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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

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E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LHK

NORTH COAST MEDICAL, INC., a
California corporation,

CV 12

1246

Plaintff,

v.

DANMIC GLOBAL, LLC;
a California limited liability company; Jorgen
Michael Jensen, an individual; CHRISTY
MANUFACTURING CORPORATION,
LLC, a California corporation; George
Michael Christy, and individual, and DOES
1 through 50, inclusive,

Defendants.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES**

1. FEDERAL TRADE DRESS
INFRINGEMENT
2. FALSE DESIGNATION OF ORIGIN
3. COMMON LAW TRADE DRESS
INFRINGEMENT
4. CALIFORNIA STATUTORY UNFAIR
COMPETITION § 17200, *et seq.*
5. CALIFORNIA STATUTORY UNFAIR
COMPETITION § 17500, *et seq.*
6. COMMON LAW UNFAIR
COMPETITION
7. TORTIOUS INTERFERENCE WITH
CONTRACT
8. TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE
9. BREACH OF WRITTEN PUTTY
AGREEMENT
10. BREACH OF WRITTEN TOUCH
TEST SENSOR AGREEMENT
11. BREACH OF FIDUCIARY DUTY

[Jury Trial Demanded]

COMMINS & KNUDSEN
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

NORTH COAST MEDICAL'S
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

1 Plaintiff North Coast Medical, Inc. (Plaintiff or North Coast) alleges as follows:
2

3 **JURISDICTION**
4

5 1. This Court has original jurisdiction of the subject matter of this action
6 under 28 U.S.C. sections 1331 and 1338 for trademark, false designation and false description or
7 representation in violation of 15 U.S.C. sections 1114 and 1125(a).
8

9 2. This Court has supplemental jurisdiction over the state law claims under
10 28 U.S.C. sections 1338(b) and 1367.
11

12 **VENUE**
13

14 3. Venue is proper in this district pursuant to 28 U.S.C. section 1391 (b) and
15 (c) because, upon information and belief, Defendants do business in and have substantial contacts
16 with the Northern District of California, expected or should reasonably have expected their acts
17 to have consequences within this judicial district, and a substantial portion of the events at issue
18 have arisen and will arise in this judicial district.
19

20 **PRELIMINARY ALLEGATIONS**
21

22 4. Plaintiff North Coast is a California corporation with its principal place of
23 business in Gilroy, California, and has been in the business of producing and selling medical
24 devices since 1974.
25

26 ///

1 5. Defendant Christy Manufacturing Corporation (CMC) is a California
2 corporation with its principal place of business in Atherton, California, and has been in the
3 business of producing medical devices since 1998.

4
5 6. Defendant George Michael Christy (Christy) is an individual residing in
6 Lincoln, California.

7
8 7. Defendant Danmic Global, LLC (DanMic) is a California limited liability
9 company with its principal place of business in Campbell, California, and has been in the
10 business of selling medical devices since 2009.

11
12 8. Defendant Jorgen Michael Jensen (Jensen) is an individual residing in
13 Campbell, California, and the Managing Member of DanMic.

14
15 9. The names and identities of Defendants Does 1 through 50 are unknown to
16 North Coast, who sues these Defendants by such fictitious names. North Coast is informed and
17 believes and thereon alleges that Does 1 through 50 were responsible in some manner for the
18 events alleged herein, were co-conspirators with, or aiders and abettors of, CMC, Christy,
19 DanMic and Jensen (collectively, Defendants).

20
21 **NORTH COAST MEDICAL**

22
23 10. Since 1974, North Coast has been in the business of worldwide product
24 supply to the rehabilitation industry as a manufacturer, direct importer and whole distributor of
25 medical products used in rehabilitation of patients with injuries or disabilities.

1 11. One product that North Coast distributes is therapeutic and exercise putty
2 under the brand names Thera -Putty and Rainbow Putty (collectively Putty). Putty is used to
3 enable patients with hand injuries or disabilities to regain strength and use of their limbs through
4 repeatedly squeezing the putty into various shapes.

5
6 12. North Coast owns a protect able trade dress used with its Putty consisting
7 of consistent color coded density gradations that are inherently distinctive to allow for easy
8 designation of specific resistance levels (collective, Trade Dress):

- 9
10 • Weak clients or those who have pain use super-soft white Putty;
11 • As the client progresses, she uses extra-soft light blue Putty, and
12 then soft turquoise Putty for added resistance;
13 • Medium-soft light green, medium dark blue and medium firm teal
14 Putties are used for a variety of exercises requiring medium-grade
15 resistance;
16 • Firm dark green Putty is used for strong clients at the end of a
17 strengthening program;
18 • Extra-firm gray Putty is designed for athletes or workers who
19 have maximum strength requirements.

20
21 13. Another key North Coast product is its Semmes Weinstein
22 Monofilaments under the brand name Touch Test Sensory Evaluator (Touch Test Sensor). The
23 Touch Test is used to test sensory levels and obtain objective data for accurate reporting on the
24 status of diminishing or returning sensibility.

25
26 ///

PUTTY DEVELOPMENT AND SUPPLY AGREEMENT WITH CHRISTY

14. On May 1, 1990, North Coast and Christy (CMC's predecessor) entered into a Putty Development and Supply Agreement (Putty Agreement). A true and correct copy of the Putty Agreement is attached hereto as Exhibit A.

15. Paragraph 4.1 of the Putty Agreement provides that North Coast:

[s]hall own all right, title and interest to the trade secrets, know how, process design, specifications, formulae, and documentation related to hand therapy putty developed pursuant to this Agreement, whether developed before, during or after the Development Period.

16. In September 2008, North Coast exercised its rights under Paragraph 4.1 by requesting all formulae for putties developed by CMC, the names and addresses of all vendors of materials and/or services used by CMC in production of the putties and an introduction to the Putty vendors, but CMC refused.

17. Paragraph 4.1 of the Putty Agreement further provides that Christy and CMC's predecessor will provide all formulae for Putty as well as vendor information and contacts:

Christy and/or Christy Putty Company shall provide North Coast with all formulae for putties developed by Christy or its affiliates and shall supply North Coast with the names and addresses of all vendors or materials and/or services used by Christy and/or Christy Putty Company in production of the putties. At North Coast's request,

1 Christy and/or Christy Putty Company shall introduce a North Coast
2 representative to such vendors.
3

4 18. In September 2008, North Coast exercised its rights under Paragraph 4.1 of
5 the Putty Agreement by requesting all formulae for Putties developed by CMC, the names and
6 addresses of all vendors of materials and/or services used by CMC in production of the Putties,
7 and an introduction to the Putty vendors, but CMC refused and continues to refuse to provide
8 this information.
9

10 **TOUCH TEST SENSOR EXCLUSIVE MANUFACTURE AND SUPPLY AGREEMENT**
11

12 19. On March 17, 1997 North Coast and Defendant Christy entered into a
13 written agreement for the joint development, exclusive manufacture and supply of the Touch
14 Test device (the Touch Test Sensor Agreement). A true and correct copy of the Touch Test
15 Sensor Agreement is attached hereto as Exhibit B.
16

17 20. In paragraph one of the Touch Test Sensor Agreement it states, in relevant
18 part:
19

20 North Coast Medical, Inc. (NCM) transferred proprietary
21 manufacturing information, materials and supplier contacts to
22 Christy Company in exchange for Christy Company becoming
23 NCM's sole manufacturer of the North Coast™ Semmes
24 Weinstein Monofilaments. In addition, a joint development project
25 between NCM and the Christy company to design a new
26 retractable version for the North Coast Monofilaments was
27 initiated and eventually completed. It was understood that in
28

1 exchange for NCM's participation in this joint development
2 project NCM would continue to be the exclusive worldwide
3 distributor of the new Monofilaments design. As well, it was
4 understood that Christy Company would continue to be NCM's
5 exclusive manufacturer for the Monofilaments.

6
7 21. The Touch Test Sensor Agreement has been in effect since 1997.
8

9 **NORTH COAST'S EMPLOYMENT OF DEFENDANT MICHAEL JENSEN**
10

11 22. From 1995 until February 10, 2009, Defendant Jensen was employed by
12 North Coast in a fiduciary capacity, lastly as International Director of Sales. During his
13 employment with North Coast, Jensen acquired confidential commercial and trade secret
14 information of North Coast including but not limited to the identities and requirements of North
15 Coast's customers and the specifications and marketing strategies for North Coast's products
16 including the Putty and certain touch test sensory evaluation products.
17

18 23. Jensen expressly acknowledged his responsibility to follow North Coast's
19 procedures for maintaining the confidentiality of North Coast's proprietary information as set
20 forth in North Coast's Employee Handbook.
21

22 **DEFENDANTS' UNFAIR COMPETITION**
23

24 24. On or about March 31, 2009, soon after his departure from North Coast,
25 North Coast discovered that Jensen had formed a competing business, DanMic, a website,
26 www.danmicglobal.com for that business, and was selling both the Touch Test Sensor and Putty
27
28

1 manufactured by Christy and CMC using North Coast's Trade Dress and trade secrets,
2 knowhow, process design, specifications, and formulae for Putty.

3
4 25. Defendants CMC's and Christy's sales of Putty and the Touch Test
5 Sensor to Jensen and DanMic violate the Putty Agreement and the Touch Test Sensor
6 Agreement, Jensen's fiduciary obligations, and state and federal unfair competition laws. Within
7 the past two months, North Coast has learned of significant market confusion caused by
8 Defendants' unauthorized sale of North Coast's products in the United States and abroad, and is
9 informed and believes that Defendants have tortiously interfered with North Coast's existing and
10 prospective contractual relationships.

11
12 **FIRST CLAIM FOR RELIEF**
13 **FEDERAL TRADE DRESS INFRINGEMENT**
14 (Against All Defendants)

15
16 26. Paragraphs 1-25 are incorporated by reference as though set forth in their
17 entirety here.

18
19 27. Pursuant to 15 U.S.C. section 1125(a), North Coast owns the exclusive
20 nationwide right to use its inherently distinctive, multi-colored Trade Dress and has used it to
21 identify its Putty products in the marketplace for decades.

22
23 28. Defendants' unauthorized sale and distribution of Putty using North
24 Coast's distinctive Trade Dress violates 15 U.S.C. section 1114. Defendants have used, and are
25 currently using, identical Putty products and Trade Dress in connection with the sale, offering for
26 sale, distribution, or advertising of Defendants' goods.

1 29. Defendants' unauthorized use of the North Coast Trade Dress in
2 connection with its goods has a tendency to deceive or confuse customers into believing that
3 Defendants' Putty is affiliated with North Coast, are sponsored or approved by North Coast, or
4 are otherwise associated with or authorized by North Coast, in violation of 15 U.S.C. §
5 1125(a)(1)(A).
6

7 30. Defendants' use of North Coast's Trade Dress has caused, and is likely
8 further to cause confusion, mistake, or deception in the domestic and international markets for
9 therapeutic hand putty.
10

11 31. Such use has been undertaken by Defendants with knowledge that such
12 imitation is intended to, and will cause confusion, mistake, or deception as to the origin and
13 composition of Defendants' therapeutic hand putty.
14

15 32. North Coast and Defendants offer identical goods through the same
16 channels of trade directed to the same consumers for the same purposes.
17

18 33. Defendants' unauthorized use of North Coast's Trade Dress constitutes
19 infringement under the Lanham Act. Defendants' use of the Trade Dress constitutes a
20 misappropriation of North Coast's goodwill in the Trade Dress, wherein Defendants are
21 knowingly using the goodwill established in the Trade Dress to sell Defendants' competing
22 goods.
23

24 34. North Coast has no control over the nature and quality of the goods
25 offered by Defendants. North Coast's reputation and goodwill has and will be damaged, and the
26 value of its Trade Dress is and will be jeopardized by Defendants' continued use of the Trade
27 Dress in connection with the sale of Defendants' therapeutic Putty.
28

1
2 35. Defendants' acts of infringement have caused and are causing great and
3 irreparable injury to North Coast and to the Trade Dress and goodwill represented thereby, in an
4 amount that cannot be ascertained at this time. Unless this infringement is restrained,
5 Defendants' use will cause further irreparable injury leaving North Coast with no adequate
6 remedy at law.

7
8 36. By reason of the foregoing, North Coast is entitled to injunctive relief
9 against Defendants, restraining further acts of unfair competition and misappropriation of North
10 Coast's Trade Dress to Defendants' profits and to North Coast's damage. North Coast is also
11 entitled to recover its costs, including attorneys' fees, incurred in this action.

12
13 **SECOND CLAIM FOR RELIEF**
14 **UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN**
15 **(Against All Defendants)**

16
17 37. Paragraphs 1-36 are incorporated by reference as though set forth in their
18 entirety here.

19
20 38. Defendants' unauthorized use of the North Coast's Trade Dress in
21 connection with the manufacture, sale and distribution of its therapeutic Putty (in addition to its
22 sale of the North Coast Touch Test Sensor) will deceive and confuse customers into believing
23 that Defendants' Putty and other products are affiliated with North Coast, are sponsored or
24 approved by North Coast, or are otherwise associated with or authorized by North Coast, in
25 violation of 15 U.S.C. § 1125(a)(1)(A).

1 44. Upon information and belief, Defendants have advertised, promoted,
2 displayed, offered for sale, and sold therapeutic Putty products bearing the identical Trade Dress.
3

4
5 45. Defendants have infringed North Coast's common law Trade Dress by
6 their acts as alleged above. Said use of the common law Trade Dress is without permission or
7 authority of North Coast and said use by Defendants is causing, and is likely to cause, confusion,
8 mistake, and deception regarding the origin of the therapeutic Putty sold by Defendants.
9

10 46. Defendant's use of North Coast's common law Trade Dress is likely to
11 cause members of the relevant public and trade to believe that the products sold by Defendants
12 bearing the infringing Trade Dress are provided by or in affiliation with or under the sponsorship
13 or approval of North Coast when used in connection with the therapeutic Putty sold by
14 Defendants.
15

16 47. Upon information and belief, Defendants' acts of trademark infringement
17 and unfair competition have been committed with intent to cause confusion, mistake, and to
18 deceive.
19

20 48. North Coast has been damaged in an amount to be proven at trial, and
21 North Coast is entitled to an accounting of Defendants' profits as well as enhanced remedies as
22 provided by law for Defendants' willful misconduct.
23

24 49. Upon information and belief, unless restrained by this Court, Defendants
25 will continue to infringe North Coast's common law Trade Dress by their use of the infringing
26 Trade Dress.
27
28

1 50. By engaging in the conduct as alleged here, Defendants have acted
2 willfully, maliciously, oppressively and fraudulently in violation of California Civil Code section
3 3294, and North Coast is therefore entitled to punitive damages in an amount according to proof.
4

5 **FOURTH CLAIM FOR RELIEF**

6 **UNFAIR COMPETITION**

7 **California Bus. and Prof. Code § 17200, et seq.**

8 **(Against All Defendants)**
9

10 51. Paragraphs 1 - 50 are incorporated by reference as though set forth in their
11 entirety here.
12

13 52. Defendants' activities complained of herein constitute unfair, deceptive
14 and unlawful practices in violation of California Business and Professions Code section 17200, *et*
15 *seq.* to the injury of North Coast and the public.
16

17 53. The conduct of Defendant as alleged here will, unless restrained, damage
18 North Coast in an amount to be determined at trial, and will cause irreparable harm including
19 serious impairment of the value of the Trade Dress. North Coast is entitled to receive from
20 Defendant any money it has received or acquired as a result of its unfair competition.
21

22 54. North Coast has been damaged in an amount to be proven at trial, and
23 North Coast is entitled to an accounting of Defendants' profits as well as enhanced remedies as
24 provided by law for Defendants' willful misconduct.
25

26 ///
27
28

FIFTH CLAIM FOR RELIEF

FALSE ADVERTISING

California Bus. and Prof. Code § 17500 et seq.

(Against All Defendants)

55. Paragraphs 1 - 54 are incorporated by reference as though set forth in their entirety here.

56. Defendants have intentionally sold Touch Test Sensors and therapeutic Putty substantially similar in appearance and composition to that sold by North Coast, and have marketed their Putty to make it appear as if North Coast's Putty were being sold.

57. Said marketing was false in that the products sold by Defendants were not manufactured for, or sold by, North Coast.

58. By reason of the foregoing, Defendants have committed false advertising in violation of California Business & Professions Code section 17500, *et seq.*

SIXTH CLAIM FOR RELIEF

COMMON LAW UNFAIR COMPETITION

(Against All Defendants)

59. Paragraphs 1 - 58 are incorporated by reference as though set forth in their entirety here.

60. Defendants' activities complained of here constitute unfair and unlawful practices in violation of the common law of the State of California to the injury of North Coast and the public.

1 61. The conduct of Defendant as alleged here will, unless restrained, damage
2 North Coast in an amount to be determined at trial and will cause irreparable harm, including
3 serious impairment of the value of the Trade Dress.
4

5 62. North Coast has been damaged in an amount to be proven at trial, and
6 North Coast is entitled to an accounting of Defendants' profits as well as enhanced remedies as
7 provided by law for Defendants' willful conduct.
8

9 63. By engaging in the conduct as alleged here, Defendants have acted
10 willfully, maliciously, oppressively and fraudulently in violation of California Civil Code section
11 3294, and North Coast is therefore entitled to punitive damages in an amount according to proof.
12

13 **SEVENTH CLAIM FOR RELIEF**
14 **TORTIOUS INTERFERENCE WITH CONTRACTS**

15 (Against Defendants Jensen, DanMic)
16

17 64. Paragraphs 1 - 63 are incorporated by reference as though set forth in their
18 entirety here.
19

20 65. Jensen and DanMic were aware of the existing contractual relationship
21 between North Coast and CMC for (1) the manufacture of therapeutic Putty and North Coast's
22 existing ownership rights under the Putty Agreement for the resistance combinations,
23 specifications, formulae, and color combinations associated with North Coast's Putty; and (2)
24 the Touch Test Sensor Agreement.
25

26 66. From and after February 2009, Jensen and DanMic intentionally induced
27 CMC to breach the Putty Agreement and the Touch Test Sensor Agreement by having Christy
28

1 and CMC manufacture and sell to Jensen and DanMic Touch Test Sensors and therapeutic Putty
 2 using North Coast's intellectual property rights under the Agreements.

3
 4 67. Using North Coast products produced by Christy and CMC, Jensen and
 5 DanMic induced North Coast's customers to purchase these products from Jensen and DanMic
 6 instead of North Coast, causing North Coast lost sales and damages through lost profits.

7
 8 68. By engaging in the conduct as alleged here, Defendants have acted
 9 willfully, maliciously, oppressively and fraudulently in violation of California Civil Code section
 10 3294, and North Coast is therefore entitled to punitive damages in an amount according to proof.

11
 12 **EIGHTH CLAIM FOR RELIEF**
 13 **TORTIOUS INTERFERENCE WITH PROSPECTIVE**
 14 **ECONOMIC ADVANTAGE**
 15 **(Against all Defendants)**

16
 17 69. Paragraphs 1 - 68 are incorporated by reference as though set forth in their
 18 entirety here.

19
 20 70. North Coast has had long term economic relationships with dozens of
 21 customers with the probability that those customers would continue to purchase North Coast
 22 products, including Putty and the Touch Test Sensor.

23
 24 71. Defendants were each aware of these relationships between North Coast
 25 and its customers.

1 72. Defendants conduct, as alleged herein, was intentionally designed to
2 disrupt North Coast's relationships with its customers.

3
4 73. Defendants' conduct has actually caused disruption of North Coast's
5 relationships with its customers.

6
7 74. The actions of Defendants has caused North Coast lost sales and damages
8 through lost profits.

9
10 75. By engaging in the conduct as alleged here, Defendants have acted
11 willfully, maliciously, oppressively and fraudulently in violation of California Civil Code section
12 3294, and North Coast is therefore entitled to punitive damages in an amount according to proof.

13
14 **NINTH CLAIM FOR RELIEF**
15 **BREACH OF WRITTEN PUTTY AGREEMENT**
16 (Against CMC and Christy)

17
18 76. Paragraphs 1 - 75 are incorporated by reference as though set forth in their
19 entirety here.

20
21 77. Under paragraph 4.1 of the Putty Agreement, North Coast owns "all right,
22 title and interest to the trade secrets, know-how, process, design, specifications, formulae and
23 documentation" related to the Putty.

24
25 78. North Coast's "trade secrets, know-how, process, design, specifications,
26 formulae" for therapeutic hand putty includes the resistance combinations, specifications,
27 formulae and color combinations associated with its hand therapy putty.

1 79. Notwithstanding North Coast's rights, CMC and Christy have, within
2 four years preceding the filing of this action, manufactured and sold to persons and entities other
3 than North Coast, therapeutic hand putty that includes the resistance combinations,
4 specifications, formulae, and color combinations associated with North Coast's Putty in breach
5 of the Putty Agreement.

6
7 80. CMC's and Christy's actions have caused North Coast to lose sales of the
8 Putty and damaged its reputation, all to North Coast's damage.

9
10
11 **TENTH CLAIM FOR RELIEF**
12 **BREACH OF WRITTEN TOUCH TEST SENSOR AGREEMENT**
13 **(Against CMC and Christy)**

14
15 81. Paragraphs 1 - 80 are incorporated by reference as though set forth in their
16 entirety here.

17
18 82. Under paragraph 1 of the Touch Test Sensor Agreement, North Coast is
19 the exclusive worldwide distributor of Touch Test Sensors manufactured by CMC and Christy.

20
21 83. North Coast has fully performed its obligations under the Touch Test
22 Sensor Agreement.

23
24 84. Notwithstanding North Coast's exclusive rights, CMC and Christy have,
25 within four years preceding the filing of this action, manufactured and sold to persons and
26 entities other than North Coast, Touch Test Sensors in breach of the Touch Test Sensor
27 Agreement.

1
2 85. CMC's and Christy's actions have caused North Coast to lose sales of the
3 Touch Test Sensor and damaged its reputation, all to North Coast's damage.
4

5 **ELEVENTH CLAIM FOR RELIEF**

6 **BREACH OF FIDUCIARY DUTY**

7 (Against Defendant Jensen)
8

9 86. Paragraphs 1 - 85 are incorporated by reference as though set forth in their
10 entirety here.
11

12 87. As a senior employee of North Coast, Jensen had a fiduciary duty not to
13 use North Coast's confidential commercial and trade secret information to compete with North
14 Coast after the termination of his employment, and not to use the goodwill developed on behalf
15 of North Coast during the course of, and as a direct consequence of, his employment with North
16 Coast.
17

18 88. In breach of that duty, Jensen, on behalf of himself and on behalf of
19 DanMic, used North Coast's confidential and trade secret information regarding the identities,
20 needs and specifications of North Coast's customers, and North Coast's good will, to solicit
21 North Coast's customers after termination of Jensen's employment with North Coast.
22

23 89. By reason of his use of North Coast's confidential and trade secret
24 information, Jensen was able to secure sales for DanMic and himself that otherwise would have
25 gone to North Coast.
26
27
28

1 90. By reason of this tortious conduct, North Coast was damaged by the
2 profits lost when customers purchased products from Jensen and/or DanMic rather than from
3 North Coast.

4
5 91. By engaging in the conduct as alleged here, Jensen has acted willfully,
6 maliciously, oppressively and fraudulently in violation of California Civil Code section 3294, and
7 North Coast is therefore entitled to punitive damages in an amount according to proof.

8
9 **PRAYER FOR RELIEF**

10
11 THEREFORE, North Coast prays as follows:

12
13 1. That Defendants, their officers, directors, managers, members, agents,
14 employees, licensors, licensees, affiliates, any parent and subsidiary corporations, attorneys and
15 representatives and all those in privity or acting under their direction or pursuant to their control,
16 be enjoined and restrained, preliminarily and permanently from directly and indirectly:

17
18 a. Manufacturing producing, sourcing, importing, selling,
19 offering for sale, distributing, advertising, or promoting any putty
20 that bears the same Trade Dress or any Trade Dress or
21 designations that so resemble North Coast's Trade Dress as to be
22 likely to cause confusion, mistake, or deception in connection with
23 products that have not been approved or sponsored by or
24 originated from North Coast;

25
26 b. Using any Trade Dress symbol, design, designation or other
27 device that is likely to cause confusion, mistake, or deception as to
28

1 an affiliation or association of Defendants or their goods with
2 North Coast;

3
4 c. Further infringing the rights of North Coast in North
5 Coast's Trade Dress or otherwise damaging North Coast's
6 goodwill or business reputation;

7
8 d. Otherwise competing unfairly with North Coast in any
9 manner; and

10 e. Continuing to perform in any manner whatsoever any of
11 the other acts complained of in this Complaint.
12

13 2. That Defendants and their officers, directors, managers, members, agents,
14 employees, licensors, licensees and all those acting under their direction and pursuant to their
15 control, be ordered to deliver to North Coast for destruction all labels, signs, advertising
16 promotional and other materials bearing or containing confusingly similar Putty or Trade Dress,
17 and remove all references to the Putty and North Coast's Trade Dress from Defendants' website
18 and other electronic media.
19

20 3. That North Coast recover from Defendants damages in an amount to be
21 proven at trial, and that Defendants be required to account to North Coast for any profits that
22 are attributable to their illegal acts.
23

24 4. That Defendants pay a sum equal to three times Defendants' profits and
25 North Coast's damages, or such amount as the Court may in its discretion deem reasonable and
26 just pursuant to 15 U.S.C. section 1125.
27
28


1 5. That Defendants pay punitive damages under California Civil Code section
2 3294.

3
4 6. That North Coast be awarded its costs, disbursements and reasonable attorneys'
5 fees incurred in connection with this action.

6
7 7. That the Court grant such other and further relief as it deems just and proper.
8
9

10
11 DATED: March 12, 2012.

12 COMMINS & KNUDSEN
13 Professional Corporation

14 By: 
15 Kit Knudsen
16 Attorneys for Plaintiff
17 North Coast Medical

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COMMINS & KNUDSEN
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial for all claims as provided for in Rule 38 of the Federal Rules of Civil Procedure.

COMINS & KNUDSEN
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

EXHIBIT A

PUTTY DEVELOPMENT AND SUPPLY AGREEMENT

This Putty Development and Supply Agreement ("Agreement") is entered into on May 1, 1990, by and between North Coast Medical, Inc., a California corporation located at 187 Stauffer Boulevard, San Jose, California ("North Coast"), and The Christy Company, a sole proprietorship located at 2108 Raven Road, Pleasanton, California ("Christy").

1. RECITALS

1.1 North Coast - North Coast is a distributor of occupational and physical therapy products, including hand therapy putty. North Coast currently purchases five types of hand therapy putty of various consistencies, ranging from soft to extra-firm. North Coast purchases soft (light blue) putty, medium (blue) putty and firm (green) putty from Sport Health for \$7.50 per pound ("Sport Health Price"). North Coast also purchases medium-soft (light green) putty and extra-firm (gray) putty from Depco for \$6.95 per pound ("Depco Price").

1.2 Christy - Christy has invested its time and money and money advanced by North Coast in an effort to study hand therapy putties currently purchased by North Coast. Christy believes it can develop hand therapy putties of the same or better quality than those currently purchased by North Coast at a cost substantially less than the prices currently paid by North Coast.

1.3 Intent of Parties - North Coast and Christy desire to enter into an agreement whereby Christy will develop low priced, high quality putties of the kind, color and quality currently purchased by North Coast as well as putties having different resistances as specified by North Coast. Christy will establish an entity ("Christy Putty Company") which will supply North Coast with such putties, as needed by North Coast, in an amount equal to one hundred fifty thousand (150,000) pounds. North Coast will purchase putties from Christy Putty Company at a price equal to Christy's direct costs of producing such putties plus one-third (1/3) of the monies North Coast saves by purchasing putties from Christy.

2. TERM

The term of this Agreement ("Term") shall be until North Coast purchases one hundred fifty thousand (150,000) pounds of putty from Christy Putty Company, excluding experimental batches purchased from Christy between April 1, 1990, and December 31, 1990 ("Development Period").

for
put

3. OBLIGATIONS DURING DEVELOPMENT PERIOD

3.1 Development - During the Development Period, Christy shall use its best efforts to develop:

(a) acceptable quality putty with a soft, medium or firm consistency of the kind and color currently purchased by North Coast from Sport Health for the Sport Health Price ("Group A Putty");

(b) acceptable quality putty with a medium-soft or extra-firm consistency of the kind and color currently purchased by North Coast from Depco for the Depco Price ("Group B Putty"); and

(c) acceptable quality putty with a different consistency from Group A Putty or Group B Putty, as specified by North Coast, in a color as specified by North Coast ("New Putty").

For purposes of this Agreement, "acceptable quality" means the quality currently achieved by Sport Health in its manufacture of Group A Putty.

3.2 Compensation Advanced - Each month during the Development Period, North Coast shall advance Four Thousand Dollars (\$4,000.00) to Christy on the fifteenth (15th) day of the month. North Coast shall subtract such advances from the monies to be paid to Christy Putty Company as provided in Paragraph 6.2.

3.3 Experimental Batches - North Coast shall purchase up to ten (10) experimental batches of putty developed by Christy during the Development Period; however, the total amount of putty that North Coast is required to purchase under this Paragraph 3.3 shall not exceed seven thousand (7,000) pounds ("Maximum Amount"). The purchase price of each experimental batch shall be, for each experimental batch of putty produced, the Direct Costs, as herein defined, of producing the experimental batch of putty.

For purposes of this Agreement, "Direct Costs" shall be the sum of the cost to Christy of raw silicone, appropriate additives and rental of equipment or procurement of services, other than Christy's, for compounding raw silicone and additives. The purchase price of any experimental batch shall not include compensation for any time spent or expenses, other than those described herein, incurred by Christy. The purchase price of any experimental batch shall be due thirty (30) days after North Coast receives the experimental batch.

If Christy desires to sell an experimental batch after North Coast has purchased the lesser of ten (10) batches or the Maximum Amount, then Christy shall provide North Coast with a written description of the proposed experiment, and North Coast may, at its sole option, elect to purchase the experimental batch. However, North Coast shall be under no obligation to purchase any experimental batch after North Coast has purchased the lesser of ten (10) batches or the Maximum Amount. All monies received by North Coast from its sale of an experimental batch shall be the sole property of North Coast.

3.4 Additional Expenses - North Coast shall advance to Christy monies for additional expenses related to Christy's development of Group A, Group B and New Putties which are incurred by Christy during the Development Period; however, the total amount of such expenses shall not exceed Five Thousand Dollars (\$5,000.00), and their payment shall be due thirty (30) days after Christy presents proof to North Coast that they were incurred.

3.5 Establishment of Supplier Entity - On or before January 1, 1991, Christy shall create and, until the termination of this Agreement, maintain Christy Putty Company as an entity the sole purpose of which shall be to obtain Group A, Group B and New Putties and to sell such putties to North Coast at the price specified in Paragraph 6.1.

4. OWNERSHIP OF DEVELOPED PRODUCTS

4.1 North Coast's Ownership Rights - Except as provided in Paragraph 4.2, North Coast shall own all right, title and interest to the trade secrets, know-how, process, design, specifications, formulae and documentation related to hand therapy putty developed pursuant to this Agreement, whether developed before, during or after the Development Period.

Christy and/or Christy Putty Company shall provide North Coast with all formulae for putties developed by Christy or its affiliates and shall supply North Coast with the names and addresses of all vendors of materials and/or services used by Christy and/or Christy Putty Company in production of the putties. At North Coast's request, Christy and/or Christy Putty Company shall introduce a North Coast representative to such vendors.

4.2 Christy's Ownership Rights - Notwithstanding the terms of Paragraph 4.1, Christy shall own the formula and technology of a product developed by Christy known as elastomeric putty.

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4.3 Grant of Exclusive Right to North Coast - North Coast shall, at its option, have the exclusive right, but shall not be under any obligation, to market, sell and otherwise make use of any product containing elastomeric putty provided that North Coast agrees to pay to Christy a royalty in connection with the sale of any such product in the amount of Two Dollars (\$2.00) per pound of elastomeric putty used to create such product.

5. SUPPLY OF PUTTY

5.1 Supply as Required - Until North Coast has purchased one hundred fifty thousand (150,000) pounds of putty, excluding experimental batches purchased during the Development Period, from Christy Putty Company ("Supply Period"), Christy Putty Company shall supply North Coast with Group A, Group B and New Putties in amounts and at such times as North Coast requires. North Coast agrees to purchase from Christy Group A, Group B and New Putties in an amount equal to one hundred fifty thousand (150,000) pounds so long as the price charged by Christy Putty Company is less than the prices charged by Sport Health and Depco as stated in Paragraph 3.1.

5.2 Orders - All orders shall be placed with Christy Putty Company by North Coast in writing at least thirty (30) days prior to the required delivery date. Christy Putty Company shall deliver the amounts ordered on or before the required delivery date.

5.3 Terms - Except as otherwise agreed to by the parties, the terms for purchases pursuant to Paragraph 5.1 of this Agreement shall be net thirty (30) days from date of invoice. North Coast shall pay normal freight charges for delivery to North Coast.

6. COMPENSATION TO CHRISTY PUTTY COMPANY

6.1 Payment Price - For each purchase by North Coast from Christy Putty Company during the Supply Period, North Coast shall pay to Christy Putty Company the Payment Price as defined herein and adjusted in accordance with Paragraph 6.2, below. "Payment Price" means, for each purchase, the sum of:

(a) The Direct Costs, as that term is defined in Paragraph 3.3, attributable to the putty that North Coast purchases from Christy Putty Company; and

(b) One third ($1/3$) of the Savings, as defined herein, on North Coast's purchases from Christy Putty Company.

"Savings" means, for each purchase made by North Coast and subject to the adjustments set forth in Paragraph 6.3, the sum of:

(i) the difference between the product of the number of pounds of Group A Putty purchased from Christy Putty Company times the Sport Health Price and the Direct Costs of the Group A Putty purchased;

(ii) the difference between the product of the number of pounds of Group B Putty purchased from Christy Putty Company times the Depco Price and the Direct Costs of the Group B Putty purchased; and

(iii) the difference between the product of the number of pounds of New Putty purchased from Christy Putty Company times the Sport Health Price and the Direct Costs of the New Putty purchased.

All payments hereunder shall be made thirty (30) days after receipt of invoice by North Coast.

6.2 Return of Advances - As a return to North Coast of the monies advanced to Christy under Paragraph 3.2, the Payment Price shall be reduced by Twenty-four Cents (\$.24) per pound of putty that North Coast purchases from Christy Putty Company.

6.3 Adjustments Based on Fluctuations in Price of Raw Silicone - The formula for calculating Savings set forth in Paragraph 6.1 shall be adjusted by adding to or subtracting from, as set forth herein, the Sport Health Price and the Depco Price an amount equal to the difference between the cost to Christy Putty Company of the raw silicone known as Q23233 from Dow Corning FOB Midland, Michigan used to create the putty purchased by North Coast ("Cost of Raw Silicone") and the product ("Base Cost") of Six Dollars Thirty-one Cents (\$6.31) times the number of pounds of raw silicone used to create the putty purchased by North Coast. If the Cost of Raw Silicone is greater than the Base Cost, then that difference shall be added to the Sport Health Price and the Depco Price. If the Cost of Raw Silicone is less than the Base Cost, then that difference shall be subtracted from the Sport Health Price and the Depco Price.

7. WARRANTY

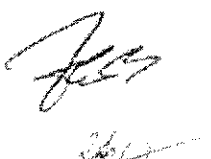
Christy and Christy Putty Company warrant that the Group A, Group B and New Putties sold to North Coast will be free of errors, faulty workmanship and faulty materials and will be of acceptable quality upon delivery to North Coast. North Coast shall notify Christy Putty Company if any putty does not conform to the provisions of this warranty and shall, if Christy Putty Company so requests, return such product to Christy Putty Company for verification of the defect. Upon reasonable verification of the failure of such putty to meet the acceptable quality standard, Christy Putty Company shall either replace such defective putty or refund the purchase price of such defective putty to North Coast.

8. OPTION TO PURCHASE SUPPLIER ENTITY

As partial consideration for North Coast's covenants and agreements hereunder, Christy hereby grants to North Coast the option to purchase Christy Putty Company. The option price shall be the net book value of Christy Putty Company on the date such option first becomes exercisable. Such option shall be exercisable upon North Coast's purchase of one hundred fifty thousand (150,000) pounds of putty from Christy and for one (1) year thereafter. In connection with the purchase of Christy Putty Company, Christy and its principals shall execute a covenant not to compete in favor of North Coast similar to the covenant contained in Section 9 of this Agreement. Such covenant shall last for five (5) years.

9. CONFIDENTIALITY

During the Term of this Agreement, each party will be exposed to information concerning the other party's business, products, technology, customers and related information that is of substantial value to the party owning it, which value would be impaired if such information were disclosed to others ("Confidential Information"). Confidential Information includes but is not limited to financial and sales information, design and process technology, including but not limited to the hand therapy putty design and all documentation and specifications. For a period of five (5) years following the termination of this Agreement, each party agrees not to disclose or otherwise make the other party's Confidential Information available to third parties or to make any use of such Confidential Information except as set forth in this Agreement. Each party further agrees to restrict access to the other party's Confidential Information to



employees or consultants who have a strict need to know in order to fulfill the provisions of this Agreement and who have signed confidentiality agreements with their employer. If any party is in doubt as to whether or not certain information is confidential, the other party shall clarify it upon request. Each party will treat and safeguard any Confidential Information received from the other, whether verbal or in writing (provided that it is properly identified as such), in the same manner as the receiving party safeguards its own Confidential Information and shall not disseminate the same without prior written authorization from the disclosing party, unless the receiving party can prove and to the extent that it can prove:

(a) Such information was in its possession prior to the receipt thereof; or

(b) Such information lawfully is or becomes public knowledge through no breach of this Agreement by the receiving party; or

(c) Such information is provided without confidentiality obligation by any arm's length party with a bona fide right to do so; or

(d) Such information is independently developed by the receiving party prior to receipt of such information.

10. COVENANT NOT TO COMPETE

During the term of this Agreement, Christy or any of its officers, directors and shareholders shall not purchase the stock or all of the assets of a business and will not engage in activity that competes with North Coast in the hand therapy putty distribution business in the California counties listed in Exhibit A to this Agreement attached hereto and incorporated herein by this reference, in any other state of the United States or anywhere else in the world. Nothing in this Agreement shall prohibit Christy or any of its officers, directors and shareholders from owning stock or other securities of a competitor in an amount which is relatively insubstantial to the total amount of stock of the competitor, as long as Christy or any of its officers, directors and shareholders do not have the power to control or direct the management or policies of the competitor and are not otherwise associated with any competitor.

11. TERMINATION OF AGREEMENT ON DEFAULT

In the event of a default in the terms of this Agreement by either party, thirty (30) days written notice shall be given to the defaulting party to correct the default, and if not so corrected within the thirty (30) day period, the non-defaulting party may elect to terminate this Agreement by giving written notice of such termination to the defaulting party. After such notice is given, this Agreement shall terminate, subject only to the non-defaulting party's right to recover damages for the default from the defaulting party.

12. MISCELLANEOUS

12.1 Notices - All notices, requests, approvals or other communications provided for herein shall be in writing and shall be delivered personally or by United States certified mail directed to the parties at the addresses set forth below their names at the foot hereof or to such other address as any party may from time to time designate in writing. Notices or communications mailed as set forth herein shall be conclusively deemed to have been received by the party to whom addressed three business days after deposit in the United States mail.

12.2 Headings, Number and Gender - As used herein, section and paragraph headings are for convenience of reference only and shall not be used to construe, limit, modify, expand or otherwise interpret the terms hereof. As used herein, singular number shall contain the plural, and vice versa, and the masculine gender shall contain the feminine or neuter, and vice versa, as the context so requires.

12.3 Parties Unable to Obligate Other - Neither party shall have the authority to act for the other in any manner to create obligations or debts which would be binding on the other party.

12.4 Trademarks and Tradenames - Neither party shall acquire any rights to the patents, copyrights, trademarks or tradenames of the other, except as expressly stated in this Agreement.

12.5 Licenses - Neither party grants any license to the other.

12.6 Governing Law - This Agreement shall be governed by and construed in accordance with the laws of California.

12.7 Attorneys' Fees and Costs - If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

12.8 Entire Agreement - This Agreement contains the entire agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the parties. No party may hereafter enter into any such agreement except by amendment hereof in accordance with Paragraph 12.9.

12.9 Amendments - This Agreement may be amended at any time, but any amendment must be in writing and signed by both parties.

12.10 No Waiver - The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition; nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

12.11 Binding Effect - This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

12.12 Severability - If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth hereinabove.

"Christy"

The Christy Company
2108 Raven Road
Pleasanton, California

By 
5/1/90

"North Coast"

North Coast Medical, Inc.
187 Stauffer Boulevard
San Jose, California

By 
5/1/90

EXHIBIT A

Alameda County
Alpine County
Amador County
Butte County
Calaveras County
Colusa County
Contra Costa County
Del Norte County
El Dorado County
Fresno County
Glenn County
Humboldt County
Imperial County
Inyo County
Kern County
Kings County
Lake County
Lassen County
Los Angeles County
Madera County
Marin County
Mariposa County
Mendocino County
Merced County
Modoc County
Mono County
Monterey County
Napa County
Nevada County

Orange County
Placer County
Plumas County
Riverside County
Sacramento County
San Benito County
San Bernardino County
San Diego County
San Francisco County
San Joaquin County
San Luis Obispo County
San Mateo County
Santa Barbara County
Santa Clara County
Santa Cruz County
Shasta County
Sierra County
Siskiyou County
Solano County
Sonoma County
Stanislaus County
Sutter County
Tahama County
Trinity County
Tulare County
Tuolumne County
Ventura County
Yolo County
Yuba County

FIRST AMENDMENT TO
PUTTY DEVELOPMENT
AND SUPPLY AGREEMENT

This First Amendment ("Amendment") to Putty Development and Supply Agreement is entered into on August 9th, 1991, by and between North Coast Medical, Inc., a California corporation, located at 187 Stauffer Boulevard, San Jose, California ("North Coast"), and Centerline Products, a *division of Y&K Manufacturing Inc.*, located at 1258 Quarry Ln, Suite 6 Pleasanton CA 94566 ("Centerline"). Centerline enters into this Agreement as the assignee of The Christy Company ("Christy").

1. Recitals.

1.1 Agreement. North Coast and Christy entered into a Putty Development and Supply Agreement ("Agreement") on May 1st, 1990. Under the Agreement, Christy agreed to supply North Coast, and North Coast agreed to purchase from Christy, 150,000 pounds of hand therapy putty in various consistencies. The Agreement set forth the terms and conditions upon which the sale of putty and other aspects of a continuing relationship between the parties would take place.



1.2 Centerline. Since entering into the Agreement, Christy has assigned his rights in the Agreement to Centerline. Centerline wishes to assume formally Christy's obligations under the Agreement.

1.3 Intent of Parties. North Coast, Christy and Centerline wish to ratify the Putty Development and Supply Agreement and to extend the term of the Agreement until North Coast purchases a total of 250,000 pounds of putty under the Agreement. The parties also wish to acknowledge other ongoing consulting activities between them.

2. Ratification by Centerline. The parties hereby acknowledge and agree that Centerline shall be entitled to all the benefits and subject to all the obligations of Christy under the Agreement. The parties agree and acknowledge that Christy shall not be released from its obligations under the Agreement, except as they are actually performed by Centerline.

3. Extension of Term. Wherever the figure "150,000" appears in the Agreement, it shall be changed to "250,000" to implement the intent of the parties as stated in Section 1.3.

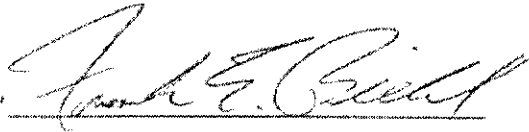
4. Consulting Arrangements. During the term of any consulting agreement in effect between Centerline and North Coast, neither Centerline nor any of its principals shall purchase the stock or all of the assets of a business, or otherwise engage in activity that competes with North Coast in any market in which North Coast conducts business in the California counties listed in Exhibit A to the Agreement, in any other state of the United States, or anywhere else in the world. Nothing in the Agreement or this Amendment shall prohibit Centerline or any of its principals from owning stock or other securities of a competitor of North Coast in an amount which is relatively insubstantial to the total amount of stock of the competitor, as long as Centerline or any of its principals do not have the power to control or direct the management or policies of the competitor and are not otherwise associated with any competitor.

5. Continuing Effectiveness of Agreement. Except as modified by this Amendment, the Agreement shall remain in full force and effect among the parties.

IN WITNESS WHEREOF, the parties have caused this
Amendment to be executed as of the date first set
forth above.

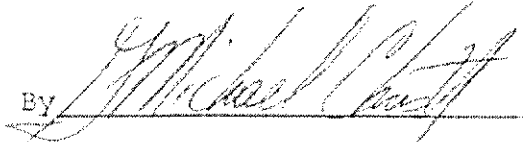
NORTH COAST MEDICAL, INC.

BY



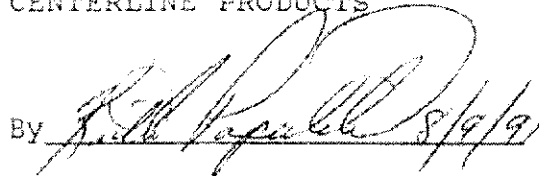
THE CHRISTY COMPANY

BY



CENTERLINE PRODUCTS

BY

 8/9/91

Second Amendment to
Putty Development and Supply Agreement

This Second Amendment (Amendment) to Putty Development and Supply agreement is entered into on August 15, 1994 by and between North Coast Medical, Inc., a California corporation located at 187 Stauffer Boulevard, San Jose, CA ("North Coast") and the Christy Putty Company, 1258-G Quarry Lane, Suite G, Pleasanton, CA ("Christy").

1. Recitals

1.1 Centerline. All references to Centerline from the First Amendment to Putty Development and Supply Agreement dated August 9, 1991 ("First Amendment") are null and void. Christy hereby represents and warrants to North Coast that Centerline owns no interest in the Agreement or the First Amendment and that no amounts are due to Centerline pursuant to the Agreement or First Amendment. Christy agrees to indemnify, defend and hold North Coast harmless from any and all claims, losses and damages which may be asserted by Centerline or its successors or assigns (other than Christy) against North Coast with respect to matters arising under the Agreement, First Amendment or this Second Amendment.

1.2 Intent of Parties. North Coast and Christy wish to ratify the Putty Development and Supply Agreement and to extend the term of the Agreement until North Coast purchases a total of 400,000 pounds of putty per the Agreement. The parties also wish to acknowledge other ongoing consulting activities between them.

2. Extension of Term

Whenever the figure "250,000" appears in the Agreement as modified by the First Amendment, it shall be changed to "400,000" to implement the intent of the parties as stated in Section 1.3 of the Agreement.

3. Consulting Arrangements

During the term of any consulting agreement in effect between Christy and North Coast, neither Christy nor any of its principals shall purchase the stock or all of the assets of a business, or otherwise engage in activity that competes with



North Coast in any market in which North Coast conducts business in California, in any other state of the United States, or anywhere else in the world. Nothing in the Agreement or this Amendment shall prohibit Christy or any of its principals from owning stock or other securities of a competitor of North Coast in an amount which is relatively insubstantial to the total amount of stock of the competitor, Provided that neither Christy nor any of its principals do not have the power to control or direct the management or policies of the competitor and are not otherwise associated with any competitor.

4. Royalties.

Christy has the non-exclusive right to sell North Coast putty formulas into retail product markets other than the medical market and health and safety market as defined under Definitions (Part 5 of this agreement).

Any such sales will include a ten percent (10%) royalty to North Coast. Credit for sales will be bulk based. Christy may then package and resell the putty at its discretion. The bulk based rate will be at current costs to North Coast at the time of the sale.

Termination of this right to market North Coast formulas requires a thirty-six (36) month written notice. This notice can extend beyond the supply contract termination date.

5. Definitions.

5.1 Medical Market. The Medical Market shall mean professionals with licenses or certification to work in the medical profession and anyone who sells to them such as dealers, distributors and resellers. This market is the exclusive market of North Coast and includes but is not limited to:

- Licensed Occupational Therapists
- Certified Hand Therapists
- Certified Occupational Therapist Assistants
- Physical Therapists
- Physical Therapist Assistants
- Orthopedic Surgeons
- Orthopedic Nurses
- Licensed Medical Doctors
- Home Care Providers



5.2 Health and Safety Market. The Health and Safety Market shall mean professionals who work in the Health and Safety industry and anyone who sells to them such as dealers, distributors and resellers. This market is the exclusive market of North Coast and includes but is not limited to:

Industrial Hygienists
Occupational Health Nurses
Safety Engineers
Risk Managers
Ergonomic Engineers (Human Factors)

6. Continuing Effectiveness of Agreement.

Except as modified by this Amendment, the Agreement and First Amendment shall remain in full force and effect among the parties.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first set forth above.

NORTH COAST MEDICAL, INC.

By

THE CHRISTY PUTTY COMPANY

By

EXHIBIT B

North Coast

Dear Mike:

The recent departure of a certain NCM employee and the subsequent reported behavior has prompted me to document our understanding in writing. I would not want anything such as a misunderstanding or the apparent misguided actions of a former NCM employee to come between our mutually beneficial and exclusive relationship.

Yours Truly,

CC FJB, LLB

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