

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY THE 4th DAY
JUSTICE EDWARD MORGAN) OF FEBRUARY, 2021

BETWEEN:

ANNE MILLER

Plaintiff

– and –

FSD PHARMA, INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THESE MOTIONS, made by:

- (a) Anne Miller for (i) an order approving the settlement pursuant to s. 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“*CPA*”) and, (ii) approving the Notice, Claim Form, and Plan of Allocation in respect of the Settlement; and
- (b) Class Counsel for the approval of the agreement respecting fees and disbursements between Class Counsel and Anne Miller pursuant to subsection 32(2) of the *CPA*;

were heard on February 4, 2021 at the courthouse located at 130 Queen Street West, Toronto, Ontario.

ON READING the following:

- (a) the notice of motion;
- (b) the Settlement Agreement;

- (c) the affidavits of:
 - (i) Andrew Morganti sworn January 14, 2021;
 - (ii) Anne Miller sworn January 14, 2021; and
 - (iii) Paul Battaglia sworn January 25, 2021.

AND ON HEARING the submissions of counsel for the Parties in the Action;

AND ON BEING ADVISED that:

- (a) the Parties consent to these orders;
- (b) Paul Battaglia of Trilogy Class Action Services consents to being appointed Administrator;
- (c) Avram Joseph consents to being appointed Referee; and
- (d) as of the deadline for objections to and opt-outs from the proposed settlement, no objections or opt-outs have been received;

AND without any admission of liability on the part of any of the Defendant, who denies liability;

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order, the definitions in the Settlement Agreement apply to and are incorporated into this Order and that the following definitions also apply:

- (a) “Claims Bar Deadline” means 5:00 p.m. eastern standard time on June 21, 2021;
- (b) “Class Counsel” means Morganti & Co., P.C.;
- (c) “Fee Agreement” means the agreement between Anne Miller and Morganti & Co., P.C. dated February 21, 2019; and
- (d) “Settlement Agreement” means the settlement agreement made as of October 26, 2020 (without schedules) attached hereto as Schedule 1.

2. **THIS COURT ORDERS AND ADJUDGES** that the Settlement is fair and reasonable and in the best interests of the Plaintiff and Class Members and is approved pursuant to section 29 of the *CPA*.
3. **THIS COURT ORDERS AND ADJUDGES** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
4. **THIS COURT ORDERS AND ADJUDGES** that all provisions of the Settlement Agreement (including the Recitals and Definitions) form part of this Order and are binding upon the Defendant, the Plaintiff and all Class Members, including persons that are minors or mentally incapable, in accordance with the terms thereof.
5. **THIS COURT ORDERS** that:
 - (a) the Settlement Agreement, without schedules, attached as Schedule 1 to this Order, is approved and shall be implemented in accordance with its terms;
 - (b) the Second Notice, generally in the form attached as Schedule 2 to this Order, is approved;
 - (c) the Plan of Notice, generally in the form attached as Schedule 3 to this Order, is approved;
 - (d) the Plan of Allocation, generally in the form attached as Schedule 4 to this Order, is approved; and
 - (e) the Claim Form, generally in the form attached as Schedule 5 to this Order, is approved.
6. **THIS COURT ORDERS** that Paul Battaglia is appointed, until further order of the court:
 - (a) as the Administrator on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation; and
 - (b) to manage the Escrow Account and to hold, invest and disburse the Escrow Settlement Amount in accordance with the terms of the Settlement Agreement, the Plan of Allocation and this Order.

7. **THIS COURT ORDERS** that the Administrator shall be paid from the Escrow Account a fee in an amount to be approved by the court.
8. **THIS COURT ORDERS** that if the Settlement Agreement is terminated, the Administrator may apply to the court pursuant to the terms of the Settlement Agreement for directions relating to the amount it is to be paid for the services it rendered to the date of termination.
9. **THIS COURT ORDERS** that the Administrator may implement a procedure permitting brokers to make claims on behalf of their clients if they are authorized to do so.
10. **THIS COURT ORDERS** that Avram Joseph of Avram Joseph Law is appointed as Referee, until further order of the court, on the terms and conditions and with the powers, duties and responsibilities set out in the Settlement Agreement and Plan of Allocation.
11. **THIS COURT ORDERS** that the Class Members shall be given notice of the approval of the Settlement Agreement, the Plan of Allocation, and the Claims Bar Deadline substantially in the form of the Second Notice published and disseminated in accordance with the Plan of Notice, and shall constitute good and sufficient service upon Class Members of notice of this Order and approval of the Settlement.
12. **THIS COURT ORDERS** the payment of a \$5,000 honorarium to the representative plaintiff, Anne Miller, from the Settlement Funds.
13. **THIS COURT ORDERS AND DECLARES** that the notice to Class Members described in paragraph 11 satisfies the requirements of section 17(6) of the *CPA*.
14. **THIS COURT ORDERS** that forthwith after publication and distribution of the Second Notice in accordance with the Plan of Notice, Class Counsel shall file with the court an affidavit

confirming its compliance with its obligations concerning the publication and distribution of the Second Notice as required by the Plan of Notice.

15. **THIS COURT ORDERS AND DECLARES** that this Order is binding upon each Class Member who has not opted-out in accordance with the terms of this Order, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.

16. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Releasors shall release and discharge, and shall be conclusively deemed to have fully, finally and forever released and discharged the Releasees from the Released Claim.

17. **THIS COURT ORDERS** that the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person (including on behalf of any Opt-Out Party), any action, suit, cause of action, claim or demand against any Releasee or any other person (including but not limited to the auditors) who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto.

18. **THIS COURT ORDERS** that to participate in this Settlement, a Class Member must file a Claim Form with the Administrator on or before the Claims Bar Deadline unless the Administrator and Class Counsel acting reasonably and in the best interests of Class Members agree to extend the deadline for all Class Members.

19. **THIS COURT ORDERS** that the Plaintiff, Class Counsel, the Referee or the Administrator may apply to the court for directions in respect of the implementation and/or the administration of the Plan of Allocation or relating to any other matter.

20. **THIS COURT ORDERS** that the Plaintiff and the Defendant may apply to the court for directions in respect of the termination of the Settlement Agreement in accordance with its terms or any matter relating thereto.

21. **THIS COURT ORDERS** that no person may bring any action or take any proceedings against the Plaintiff, Defendant, Administrator, the Referee, or their employees, agents, partners, lawyers, associates, representatives, successors or assigns for any matter in any way relating to the administration of the Plan of Allocation or the implementation of this Order except with leave of the court.

22. **THIS COURT ORDERS** that:

- (a) the Fee Agreement between Anne Miller and Class Counsel is approved; and
- (b) Class Counsel Fees, in the amount of thirty (30) percent of CAD \$5,500,000, plus disbursements, plus taxes shall be paid from the Escrow Account forthwith after the Effective Date.

23. **THIS COURT ORDERS** that in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void.

24. **THIS COURT ORDERS** that upon the Effective Date, the Action shall be dismissed against the Defendant with prejudice and without costs.

25. **THIS COURT ORDERS AND DECLARES** that all persons and entities provided with notice of this motion shall be bound by the declarations made in, and the terms of, this Order.



THE HONOURABLE JUSTICE EDWARD MORGAN

