

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: SOCLEAN, INC.)	
MARKETING, SALES PRACTICES)	
AND PRODUCTS LIABILITY)	Master Docket: No. No. 22-mc-152
LITIGATION)	
)	MDL No. 3021
This document relates to: <i>SoClean, Inc.</i>)	
<i>v. Koninklijke Philips N.V., et al,</i>)	
2:22-cv-00542)	
)	

PRETRIAL ORDER #14

APPOINTING SETTLEMENT MEDIATOR

The parties to the above-captioned action (the “Parties” and the “Action”) have agreed to use a settlement mediator. IT IS HEREBY ORDERED as follows pursuant to Local Rule 16.2 and this Court’s ADR Policies and Procedures:

Appointment of Retired Magistrate Judge Diane Welsh. The Parties have conferred and have agreed to the appointment of Retired Magistrate Judge Diane Welsh of JAMS as the Settlement Mediator for this Action. The Court now enters this Order of Appointment appointing Judge Welsh as the Settlement Mediator pursuant to Local Rule 16.2.

Settlement Mediator Duties and Authority. The Settlement Mediator will assist the Court with settlement matters only. She may take all appropriate measures to perform her duties fairly and efficiently. As set forth in Section 2.5(B)(1)(c) of the Court’s ADR Policies and Procedures, the Settlement Mediator should adhere to the Model Standards of Conduct for Mediators and all other standards of professional conduct as required by this Court.

As relates to settlement, the Settlement Mediator shall have the full authority provided in Local Rule 16.2 and the Court’s ADR Policies and Procedures. The Settlement Mediator may, without limitation:

1. Direct the Parties to meet and engage in serious and meaningful negotiations;

2. Construct an efficient procedure to engage the Parties in settlement negotiations, including:
 - a. identifying information that each Party should disclose in order to facilitate settlement negotiations, with the assistance of the Discovery Special Master as appropriate;
 - b. creating a form and a schedule for the voluntary exchange of such information;
 - c. developing a schedule for the mediation; and
 - d. conducting in-person and remote settlement negotiations with the Parties and their counsel.
3. Identify any persons whose participation is necessary to settle any claims completely (including, if appropriate, non-parties whose participation may facilitate settlement); and
4. Make recommendations to the Court concerning any issues that may require resolution to facilitate settlement or to efficiently manage the litigation.

Coordination Discretion. The Settlement Mediator shall have the full authority to coordinate settlement discussions and other settlement-related proceedings between all the parties in this Action, the other actions pending in MDL No. 3021, and the actions pending in MDL No. 3014 (*In re Philips Recalled CPAP, Bi-Level PAP, & Mechanical Ventilator Products Liability Litigation*), if, in her discretion, she determines that it is appropriate to coordinate settlement discussions, settlement-related proceedings, or aspects thereof.

Proceedings. In performing her duties, the Settlement Mediator has the authority to schedule and hold conferences, and to regulate all proceedings before her. The Settlement Mediator may require the Parties to appear in person, via video conference, or telephonically.

Report of the Neutral. Pursuant to Section 3.10 of the Court's ADR Policies and Procedures, at a date to be determined by the Court, the Settlement Mediator will electronically file the "Report

of the Neutral” reporting on the “date of the mediation, whether any follow up is scheduled, whether the case resolved in whole or in part, and any stipulations the parties agree may be disclosed.”

Ex Parte Communications. The Settlement Mediator may communicate *ex parte* with the Court and the Discovery Special Master at any time. She also may communicate *ex parte* with a Party or counsel as needed.

Access to Information. The Parties will make readily available to the Settlement Mediator any and all individuals, information, documents, materials, programs, files, databases, services, facilities, and premises under their control that the Settlement Mediator requires to perform her duties. The Settlement Mediator may require reports from any Party in a format specified, as reasonably required to enable the Settlement Mediator to perform all assigned duties. The Settlement Mediator agrees not to disclose any documents or the information contained therein to any other Party (or other person or entity) without the express authorization of the disclosing Party.

Confidentiality. The Settlement Mediator may have access to trade secrets, proprietary information, and other confidential information in this Action including, but not limited to, information which may be subject to a Stipulated Protective Order. The Settlement Mediator shall be bound by the terms of any Protective Order stipulated to by the Parties and any amendments thereto.

As set forth in Sections 6.A through 6.C of the Court’s ADR Policies and Procedures, the Settlement Mediator, all counsel and Parties, and any other persons (including non-parties) participating in settlement discussions, shall treat as “Confidential Information” the contents of any written settlement statements or other settlement-related communications, anything that happened or was said, and any position taken or view expressed by any participant in connection with any settlement conference or discussion. "Confidential information" shall not be:

- (i) Disclosed to anyone not involved in the settlement discussions;
- (ii) Disclosed to the Court; or

(iii) Used for any purpose, including impeachment, in any pending or future proceeding.

In addition, the Settlement Mediator will adhere to the Limited Exceptions to Confidentiality set forth in Section 6.D of the Court's ADR Policies and Procedures.

Notwithstanding the above, upon the agreement of all relevant participating parties, the Settlement Mediator may communicate Confidential Information to the Court without violating this Order or the rules governing confidentiality of settlement discussions. The Settlement Mediator may otherwise communicate with the Court regarding non-confidential matters, including procedural issues, the nature of the Settlement Mediator's activities, and updates on the progress of settlement communications; but, as explained above, she shall not communicate any Confidential Information to the Court absent the relevant party's agreement.

To facilitate potential resolutions, the Court orders that any and all statements made during the course of proceedings before the Settlement Mediator are confidential and privileged settlement discussions, and are made without prejudice to any Party's legal position, and are inadmissible for any purpose in any legal proceeding. Any offers, promises, conduct, and statements (a) will not be disclosed to third parties except persons associated with the participants in the process, and (b) are privileged and inadmissible for any purposes, including impeachment, under Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law provisions. All communications with and submissions to the Settlement Mediator by the Parties or their counsel are for the purposes of mediation and are privileged under 42 Pa.C.S. Section 5949 (Pa. statutory privilege for mediation communications and documents).

Preservation and Filing of Materials. Pursuant to Fed. R. Civ. P. 53(b)(2)C), the Settlement Mediator must maintain orderly files consisting of all documents submitted to her by the Parties, and any of her written orders, findings, and/or recommendations. She must preserve these files until such time that the Court grants permission for their destruction. Neither the Settlement Mediator nor the Parties are required to file on the record materials submitted to the

Settlement Mediator in confidence to aid in her mediation of the proceedings. But, pursuant to Fed. R. Civ. P. 53(b)(2)(D) and 53(d), any order, findings, and/or recommendations issued by the Settlement Mediator must be filed by her with the Court via the Court's electronic case filing (ECF) system. Such filings shall fulfill the Settlement Mediator's duty to serve her orders on the Parties.

Actions on the Settlement Mediator's Filings. Any Party wishing to file objections or motions related to the Settlement Mediator's filings must do so within five business days of the filing. Responses will be due within five business days of the objection or motion and replies within five business days of the responses. The Court will review such motions and objections under the standards provided in Fed. R. Civ. P. 53(f).

Compensation. The Settlement Mediator shall be paid her customary hourly rate and expenses and may obtain assistance from her colleagues at JAMS at their customary hourly rates. The Settlement Mediator shall prepare detailed invoices for her services, which shall be provided to counsel for the Parties via email. Any objections or disputes regarding such fees and expenses shall be presented to the Court. The Settlement Mediator invoices must be paid within sixty (60) days of receipt.

Payment. Generally speaking, plaintiff will pay 50% of each invoice, and defendants will pay 50% of each invoice; provided, however, that this structure is based on the current composition of the Parties and may be subject to change in the event parties are added or removed from this case. To the extent that work done by the Settlement Mediator does not involve all the Parties, the Parties shall meet and confer and apportion the costs. Where the Settlement Mediator's work is relevant to both this Action, the other actions pending in MDL No. 3021, and the actions pending in MDL No. 3014, the Settlement Mediator shall ensure that any time billed is split equitably between the MDLs as appropriate based upon the work that is performed. If a dispute arises relating to the Settlement Mediator's apportionment of time billed and no resolution of the dispute can be reached after the

Parties have met and conferred, then the dispute will be referred to the Court.

Affidavit. Fed. R. Civ. P. 53(b)(3)(A) states that the Court may enter an Order of appointment “only after the [Settlement Mediator] files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455.” This Order shall become effective on the date on which the Settlement Mediator files with the Court an affidavit stating that there is no ground for disqualification under 28 U.S.C. § 455 or, if a ground for disqualification is disclosed, that the Parties have consented, subject to the Court’s approval, to waive the ground for disqualification.

Exclusion of Settlement Mediator’s Liability. Each party agrees to make no attempt to compel the testimony of the Settlement Mediator. Each party agrees to make no attempt to compel the Settlement Mediator to produce any document provided or created by the Settlement Mediator or provided by the other party to the Settlement Mediator. The parties agree to defend the Settlement Mediator from any subpoenas from outside parties arising out of this Order or mediation. Should the Settlement Mediator be required to respond to a subpoena from any party involved in this mediation, that party will be billed for time and expenses incurred in connection with such a response. The parties agree that the Settlement Mediator is not a necessary party in any arbitral or judicial proceeding relating to the mediation or to the subject matter of the mediation. The Settlement Mediator shall not be liable to any party for any act or omission in connection with any mediation conducted under this Order.

Dated: July 6, 2022

IT IS SO ORDERED.

/s/ JOY FLOWERS CONTI
Joy Flowers Conti
Senior United States District Court Judge