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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE HYDROXYCUT MARKETING AND  
SALES PRACTICES LITIGATION,

CASE NO. 09-MD-2087 BTM (CAB)

**ORDER APPOINTING A SPECIAL  
MASTER**

\_\_\_\_\_  
THIS DOCUMENT RELATES TO ALL  
CASES  
\_\_\_\_\_

The Court having notified the parties and provided an opportunity for all parties to be heard, hereby appoints a Special Master under Federal Rule of Civil Procedure 53 for the purpose of acting as mediator and liaison between Plaintiffs and Defendants to try to reach a resolution of all cases, either individually or in a global settlement, and to facilitate post-settlement allocations if necessary. It is hereby ORDERED:

1. *Appointment.* The Honorable John K. Trotter (Ret.) is appointed under Rule 53 as the Special Master for the purpose of acting as mediator and liaison between plaintiffs and defendants to try to reach a resolution of all cases, either individually or in a global settlement, and to facilitate post-settlement allocations if necessary.

1           2.     *Mandatory Mediation.* All parties are ordered to participate in mediation  
2 with the Special Master.

3           3.     *Duties.* The Special Master shall have the rights, powers and duties  
4 provided in Rule 53, and may adopt such procedures that are not inconsistent with  
5 that Rule or with this or other Orders of the Court. The Special Master shall act with all  
6 reasonable diligence and shall act as mediator among the parties to this litigation. The  
7 Special Master's responsibilities and duties shall include:

- 8           a.     The Special Master shall review each Plaintiffs' claim against the  
9 Defendants and mediate, if possible, settlement amounts for each  
10 Plaintiff or, in the alternative, the Special Master shall mediate an  
11 appropriate group settlement, and subsequent method for  
12 determining the amount awarded to each Plaintiff.
- 13          b.     The Special Master shall order all parties to submit appropriate  
14 pre-settlement information to the Special Master, including  
15 information on product usage and resulting injuries for each  
16 Plaintiff. The Special Master shall set a deadline or deadlines for  
17 such information and shall inform the parties of such deadlines.
- 18          c.     The Special Master shall review all information submitted from the  
19 parties, and may hold mediation/settlement sessions with any or  
20 all parties at the Special Master's discretion. In order to facilitate  
21 settlement, the Special Master may have ex parte  
22 communications with all parties to this litigation.
- 23          d.     The Special Master shall send report(s) to the Court from time to  
24 time, which may include the following information: (i) the progress  
25 of the mediation/settlement sessions, (ii) the parties participating  
26 in such sessions, and (iii) any other information that the Special  
27 Master believes would be helpful to the Court.
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- e. The Special Master shall act as a mediator over certain post-settlement matters, including:
  - i. Determination of all allocation issues, including issues between Plaintiffs, heirs, co-Plaintiffs and/or counsel. This determination shall include a determination of any work needed in order to meet the requirements of Model Rule of Professional Conduct 1.8(g).
  - ii. Review and recommendation for approval of any minor's compromise petitions to this Court.

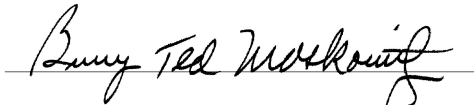
4. *Fees and Expenses.* The Special Master shall be paid at the rates listed in Exhibit A, plus reimbursement for reasonable travel and other expenses incurred by the Special Master. The Defendants are responsible for half of the fees and expenses of the Special Master that are associated with mediation and settlement work. The Plaintiffs, through the PSC, are responsible for half of the fees and expenses of the Special Master that are associated with mediation and settlement work, and for all fees and expenses that are associated with any post-settlement work. The Special Master may employ other persons to provide clerical and secretarial assistance; such persons shall be under the supervision and control of the Special Master, who shall take appropriate action to ensure that such persons preserve the confidentiality of matters submitted to the Special Master for review.

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5. *Distribution.* A copy of this Order shall be mailed by the Clerk to the Special Master and to liaison counsel for the parties.

DATED: June 16, 2011



Honorable Barry Ted Moskowitz  
United States District Judge