment. The proposed order requires the defendants to destroy and not use any of Nephron's confidential information in their possession, but it does not require U.S. Compounding to discontinue business with any customers or stop selling any products.

Adamis disclosed the payment to Nephron in a filing with the U.S. Securities and Exchange Commission, in which it also said that Nephron will also dismiss a related case in New Jersey.

"Without admitting liability, defendants wish to resolve this matter and therefore consent to entry of judgment in the above-captioned case and entry of this consent permanent injunction," the injunction and final judgment said. Adamis said in its SEC filing that it believes the claims to be without merit, but cited recent rulings on pre-trial motions and the legal expenses and uncertainties associated with ongoing litigation, including possible punitive damages and sanctions, as reasons for its decision to settle the matter.

The parties gave the Florida district court initial notice of a settlement days before a scheduled April 19 trial date. The agreement also came about two months after Judge Presnell found U.S. Compounding and Adamis in **civil contempt** for failing to abide by a preliminary consent injunction the parties agreed to at the outset of Nephron's lawsuit.

Nephron's lead trial counsel, Nikole Setzler Mergo of Nexsen Pruet LLC, said her client was always fully prepared to go before a jury to protect its trade secrets, which she said go to the heart of its business.

"We believe it was that unwavering determination, coupled with the precedential nature of the rulings Nephron achieved in this case, in terms of overcoming dispositive motions, obtaining a finding of civil contempt, and winning key pretrial evidentiary rulings, that put this case in a favorable position for a global resolution," she told Law360 in an email Thursday.

"We are extremely pleased with U.S. Compounding and Adamis Pharmaceuticals' payment of the \$7.9M settlement to Nephron and defendants' agreement to permanent injunctive relief, and trust that the rulings achieved will not only benefit Nephron in the future, but any company who seeks to protect its trade secret rights," she added.

In his March 3 sanctions order, Judge Presnell awarded Nephron recovery of attorney fees and costs it incurred investigating and pursuing its contempt bid, and imposed a coercive daily fine until they proved they were in full compliance. At an April 6 hearing, the judge deferred making a determination on the amounts of the sanctions.

Nephron, Nephron S.C. Inc. and Nephron Sterile Compounding Center LLC sued in 2018, claiming Hulse misappropriated trade secrets when she was hired by U.S. Compounding. The suit, which Nephron amended three times, ultimately also claimed that U.S. Compounding and Adamis were

liable for directing Hulsey to obtain the supposed trade secrets for them.

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

Judge Presnell rejected U.S. Compounding and Adamis' argument that the preliminary injunction did not apply to their hiring of Lane, saying that agreement "plainly encompasses" the customer lists and pricing information that Lane took from Nephron and used in her new job.

The consent permanent injunction and final judgment specify that the defendants will also destroy any confidential information from Nephron stored in Lane's iCloud account.

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

Counsel for U.S. Compounding and Adamis and for Hulsey did not immediately respond to requests for comment Thursday.

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.

Hulsey 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. Hulsey et al., case number 6:18-cv-01573, in the U.S. District Court for the Middle District of Florida.

--Editing by Adam LoBelia.