

CAUSE NO. DC-18-08923

**TRACY FLEMING and
NORMA EGEA**

Plaintiffs,

vs.

**BRIAN CHILDRESS; NEYLU, INC.;
RICHARD D. SCHUBERT, M.D., and;
SMITH & NEPHEW, INC.,**

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

192nd JUDICIAL DISTRICT

**PLAINTIFFS' NOTICE OF FILING OF RULE 11 AGREEMENT BETWEEN
PLAINTIFFS AND DEFENDANT SMITH & NEPHEW, INC.**

TO THE HONORABLE JUDGE OF SAID COURT:

This will confirm for the Court and will provide notice to all counsel and parties that Plaintiffs and Defendant Smith & Nephew, Inc. enter into the Rule 11 Agreement that is attached as **Exhibit A.**

Respectfully submitted,

LAW OFFICE OF KIP PETROFF

/s/ Kip Petroff

Kip A. Petroff
State Bar No. 15851800
Caio Formenti
State Bar No. 24104676
Kristopher Bonham
State Bar No. 24118335
8150 North Central Expressway, Suite 500
Dallas, Texas 75206
Telephone: (972) 294-7530
Fax: (972) 294-7530
kpetroff@petroffassociates.com
caio@kippetroff.com
kris@kippetroff.com

ATTORNEYS FOR PLAINTIFFS

Certificate of Service

I HEREBY CERTIFY that on **July 13, 2020**, a true and correct copy of the foregoing was served
PLAINTIFFS' NOTICE OF FILING OF RULE 11 AGREEMENT

on the Defendants by email as follows:

Defendants **Smith & Nephew, Inc., Brian Childress and Neylu, Inc.** to: Mr. Brian P. Johnson, Ms. Leila D'Aquin, Mr. David O'Quinn, Ms. Sarah Segrest-Jay, Mr. Douglas Moore, and Ms. Kealy Sehic.

Defendant **Richard D. Schubert, M.D.**, to: Mr. David Criss and Ms. Alexandra Sallade.

_____/s/_____
Caio Formenti

Exhibit A

KIP A. PETROFF

Board Certified Personal Injury and
Civil Trial Lawyer
Texas Board of Legal Specialization

8150 N. Central Expressway,
Suite 500
Dallas, TX 75231

Telephone: (972) 294-7530
web: KipPetroff.com
email: kpetroff@petroffassociates.com

July 13, 2020

David O'Quinn
Irwin Fritchie Urquhart & Moore LLC
400 Poydras Street, Suite 2700
New Orleans, Louisiana 70130

Brian Johnson
Johnson, Trent & Taylor, L.L.P.
919 Milam Street, Suite 1500
Houston, Texas 77002

Re: Rule 11 Agreement re: Sales Representative and
Surgeon Training Corporate Representative Depositions

Dear Mr. O'Quinn and Mr. Johnson:

This Rule 11 Agreement memorializes the agreements between the Plaintiffs and Defendants Smith & Nephew, Inc. on July 13, 2020 as follows:

- **Identification of Documents.** Smith & Nephew, Inc. agrees to notify Plaintiffs in writing on or before Wednesday, July 22, 2020 of **(1)** the bates numbers of the documents that Judge Smith ordered Smith & Nephew, Inc. to produce in an Order signed May 29, 2020 and **(2)** any topics from the requests in the signed Order that Smith & Nephew has not finished responding to as of July 22, 2020. Smith & Nephew, Inc. shall produce any other documents, including videos, responsive to the Fifth Requests for Production and the above Order on or before July 29, 2020.
- **Reschedule Corporate Representative Depositions.** The parties agree to reschedule the **Sales Representative Training** and **Surgeon Training** Smith & Nephew, Inc. Corporate Representative depositions, to be noticed and taken in the *Fleming*, *Kemp*, *Shammel*, and *Deborah Smith* cases, to a day on or before August 20, 2020. Smith & Nephew, Inc. will not seek any changes in the Deposition Notices already served in these cases other than adding the Fleming case to the Notices.
- **Clinical Studies, Recalls and Withdrawals Corporate Representatives.** Plaintiffs agree to Notice both the Clinical Studies and Recall and Withdrawal

corporate representative depositions in the *Fleming* case. The parties agree that the depositions are being taken in *Fleming* and *Kemp*, but may be used in the *Shammel* and *Deborah Smith* cases.

- The parties agree to a seven-hour time limit for the Recall and Withdrawal corporate representative deposition, and that deposition shall occur on Thursday, July 16, 2020 as currently scheduled.
- The parties agree to a seven-hour time limit for the Joan Overhauser deposition as a corporate rep and a fact witness, and that deposition shall occur on Friday, July 17, 2020 as currently scheduled.
- The parties agree to a four to five-hour time limit for the Debra Gilbert deposition as a corporate rep and a fact witness, and that deposition shall occur on or before August 20, 2020.
- The parties agree to Plaintiffs having two lawyers ask questions during the Recalls and Withdrawals and Clinical Studies/IDE depositions.
- The parties agree to Plaintiffs having two lawyers ask questions during the Sales Representative Training and Surgeon Training depositions.
- The parties agree to an eight-hour time limit for Russell Walter as the Sales Representative Training deposition as a corporate rep and a fact witness, and that deposition shall occur on or before August 20, 2020.
- The parties agree to an eight-hour time limit for Tim Bourne as the Surgeon Training deposition as a corporate rep and a fact witness, and that deposition shall occur on or before August 20, 2020.
- Smith & Nephew, Inc. will offer Joan Overhauser on her designated topics and as a fact witness on Friday, July 17, 2020 and will promptly provide new dates for Debra Gilbert's testimony as a corporate representative.

**THIS RULE 11 AGREEMENT IS ENTERED INTO ON BEHALF OF THE PLAINTIFFS
AND DEFENDANTS AS FOLLOWS:**

LAW OFFICE OF KIP PETROFF

By: 

Kip A. Petroff
State Bar No. 15851800
8150 North Central Expressway, Suite 500
Dallas, Texas 75206
Telephone: (972) 294-7530
Fax: (972) 294-7530
kpetroff@petroffassociates.com
ATTORNEY FOR PLAINTIFFS

