

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE

)

THURSDAY, THE 15TH DAY

JUSTICE STRATHY

)

OF DECEMBER, 2011

)

BETWEEN:

SWAPAN BANERJEE

Plaintiff

- and -

SHIRE BIOCHEM INC., DRAXIS HEALTH INC.,
ELI LILLY CANADA INC. and ELI LILLY AND COMPANY

Defendants

ORDER

THIS MOTION, made by the Plaintiff for an order that this action be certified as a class proceeding against the defendant ~~Jubilant DraxImage Inc.~~ formerly Draxis Health Inc. ^{now Jubilant DraxImage Inc.} ("Draxis"), pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, and for approval of the settlement of this class proceeding pursuant to subsection 29(2) of the *Class Proceedings Act*, 1992, in accordance with the terms of the Minutes of Settlement, was heard this day at 130 Queen Street West, Toronto, Ontario.

Q255

ON READING the following:

- (a) Notice of motion;
- (b) Certification Order dated February 8, 2010;
- (c) Minutes of Settlement;
- (d) Final Claims Matrix listing the 58 class members entitled to compensation under the Minutes of Settlement; and,
- (e) Affidavits of:
 - (i) Swapam Banerjee sworn on the 6th day of December, 2011; and,
 - (ii) Alan A. Farrer sworn on the 8th day of December, 2011;

AND ON BEING ADVISED that:

- (a) the Plaintiff consents to this Order;
- (b) the Defendants consent to this Order;
- (c) the opt-out date for this class proceeding was November 30, 2010 and no person has opted out of this class proceeding; and,
- (d) notice of this settlement has been published in accordance with paragraph 9 of the Minutes of Settlement.

~~AND ON ADVISING THE PARTIES~~ that:

~~(a) Justice De Wever presiding over the Quebec action in Quebec Court File No. 500-06000-464-095 has been consulted with respect to the implementation of this Order;~~

AND WITHOUT any admission of liability on the part of the Defendants,

CERTIFICATION

1. **THIS COURT ORDERS** that the within proceeding is hereby certified as a class proceeding against the defendant, Draxis, pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, with this class proceeding having previously been certified by order of February 8, 2010, against the defendants Eli Lilly and Company, Eli Lilly Canada Inc. and Shire Biochem Inc. (last known as Shire Canada Inc.).

2. **THIS COURT ORDERS** that paragraphs 2 through 5 of the February 8, 2010, certification order apply to the certification of this class proceeding against Draxis.

SETTLEMENT APPROVAL

3. **THIS COURT ORDERS AND ADJUDGES** that the settlement of this class proceeding as set out in the Minutes of Settlement is fair and reasonable and in the best interests of the Class and is hereby approved.

4. **THIS COURT ORDERS** that the Minutes of Settlement are incorporated by reference into this Certification and Settlement Approval Order and are hereby approved.

5. **THIS COURT ORDERS AND DECLARES** that this Order be posted on the websites maintained by Class Counsel and that no further notice of this settlement is required.

6. **THIS COURT ORDERS AND DECLARES** that this Certification and Settlement Approval Order, including the Minutes of Settlement, is binding upon each Class Member, including those persons who are minors or are mentally incapable, and the requirements of Rule 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with. For greater certainty, each Class Member is bound by the Certification and Settlement Approval Order, whether or not such person receives a distribution, or whether such person claims compensation.

7. **THIS COURT ORDERS** that the Defendants pay the Settlement Fund of \$2,400,000.00 plus \$300,000.00 in partial indemnity costs (together the "Settlement Monies") in accordance with the Minutes of Settlement by sending the Settlement Monies to Thomson, Rogers payable to "Thomson, Rogers in Trust," within 30 days of this Order.

8. **THIS COURT ORDERS** that only those persons with claims listed in the Final Claims Matrix are eligible for compensation out of the Settlement Fund.

9. **THIS COURT ORDERS** that the Settlement Fund will be distributed to those persons with claims listed in the Final Claims Matrix.

10. **THIS COURT ORDERS** that any one or more of the Parties or Class Counsel may apply to the Court for directions in respect of the implementation and/or the administration of the Minutes of Settlement or relating to any other matter.

LEGAL FEES

11. **THIS COURT ORDERS** that Class Counsel Fees be and are hereby fixed at \$811,563.03, inclusive of all disbursements and all taxes, and are to be paid to "Thomson, Rogers in Trust" from the Settlement Monies within 30 days of this Order.

G. R. Shetty J.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 22 2011

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:



ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

ORDER

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