

SUPERIOR COURT OF NEW JERSEY

SOMERSET, HUNTERDON AND WARREN COUNTIES
VICINAGE 13

YOLANDA CICCONE
ASSIGNMENT JUDGE



SOMERSET COUNTY COURT HOUSE
P.O. Box 3000
SOMERVILLE, NEW JERSEY 08876
(908) 231-7069

October 9, 2013

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Re: Novel Laboratories, Inc. v. KVK-Tech, Inc.
Docket SOM-C-12009-11

Dear Counselors:

Please allow the following letter to serve as the court's Opinion with regard to the Plaintiff's Motion to Enforce the Settlement Agreement heard on October 4, 2013:

I. Introduction

This action arose out of the development of a generic version of a brand-name drug. The matter was settled on October 3, 2012 before this court, the terms of which were never memorialized in writing, but came to an oral settlement on the record in front of this Court. There is no dispute that the settlement occurred on this date.

Under the terms of the agreement, the Plaintiffs were to pay the Defendants \$1 million over 8 years if: (i) their generic version of the product was approved by the FDA and (ii) Plaintiff cleared the patent issues with the brand name manufacturer, Braintree Laboratories, Inc. At the time both prongs were met, Defendants would withdraw their application for their generic version of the brand name product. Additionally, the

Defendants agreed they would not “be able to do formulations, etcetera and so forth.” This dispute arises out of the interpretation of the settlement agreement.

Prior to the settlement, Plaintiff alleged a former Vice President of Plaintiff’s company, Novel Laboratories, Inc., breached his employment agreement by providing confidential information to the Defendants concerning the development of a generic version of the brand name drug product SUPREP. The Defendants denied the allegations that the former Vice President supplied them with information and ceased working with the individual.

The Plaintiffs moved for and were granted a temporary restraining order against the Defendants to prevent them from continuing development of the generic drug product. In April 2013, the Plaintiffs became aware of a lawsuit filed by Braintree Laboratories, Inc., against the Defendants for patent infringement in developing a generic formulation of SUPREP. The Plaintiffs believed this violated the settlement agreement put forth on the record and filed the present Motion to Enforce the Settlement.

II. Standard

In New Jersey, there is a strong public policy in favor of settlement. Williams v. Vito, 365 N.J. Super. 225, 230 (Law Div. 2003). “The point of this policy is not the salutary effects of settlement on our overtaxed judicial and administrative calendars (although this is an undeniable benefit) but the notion that the parties to a dispute are in the best position to determine how to resolve a contested matter in a way which is least disadvantageous to everyone. In recognition of this principle, courts will strain to give effect to the terms of a settlement wherever possible.” Id., citing Dept. of Public Advocate v. N.J. Bd. of Pb. Ut., 206 N.J. Super. 523, 528 (App. Div. 1985). The Appellate Division, in Pascarella v. Bruck, 190 N.J. Super. 118, 120 (App. Div. 1983), held that there is no legal requirement that there be court approval of a settlement agreement in order for the agreement to be enforceable; “[t]hat the agreement to settle was orally made is of no consequence, and the failure to do no more than, as here, inform the court of settlement and have the clerk mark the case settled has no effect on the validity of a compromise disposition.” Id. The Appellate Division noted that in a Third Circuit case, Green v. John H. Lewis & Co., 436 F.2d 389, 390 (3d. Cir. 1971), the court

held that a settlement agreement voluntarily entered into is binding upon the parties, “whether or not made in the presence of the court and *even in the absence of writing*” (emphasis added).

III. Analysis

Plaintiff’s motion shall be granted. As stated above, under the terms of the agreement, the Plaintiffs were to pay the Defendants \$1 million over 8 years if: (i) their generic version of the product was approved by the FDA and (ii) Plaintiff cleared the patent issues with the brand name manufacturer, Braintree Laboratories, Inc. At the time both prongs were met, Defendants would withdraw their application for their generic version of the brand name product. Additionally, the Defendants agreed they would not “be able to do formulations, etcetera and so forth.” This Court believes Defendant’s paper-NDA is a formulation of SUPREP under the settlement agreement that was put on the record. This Court reads the settlement as Defendants being prohibited from any formulations that involve SUPREP. The powder paper-NDA is the bioequivalent of the liquid product that was at the heart of the settlement agreement and the Defendant must abide by the settlement agreement and not create formulations of SUPREP until the Plaintiff has cleared the patent issues with Braintree.

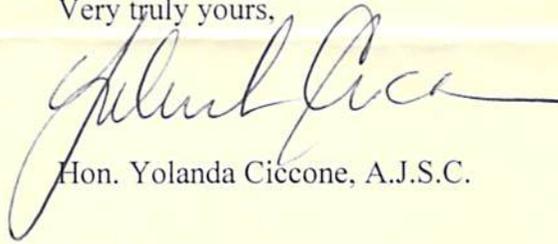
“The point of this policy is not the salutary effects of settlement on our overtaxed judicial and administrative calendars (although this is an undeniable benefit) but the notion that the parties to a dispute are in the best position to determine how to resolve a contested matter in a way which is least disadvantageous to everyone. In recognition of this principle, courts will strain to give effect to the terms of a settlement wherever possible.” *Id.*, citing *Dept. of Public Advocate v. N.J. Bd. of Pb. Ut.*, 206 N.J. Super. 523, 528 (App. Div. 1985). This Court believes the heart of the settlement was the question of whether both parties had the right to produce a generic formulation of SUPREP. Defendant agreed to the settlement on the record that they would not continue to create formulations of SUPREP and has disregarded the settlement by creating the powder paper-NDA. This Court will order the Defendants immediately withdraw their new paper-NDA application and the Defendants shall refrain from filing any further

applications of any kind relating to formulations of any kind of SUPREP. However, this Court will not award attorney's fees to Plaintiff.

IV. **Conclusion**

Based on the foregoing, it is respectfully recommended that the court **GRANT** Plaintiff's Motion to Enforce the Settlement. As stated above, Plaintiff is not entitled to attorney's fees and that portion of the proposed order will be denied.

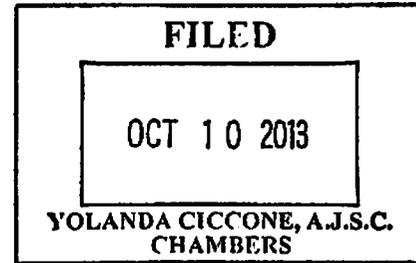
Very truly yours,

A handwritten signature in black ink, appearing to read 'Yolanda Ciccone', written in a cursive style.

Hon. Yolanda Ciccone, A.J.S.C.

YC:bd
Enclosures

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Attorneys for Plaintiff Novel Laboratories, Inc.



NOVEL LABORATORIES, INC.,)	SUPERIOR COURT OF NEW
)	JERSEY - CHANCERY DIVISION
Plaintiff,)	SOMERSET COUNTY
)	GENERAL EQUITY PART
-against-)	
)	Docket Number C-12009-11
KVK-TECH, INC. and AMRUTHAM, INC.,)	Civil Action
Defendants.)	Proposed Order
)	

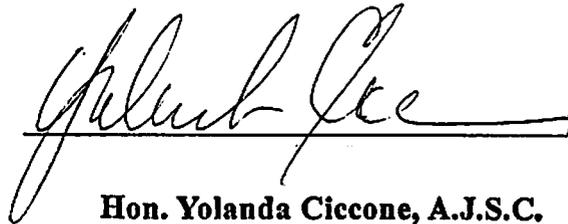
This matter having been brought before the Court on Motion of Plaintiff Novel Laboratories, Inc. ("Novel"), for an Order to enforce the settlement agreement between Novel and Defendants KVK-Tech, Inc. ("KVK") and Amrutham, Inc. ("Amrutham") (collectively "defendants"), and the Court having considered the matter and for good cause appearing,

It is on this 10 day of October, 2013,

ORDERED as follows: (1) defendants shall immediately withdraw their new paper-NDA application; (2) defendants shall refrain from filing any further applications of any kind relating to formulations of any kind of SUPREP; and ~~(3) defendants shall pay all of Novel's attorneys' fees since inception of this action in accordance with the October 3,~~

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~~2012 settlement, along with the fees and expenses associated with the immediate application to the Court in response to defendants' breach of the settlement.~~

 J.S.C.

**Hon. Yolanda Ciccone, A.J.S.C.
Somerset County Court House
P.O. Box 3000
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