

## PLAN OF ALLOCATION

### THE DEFINED TERMS

1. The definitions set out in the settlement agreement reached between the Plaintiff Anne Miller and Defendant FSD Pharma, Inc. made as of October 26, 2020 (“**Agreement**”), except as modified or defined herein, apply to and are incorporated into this Plan of Allocation:
  - (a) “**Authorized Claim**” means a properly submitted claim for damages from the Compensation Fund, which has been approved by the Administrator or Referee;
  - (b) “**Authorized Claimant**” means a Class Member who: (i) submitted a properly completed Claim Form with the calculation of their Maximum Entitlement (September Disclosure) and/or Maximum Entitlement (November Disclosure), and all required Supporting Documentation to the Administrator on or before the Claims Bar Deadline; and (ii) is eligible to receive a Distribution from the Compensation Fund;
  - (c) “**Category**” means, separately, the Compensation Fund (September Disclosure), and the Compensation Fund (November Disclosure);
  - (d) “**Claim Form**” means the online form or forms to be approved by the Court, which, when completed and submitted in a timely manner to the Administrator through the online claims portal, enables a Class Member to apply for compensation pursuant to the Agreement and this Plan of Allocation;
  - (e) “**Claimant**” means a Class Member who submits a properly completed Claim Form with the calculation of their Maximum Entitlement (September Disclosure) and/or Maximum Entitlement (November Disclosure), and all required Supporting Documentation to the Administrator on or before the Claims Bar Deadline;

- (f) **“Class Member”** means all persons and entities, other than Excluded Persons, wherever they may reside or be domiciled, who during the Class Period acquired Shares in the secondary market on or after September 20, 2018, and held some or all of such Shares as of the close of trading on February 6, 2019;
- (g) **“Class Period”** means the period from September 20, 2018 to and including February 6, 2019;
- (h) **“Compensation Fund”** means the Settlement Amount less Class Counsel Fees, Administration Expenses and the Honorarium;
- (i) **“Compensation Fund (September Disclosure)”** means the portion of the Compensation Fund to be distributed to Authorized Claimants in respect of their Maximum Entitlement (September Disclosure);
- (j) **“Compensation Fund (November Disclosure)”** means the portion of the Compensation Fund to be distributed to Authorized Claimants in respect of their Maximum Entitlement (November Disclosure);
- (k) **“Court”** means the Ontario Superior Court of Justice;
- (l) **“Database”** means the web-based database in which the Administrator stores information received from the Claimants and/or acquired through the claims process;
- (m) **“Distribution”** means payment to Authorized Claimants in accordance with this Plan of Allocation, the Agreement and any order of the Court;
- (n) **“Distribution List”** means a list containing the name and address of each Authorized Claimant, the calculation of his/her/its Maximum Entitlement (September Disclosure) and/or Maximum Entitlement (November Disclosure),

and the calculation of each Authorized Claimant's *pro rata* share of the Compensation Fund (September Disclosure) and/or Compensation Fund (November Disclosure);

- (o) “**Escrow Account**” means the trust account holding the Compensation Fund and used by the Administrator to make the Distribution in accordance with this Plan of Allocation;
- (p) “**FSD**” means FSD Pharma, Inc., and, as the context may require, includes its subsidiaries and affiliates;
- (q) “**Honorarium**” means a one-time payment of \$5,000 from the Compensation Fund to the representative plaintiff, Anne Miller, subject to the approval of the Court;
- (r) “**LIFO**” means the principle of last-in first-out, wherein securities are deemed to be sold in the opposite order than they were purchased (i.e. the last securities purchased are deemed to be the first sold);
- (s) “**Maximum Entitlement (September Disclosure)**” means an Authorized Claimant's actual loss on Qualified Shares (September Disclosure), as calculated pursuant to the formula set forth in paragraph 6 herein;
- (t) “**Maximum Entitlement (November Disclosure)**” means an Authorized Claimant's actual loss on Qualified Shares (November Disclosure), as calculated pursuant to the formula set forth in paragraph 6 herein;
- (u) “**Pro Rata Distribution (September Disclosure)**” means the Distribution per dollar of Total Damages (September Disclosure);
- (v) “**Pro Rata Distribution (November Disclosure)**” means the Distribution per dollar of Total Damages (November Disclosure);

- (w) “**Qualified Shares**” means Shares purchased or acquired during the Class Period and held until after the close of trading on February 6, 2019, calculated using LIFO;
- (x) “**Qualified Shares (September Disclosure)**” means Shares purchased or acquired on or after September 20, 2018, but before November 29, 2018, and held until after the close of trading on February 6, 2019, calculated using LIFO;
- (y) “**Qualified Shares (November Disclosure)**” means Shares purchased or acquired on or after November 29, 2018 and held until after the close of trading on February 6, 2019, calculated using LIFO;
- (z) “**Reference**” means the procedure by which a Claimant who disagrees with the Administrator’s decision relating to their eligibility for compensation, the determination of the number of Qualified Shares, or the amount of their Maximum Entitlement (September Disclosure) and/or Maximum Entitlement (November Disclosure), may appeal the Administrator’s decision and have it reviewed by the Referee;
- (aa) “**Settlement Amount**” means CAD \$5,500,000, inclusive of the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to the Action or the Settlement;
- (bb) “**Shares**” means class B common shares of FSD that are or were listed for trading;
- (cc) “**Supporting Documentation**” means true copies of (i) all trade confirmation slips in respect of transactions in the Qualified Shares during the Class Period (and ten days after the end of the Class Period), or (ii) all monthly statements with

information concerning transactions in the Qualified Shares during the Class Period (and ten days after the end of the Class Period);

- (dd) **“Total Damages (September Disclosure)”** means the aggregate of all Authorized Claimants’ Maximum Entitlements (September Disclosure);
- (ee) **“Total Damages (November Disclosure)”** means the aggregate of all Authorized Claimants’ Maximum Entitlements (November Disclosure); and
- (ff) **“Website”** means the website at [www.fsdsecuritiesclassaction.com](http://www.fsdsecuritiesclassaction.com).

#### **THE OVERVIEW**

2. This Plan of Allocation sets out the procedure for Class Members to apply for a Distribution from the Compensation Fund; the guidelines for determination of a Class Member’s eligibility to same; and if appropriate the manner of allocation and Distribution to each Authorized Claimant of their proportionate and allocable share of the Compensation Fund calculated on the basis of the calculations set forth herein, up to the Maximum Entitlement (September Disclosure) and Maximum Entitlement (November Disclosure) for each Authorized Claimant.

#### **CALCULATION OF THE DISTRIBUTION AND MAXIMUM ENTITLEMENT**

3. The Administrator will allocate 30% of the Compensation Fund to Authorized Claims in respect of Qualified Shares (September Disclosure) to create the Compensation Fund (September Disclosure). The Administrator will then allocate 70% of the Compensation Fund to Authorized Claims in respect of Qualified Shares (November Disclosure) to create the Compensation Fund (November Disclosure).

4. The Administrator will allocate all the Authorized Claims into these two Categories (*i.e.*, September Disclosure and November Disclosure) depending on when Authorized Claimants purchased Qualified Shares.
5. Based upon each Authorized Claimant's Maximum Entitlement within each Category, they will receive their *pro rata* distribution based on the Total Damages in each Category. This will be done first by dividing the Compensation Fund (September Disclosure) by the Total Damages (September Disclosure) to calculate a percentage recovery per dollar lost defined herein as the "*Pro Rata* Distribution (September Disclosure)", and by dividing the Compensation Fund (November Disclosure) by the Total Damages (November Disclosure) to calculate a percentage recovery per dollar lost defined herein as the "*Pro Rata* Distribution (November Disclosure)".
6. The Administrator will then multiply the *Pro Rata* Distribution (September Disclosure) by each Authorized Claimant's Maximum Entitlement (September Disclosure) to arrive at the Distribution (September Disclosure) to be paid to each Authorized Claimant in that Category, and multiply the *Pro Rata* Distribution (November Disclosure) by each Authorized Claimant's Maximum Entitlement (November Disclosure) to arrive at the Distribution (November Disclosure) to be paid to each Authorized Claimant in that Category.
7. In no event shall an Authorized Claimant receive a Distribution greater than his/her/its Maximum Entitlement (September Disclosure), or his/her/its Maximum Entitlement (November Disclosure).
8. If a Claimant in either Category purchased their Qualified Shares for a price that is below what the Claimant sold them for (if sold within ten trading after February 6, 2019), or is

deemed to have sold them for (if held after the close of trading on February 6, 2019 and not sold within ten trading days thereafter), such a Claimant will not be entitled to compensation from the Compensation Fund.

9. Maximum Entitlement (September Disclosure) and Maximum Entitlement (November Disclosure) shall be calculated as follows:
  - (a) For Qualified Shares disposed of on or before the 10<sup>th</sup> trading day after the public correction (released before market open on February 7, 2019), the difference between the price paid for each of those Qualified Shares (including any commissions paid in respect thereof) and the price received upon the disposition of those Qualified Shares (without deducting any commissions paid in respect of the disposition) on a LIFO basis;
  - (b) For Qualified Shares not disposed of after the 10<sup>th</sup> trading day after the public correction, an amount equal to the number of Qualified Shares disposed of by an Authorized Claimant, multiplied by the difference between the price paid for each of those Qualified Shares (including any commissions paid in respect thereof determined on a per security basis) and the ten-day volume-weighted average trading price for those Qualified Shares following the public correction.

**GENERAL PRINCIPLES OF THE ADMINISTRATION OF THE SETTLEMENT**

10. The administration process to be established shall:
  - (a) implement and conform to the Plan of Allocation;
  - (b) employ secure, paperless, web-based systems with electronic registration and record keeping, wherever practical, for Claimants to submit their Claim Form and calculation of their Maximum Entitlement (September Disclosure) and/or

Maximum Entitlement (November Disclosure), and to upload their Supporting Documentation;

- (c) allow Claim Forms to be submitted in English and French;
- (d) offer a bilingual (English and French), toll-free telephone helpline; and
- (e) make available a bilingual website (English and French) for Class Members to download Claim Forms and to receive updates and information in regards to notice, claims procedure, definitions, Court documents and contact information.

#### **THE ADMINISTRATOR**

11. The Administrator shall have such powers and rights reasonably necessary to discharge its duties and obligations to implement and administer the Escrow Account and the Plan of Allocation in accordance with their terms, subject to the direction of the Court, including:

- (a) the power to contact Claimants or their representatives to obtain more information about a claim and/or to audit claims;
- (b) if the Administrator reasonably believes that a Claim contains intentional errors the effect of which if not corrected would increase the Distribution to be awarded to a Claimant, the Administrator may disallow the Claim in its entirety;
- (c) if a Claimant fails to provide the Administrator the required calculations for their Maximum Entitlement (September Disclosure) or Maximum Entitlement (November Disclosure) and Supporting Documentation in an organized manner and clear format to allow the Administrator to readily discern the amount of the



Claim and the adjudication of the Claim Form, the Administrator may exercise the right to reject the Claim Form in its entirety; and

- (d) where a Claim Form contains minor omissions or errors, the Administrator may correct such omissions or errors if the information necessary to correct the omission or error is readily available to the Administrator.

#### **THE ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

- 12. The Administrator shall administer the Plan of Allocation pursuant to the guidelines set out herein under the oversight and direction of the Court and shall act as trustee in respect of the monies held within the Escrow Account upon receipt from Class Counsel.
- 13. The Administrator shall, wherever practical, develop, implement and operate an administration system utilizing web-based technology and other electronic systems for the following:
  - (a) receipt of information from the Transfer Agent concerning the identity and contact information of registered holders or beneficial owners of Shares, respectively;
  - (b) Class notification, as required;
  - (c) claim filing and document collection (Claimants must submit their Claims Forms electronically using the online claims administration portal);
  - (d) claim evaluation, analysis, and Reference procedures;
  - (e) distribution analysis and Distributions;
  - (f) *cy près* award distribution, if any, and reporting thereon;
  - (g) Administration Expense payments; and
  - (h) cash management, audit control and reporting thereon.
- 14. The Administrator's duties and responsibilities shall include the following:

- (a) receiving the monies in the Escrow Account from Morganti & Co., P.C. and investing them in trust in accordance with the Agreement;
- (b) preparing any protocols required for submission to and approval of the Court;
- (c) providing notice of: (i) the Second Motion, namely that the Settlement was approved; and (ii) details of how, where, and by when to submit completed Claim Forms;
- (d) providing the hardware, software solutions and other resources necessary for an electronic web-based bilingual claims processing centre to function in a commercially-reasonable manner;
- (e) the online claims administration portal shall contain fields that require Claimants to provide all applicable information and Supporting Documentation as required as part of the Claim, in accordance with this Plan of Allocation;
- (f) providing, training and instructing personnel in such reasonable numbers as are required for the performance of its duties in the most expedient, commercially-reasonable manner;
- (g) developing, implementing and operating electronic web-based systems and procedures for receiving, processing, evaluating and decision-making respecting the claims of Class Members, including making all necessary inquiries to determine the validity of such claims;
- (h) if practicable, providing any Claimant whose Claim Form is not properly completed or does not include some of the required Supporting Documentation, an opportunity to remedy the deficiency as stipulated in the Agreement;

- (i) in order to remedy any deficiency in the completion of a Claim Form, the Administrator may request and require that additional information be submitted by a Claimant who submits a Claim Form. Such Claimant shall have until the later of thirty (30) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within the thirty (30) day period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court, but will in all other respects be subject to, and bound by, the provisions of the Agreement and the releases contained therein;
- (j) the Administrator will not accept nor process any Claim Form that does not have the calculation of Maximum Entitlement completed and accompanied with the required Supporting Documentation;
- (k) making timely assessments of eligibility for compensation and providing prompt notice thereof;
- (l) paying all taxes accruing on the interest earned in the Escrow Account and adding that interest (net of taxes) to the Compensation Fund;
- (m) making Distributions from the Compensation Fund in a timely fashion;
- (n) dedicating sufficient personnel to communicate with a Claimant in English or French as the Claimant elects;
- (o) using its best efforts to ensure that its personnel provide timely, helpful and supportive assistance to Claimants in completing the claims application process and in responding to inquiries respecting claims;
- (p) preparing for, attending and defending its decisions at all References;
- (q) distributing and reporting on any *cy près* awards;

- (r) making payments of Administration Expenses;
  - (s) maintaining a Database with all information necessary to permit the Court to evaluate the progress of the administration, as may, from time to time, be required;
  - (t) reporting to the Court respecting claims received and administered, and Administration Expenses; and
  - (u) preparing such financial statements, reports and records as directed by the Court.
15. The Administrator shall disseminate the Court-approved Second Notice substantially in conformity with the Court-approved Plan of Notice to provide notice of the outcome of the Second Motion.
16. The Administrator shall cause the information in the Database to be secured and accessible from the Website to an individual with a user identification name and password.
17. Information in the Database concerning a claim shall be accessible to the Claimant electronically. Each Claimant shall use a unique personal user identification name and personal password that will permit the Claimant to access only his/her/its own information in the Database.
18. Once a Claim Form and required Supporting Documentation is received by the Administrator, the Administrator shall:
- (a) verify the number of Qualified Shares (September Disclosure) and Qualified Shares (November Disclosure);
  - (b) decide whether the Claimant is eligible to participate in the Distribution;

- (c) confirm or amend the calculation of the Maximum Entitlement (September Disclosure) and/or Maximum Entitlement (November Disclosure) for each Authorized Claimant;
  - (d) calculate the *Pro Rata* Distribution (September Disclosure) and the *Pro Rata* Distribution (November Disclosure); and
  - (e) calculate each Authorized Claimants allocable share of each Distribution.
19. Once the Administrator determines that a Claimant is an Authorized Claimant, the respective number of his, her or its Qualified Shares and his, her or its Maximum Entitlement (September Disclosure) and/or Maximum Entitlement (November Disclosure), and the *Pro Rata* Distribution (September Disclosure) from the Compensation Fund (September Disclosure) and the *Pro Rata* Distribution (November Disclosure) from the Compensation Fund (November Disclosure), the Administrator shall advise the Claimant of the Administrator's decision by posting it on the Claimant's online claim file.
20. The Administrator may deal with Claimants in a manner that is not through an electronic medium, as and when it determines that such a step is feasible and/or necessary. However, in all cases the information acquired concerning Claimants shall be entered into the Database.
21. A decision of the Administrator in respect of a claim and any Claimant's entitlement to participate in or receive a share of the Distribution, subject to the Claimant's right to elect to refer the decision to the Referee for review, will be final and binding upon the Claimant and the Administrator.

**THE REFEREE**

22. The Referee shall have such powers and rights as are reasonably necessary to discharge his or her duties and obligations.
23. The Referee shall establish and employ a summary procedure to review any disputes arising from a decision of the Administrator, and may enter into such mediation and arbitration proceedings as the Referee may deem necessary.
24. All decisions of the Referee shall be in writing and shall be final and conclusive and there shall be no appeal therefrom whatsoever.

**THE PROCEDURE FOR REFERENCE**

25. If a Claimant disagrees with the Administrator's decision relating to eligibility to share in the Distribution, the determination of the number of Qualified Shares, or the amount of his/her/its Maximum Entitlement (September Disclosure) and/or Maximum Entitlement (November Disclosure), a Claimant may elect a Reference by the Referee by delivering a written election for review to the Administrator within fifteen (15) days of receipt of the Administrator's decision.
26. The election for a Reference must set out the basis for the disagreement with the Administrator's decision and attach all documents relevant to the review which have not previously been delivered to the Administrator. This election for a Reference must be accompanied by a certified cheque or money order, payable to the Administrator, in the amount of \$150.
27. Upon receipt of an election for a Reference, the Administrator shall provide the Referee with online access to a copy of:

- (a) the election for a Reference and accompanying documents;
  - (b) the Administrator's decision on eligibility, the number of Qualified Shares and its calculation of the Maximum Entitlement (September Disclosure) and/or Maximum Entitlement (November Disclosure), as applicable; and
  - (c) the Claim Form and Supporting Documentation.
28. The Referee will carry out the Reference in an inexpensive, summary manner. The Referee will provide all necessary procedural directions and the review will be in writing unless the Referee provides otherwise.
29. The Administrator shall participate in the process established by the Referee to the extent directed by the Referee.
30. The Referee shall deliver a written decision to the Claimant and the Administrator. If the Referee disturbs the Administrator's decision relating to eligibility to share in the Distribution, the number of Qualified Shares or his/her/its Maximum Entitlement, the Administrator shall return the \$150 deposit to the Claimant. If the Referee does not disturb the Administrator's decision, the Administrator shall add the \$150 to the Compensation Fund.

#### **ADMINISTRATION EXPENSES**

31. The Administrator shall pay the fees, disbursements, taxes, levies, and other costs of:
- (a) the Administrator;
  - (b) the Referee; and
  - (c) such other persons at the direction of the Court.
- out of the Settlement Amount in accordance with the provisions of the Agreement, the Second Order and any other orders of the Court.

32. The costs of giving the notices required pursuant to the Second Order and the Plan of Allocation are not to be paid by the Administrator from its fee.

**DISTRIBUTION TO AUTHORIZED CLAIMANTS**

33. As soon as practicable after the completion of the claims submission and election for review process, the Administrator will bring a motion to the Court for authorization to make Distributions from the Compensation Fund. In support of this motion, the Administrator will file the Distribution List with the Court in a manner that protects the privacy of persons on the Distribution List.
34. Distributions will be made in Canadian Dollars.
35. No Distribution shall be made by the Administrator until authorized by the Court.
36. No Distribution shall be made by the Administrator in respect of any amount under \$100, and the name(s) of the Authorized Claimant(s) with claims under this amount shall be excluded from the Distribution List in respect of such claims.
37. The Administrator shall make payments to Authorized Claimants by either bank transfer or by cheque at the address provided by the Authorized Claimant or the last known postal address for the Authorized Claimant. If for any reason an Authorized Claimant does not cash a cheque within six (6) months after the date on which the cheque was set to the Authorized Claimant, the Authorized Claimant shall forfeit the right to compensation and the funds shall become available for allocation to other Authorized Claimants on a *pro rata* basis up to each Authorized Claimant's Maximum Entitlement in each Category. No cheques will be reissued.
38. The Administrator may make interim Distributions if authorized by the Court.



39. Each Authorized Claimant whose name appears on the Distribution List shall comply with any condition precedent to Distribution that the Court may impose.
40. The Administrator shall make Distributions from the Compensation Funds forthwith after receipt of authorization from the Court to make Distributions to the Authorized Claimants whose names are on the Distribution List.
41. If the Escrow Account is in a positive balance (whether by reason of tax refunds, uncashed cheques or otherwise) after one hundred eighty (180) days from the date of Distributions of the Compensation Funds to the Authorized Claimants, the Administrator shall allocate such balance among Authorized Claimants whose names are on the Distribution List in an equitable fashion up to the limit of each person's actual loss. The Administrator may wait until a CRA T-5 tax slip for investment income is issued by the Schedule One bank in respect of the Escrow Account before making this second distribution. If there is a balance in the Escrow Account after each Authorized Claimant is paid up to his/her/its actual loss, the remaining funds shall be paid *cy près* to a recipient selected by Class Counsel and approved by the Court.

#### **RESTRICTION ON CLAIMS**

42. Any Class Member who does not submit a Claim Form and required Supporting Documentation with the Administrator on or before the Claims Bar Deadline, will not be permitted to participate in the Distribution. However, Class Counsel and the Administrator may jointly agree to extend the Claims Bar Deadline if, in their opinion, doing so would not adversely affect the efficient administration of the Settlement and it is in the best interests of the Class to do so.

43. Claimants must complete and submit Claim Forms electronically using the online claims portal on or before the Claims Bar Deadline.

**NO ASSIGNMENT**

44. No amount payable under this Plan of Allocation may be assigned without the written consent of the Administrator.

**ADMINISTRATOR'S FINAL REPORT TO THE COURT**

45. Upon the conclusion of the administration, or at such other time as the Court directs, the Administrator shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed by Distribution or otherwise, and may obtain an order from the Court discharging it as Administrator.