

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

In the Matter of

FEDERAL RESOURCES SUPPLY COMPANY

ASSURANCE OF DISCONTINUANCE, PURSUANT TO G. L. C. 93A, § 5

I. INTRODUCTION

1. The Commonwealth of Massachusetts, through the Office of Attorney General Maura Healey (“AGO”), and Federal Resources Supply Company (“Federal Resources”) (hereinafter, collectively referred to as the “Parties”) voluntarily enter into this Assurance of Discontinuance (“Assurance”) pursuant to G. L. c. 93A, § 5.

2. Pursuant to its statutory authority, the AGO conducted an investigation into the conduct of Federal Resources in connection with the distribution and sale of Theraworx Protect, a product manufactured by Avadim Health, Inc., to Massachusetts Political Subdivisions, including the Massachusetts Bay Transportation Authority (the “Investigation”). As part of this Assurance, the AGO and Federal Resources stipulate and agree to the facts set forth below in Section V (the “Agreed to Facts”). Further, as a result of the Investigation, the AGO alleges that Federal Resources violated G. L. c. 93A, § 2 and G. L. c. 12, § 5B by engaging in the conduct described below in Section VII (the “Covered Conduct”). Federal Resources neither admits nor denies the AGO’s allegations.

3. Federal Resources has cooperated fully with the AGO’s Investigation.

4. The AGO agrees to accept this Assurance on the terms and conditions contained herein, pursuant to the Massachusetts Consumer Protection Act, G. L. c. 93A, §5, in lieu of litigation.

II. DEFINITIONS

As used herein:

5. "Avadim" shall mean Avadim Health, Inc. being that corporation organized and existing under the laws of the State of Delaware with an office at 81 Thompson Street, Asheville, North Carolina 28803.

6. "Federal Resources" shall mean Federal Resources Supply Company being that corporation organized and existing under the laws of the State of Delaware with a principal place of business at 235-G Log Canoe Circle, Stevensville, Maryland 21666, and registered to do business in the Commonwealth of Massachusetts.

7. "Marketing Materials" shall mean all form correspondence, brochures, websites and other hard-copy or electronic material, including emails, used in connection with sales or marketing.

8. "Massachusetts Political Subdivision" shall mean a city, town, county or other governmental entity authorized or created by law, including public corporations and authorities as defined in G.L. c. 12, § 5A. This term shall specifically include the Massachusetts Bay Transportation Authority (the "MBTA"), which is a Massachusetts Political Subdivision.

9. "ProKlean" shall mean ProKlean Services LLC being that corporation organized and existing under the laws of the State of Ohio with a principal place of business at 5019 Barlow Drive, Brunswick, Ohio 44212.

10. "Theraworx Protect" shall mean that product manufactured by Avadim and all accessories thereto, including bladders and dispensers.

III. JURISDICTION AND APPLICABLE LAW

11. Federal Resources consents to this Court's subject matter jurisdiction and personal jurisdiction for purposes of entry, enforcement and modification of this Assurance.

12. The provisions of this Assurance shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IV. PARTIES SUBJECT TO ASSURANCE

13. This Assurance shall apply to Federal Resources, acting directly or indirectly, individually or through its employees, agents, successors, and assigns, or through any corporate or other device, and shall constitute a continuing obligation.

V. AGREED TO FACTS

The AGO and Federal Resources stipulate and agree to the following facts contained in paragraphs 14-23 below:

14. The Centers for Disease Control and Prevention states in its Frequently Asked Questions regarding COVID-19 that: "Handwashing is one of the best ways to protect yourself and your family from getting sick. Wash your hands often with soap and water for at least 20 seconds, especially after blowing your nose, coughing, or sneezing; going to the bathroom; and before eating or preparing food. If soap and water are not readily available, use an alcohol-based hand sanitizer with at least 60% alcohol."

15. In March 2020, Federal Resources was a distributor of Theraworx Protect, a product manufactured by Avadim.

16. In March 2020, ProKlean was a distributor of Theraworx Protect, a product manufactured by Avadim.

17. Theraworx Protect contains no alcohol.

18. On March 16, 2020, Federal Resources sent marketing materials via email to a Massachusetts Political Subdivision with the subject line: "COVID19 [sic] products for your teams."

19. After being forwarded the March 16, 2020 marketing materials from Federal Resources, the MBTA contacted Federal Resources by telephone to discuss Theraworx Protect in connection with the MBTA's response to COVID-19.

20. On March 18, 2020, the following events, *inter alia*, occurred:

- at 12:14 p.m., the MBTA sent the below email to Federal Resources:

"...can you confirm does [Theraworx Protect] Sanitize when applied or is it just a blocker?";

- upon receipt of the foregoing email from the MBTA, at 12:23 p.m., Federal Resources forwarded the MBTA's email to both Avadim and ProKlean and asked for "the best brief answer to" the MBTA's above question;

- at 12:58 p.m., ProKlean responded to Federal Resources' query as to how to answer the MBTA's question, as follows:

"Yes it does at 30 second flash and provides a 6 hour prolonged effect as well

Meaning 6 hours if you touch something it will fight it off...."

- At 1:06 p.m., Federal Resources responded to the MBTA's email sent at 12:14 p.m., by directly and exactly copying the email ProKlean sent to Federal Resources, as follows:

"Yes it does at 30 second flash and provides a 6 hour prolonged effect as well

Meaning 6 hours if you touch something it will fight it off...."

- At 2:52 p.m., Avadim directly emailed the MBTA to respond to the MBTA's question to Federal Resources. Avadim's email to the MBTA included documents containing clinical data. Avadim notified Federal Resources that it had responded to the MBTA.

21. After the MBTA received the above-referenced emails from Federal Resources and Avadim, the MBTA issued the following purchase orders to Federal Resources for Theraworx Protect:

- i. Purchase Order Number 4000098783 in the total amount of \$546,580.13 dated March 18, 2020;
- ii. Purchase Order Number 4000098858 in the total amount of \$51,456.30 dated March 20, 2020; and
- iii. Purchase Order Number 4000098855 in the total amount of \$1,082,285.27 dated March 20, 2020.

22. Federal Resources delivered the entirety of Purchase Order Numbers 4000098783 and 4000098858, and a partial amount of Purchase Order Number 4000098855, that according to Federal Resources was drop shipped by ProKlean.

23. The MBTA currently has unused Theraworx Protect in storage.

VI. COVERED CONDUCT

Based on the Investigation, the AGO alleges Federal Resources violated G. L. c. 93A, § 2 and G. L. c. 12, § 5B(a)(1),(2), as follows:

24. In mid-March 2020, the MBTA sought to purchase hand sanitizer as part of its efforts to prevent the spread of COVID-19 at MBTA facilities.

25. The MBTA contacted Federal Resources after receiving an email soliciting the purchase of “COVID-19 products.”

26. Without adequate evidence or well-controlled and reliable studies to support its claims, Federal Resources represented to the MBTA that Theraworx Protect would be effective as a hand sanitizer to combat COVID-19, when in fact Theraworx Protect contains no alcohol.

27. In connection with the sale of Theraworx Protect during the COVID-19 pandemic, without adequate evidence or well-controlled and reliable studies to support its

claims, Federal Resources represented to the MBTA that Theraworx Protect provided a 6 hour prolonged effect, “meaning 6 hours if you touch something it will fight it off.”

28. From January 1, 2020 through June 5, 2020, in addition to the MBTA, Federal Resources marketed and sold small quantities of Theraworx Protect to other Massachusetts Political Subdivisions.

VII. MONETARY RELIEF

29. On or before November 13, 2020, Federal Resources shall pay to the AGO the sum of \$400,000.00 (“the Settlement Amount”). The payment due hereunder shall be made by wire transfer in accordance with instructions provided by the Commonwealth.

30. On or before November 13, 2020, Federal Resources shall issue a credit memo to the MBTA in the amount \$154,392.98, or such other amount equal to all Theraworx Protect delivered to and used by the MBTA.

31. At a specific time convenient to the MBTA, which the Parties anticipate will be on or before November 16, 2020, Federal Resources shall retrieve all Theraworx Protect which is currently located at the MBTA storage facility in Everett, Massachusetts, or such other storage facility located in the Commonwealth of Massachusetts, at no charge to the MBTA or any other Political Subdivision.

VIII. ASSURANCES

Federal Resources agrees to the following assurances:

32. Federal Resources shall not market or sell Theraworx Protect to any Massachusetts Political Subdivisions.

33. Federal Resources shall not include in any Marketing Material it provides or distributes in the Commonwealth of Massachusetts any representation, expressly or by

implication, that Theraworx Protect is effective against COVID-19, including that it has a multiple hour prolonged effect against COVID-19.

34. Upon a reasonable request from the AGO, Federal Resources will provide non-privileged documents or information to demonstrate its compliance with the terms of this Section.

IX. RELEASE

35. In consideration of the foregoing and except to enforce the obligations set forth in Sections VII and VIII herein, the Commonwealth forever discharges and releases Federal Resources together with its current and former parent companies, direct and indirect affiliates, divisions, and subdivisions, and their current and former employees, agents, representatives, shareholders, officers, directors, managers, successors and assigns (collectively “the Releasees”), from civil liability to the Commonwealth pursuant to G.L. c. 12, § 5B arising from the Covered Conduct.

X. NOTICES AND CHANGE OF ADDRESS

36. Any notices or communications transmitted between Federal Resources and the AGO pursuant to this Assurance shall be provided in writing by first class mail and email to the AGO or Federal Resources or their successors, as follows:

AGO:

Mary-Ellen Kennedy, AAG
False Claims Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Mary-Ellen.Kennedy@mass.gov

Federal Resources:

John A. Fagg, Jr., Esquire
Moore & Van Allen PLLC
100 North Tryon Street
Suite 4700
Charlotte, NC 28202-4003
johnfagg@mvalaw.com

Stacy Williamson
Federal Resources Supply Company
235G Log Canoe Circle
Stevensville, MD 21666
Stacy.Williamson@federalresources.com

XI. MISCELLANEOUS

37. By signing below, the Parties agree to comply with all the terms of this Assurance.
38. This Assurance may be enforced only by the Parties hereto.
39. This Assurance does not constitute an approval by the AGO of any of Federal Resources' business acts and practices, and Federal Resources will make no representations to the contrary.
40. This Assurance contains the complete agreement between the Parties. No promises, representations or warranties other than those set forth in this Assurance have been made by any of the Parties. This Assurance supersedes all prior communications, discussions, or assurances, if any, of the Parties, whether orally or in writing.
41. This Assurance may not be changed, altered, or modified, except by order of the Court or by written agreement of the Parties.
42. This Assurance may be executed in multiple counterparts, each of which constitutes an original and all of which constitute one and the same Assurance.
43. Federal Resources acknowledges it is represented by counsel, including John A. Fagg, Jr. and Kristen Kenley of Moore & Van Allen PLLC, with whom it has consulted concerning this Assurance.

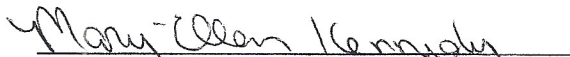
44. The undersigned signatories acknowledge that execution of this Assurance is voluntary and authorized.

45. This Assurance will be effective upon execution by the Parties.

Respectfully Submitted,

Commonwealth of Massachusetts

Maura Healey
Attorney General



Mary-ellen Kennedy, BBO #548270

Mary-ellen.kennedy@mass.gov

Assistant Attorney General

False Claims Division


Office of the Attorney General

One Ashburton Place

Boston, MA 02108

Tel: 617-727-2200

Federal Resources Supply Company



Alton L. Gwaltney, III, Chief Executive Officer

November 16th, 2020