

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
 )  
JUSTICE P. PERELL )

TUESDAY, THE 5<sup>th</sup>  
DAY OF JULY, 2022

B E T W E E N:

DARRYL GEBIEN

Plaintiff

and

APOTEX INC., APOTEX PHARMACEUTICAL HOLDINGS, INC., BRISTOL-MYERS SQUIBB CANADA, BRISTOL-MYERS SQUIBB COMPANY, PALADIN LABS, ENDO PHARMACEUTICALS INC., ENDO INTERNATIONAL PLC, JANSSEN INC., JOHNSON & JOHNSON, PHARMASCIENCE INC., JODDES LIMITED, PRO DOC LIMITEE, THE JEAN COUTU GROUP (PJC) INC., MYLAN PHARMACEUTICALS ULC, MYLAN N.V., PURDUE PHARMA INC., PURDUE PHARMA L.P., THE PURDUE FREDERICK COMPANY INC., PURDUE FREDERICK INC., RANBAXY PHARMACEUTICALS CANADA INC., SUN PHARMACEUTICAL INDUSTRIES LTD., HIKMA LABS INC., HIKMA PHARMACEUTICALS PLC, WEST-WARD COLUMBUS INC., SANIS HEALTH INC., SANDOZ CANADA INC., SANDOZ INTERNATIONAL GMBH, TEVA CANADA LIMITED, TEVA PHARMACEUTICALS USA, INC., TEVA PHARMACEUTICAL INDUSTRIES LTD., ACTAVIS PHARMA COMPANY, VALEANT CANADA LP/ VALEANT CANADA S.E.C, BAUSCH HEALTH COMPANIES INC., AMERISOURCEBERGEN CANADA CORPORATION, KOHL + FRISCH DISTRIBUTION INC., NU-QUEST DISTRIBUTION INC., ABBOTT LABORATORIES INC. LIMITED; and PROCURITY INC.

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER**

THESE MOTIONS: (1) made by the Defendants listed on Schedule A hereto (the “Moving Defendants”), for an order pursuant to section 29.1(1) of the *Class Proceedings Act, 1992*, dismissing this action for delay and other relief, and (2) made by the Plaintiff for a *nunc pro tunc*

order, effective September 30, 2021, setting a certification motion date and timetable leading to the motion, were both heard this day by Zoom videoconference.

ON READING the Notice of Motion of the Moving Defendants and Affidavit of Lesley DeBruyn sworn December 21, 2021 and the exhibits thereto, and the Notice of Motion of the Plaintiff and Affidavit of Darryl Gebien sworn February 10, 2022 and the exhibits thereto, and on reviewing the supplemental motion materials, and on hearing the submissions of counsel for certain of the Moving Party Defendants and the Plaintiff, with all parties having been properly served as evidenced by the affidavits of service filed with the Court,

AND ON BEING ADVISED that the motions have been resolved on the following terms, and that this Order and its terms are agreed to and consented to by the Plaintiff and by the Moving Defendants listed on Schedule A hereto, and that the Defendants listed on Schedule B hereto take no position with respect to the motions or this Order, and that this proceeding has been dismissed as against Sandoz International GMBH, and on hearing the submissions of the lawyer(s) for the parties,

1. THIS COURT ORDERS that:

- (a) The Plaintiff and his counsel shall take all steps required to have the following proceedings discontinued with prejudice and without costs, as soon as practicable:
  - (i) *Gebien v. Apotex Inc., et al*, in The Queen's Bench, Winnipeg Centre with the Court File No. CI 21-01-33888, and
  - (ii) *Tryon v. Apotex Inc., et al*, in The Queen's Bench, Winnipeg Centre with the Court File No. CI 22-01-34320;

- (b) Conditional upon the discontinuances of the Manitoba proceedings referred to above in (a) being filed, and if required approved, and being effective and final:
- (i) the Moving Defendants' motion pursuant to section 29.1 shall be dismissed without costs;
  - (ii) the Plaintiff's motion for a *nunc pro tunc* timetable order shall be dismissed without costs;
  - (iii) This proceeding shall be deemed, for all purposes other than in relation to applicable limitation periods, to have been commenced on October 2, 2020. Amendments made to the Ontario *Class Proceedings Act, 1992*, pursuant to Bill 161, in force as of October 1, 2020, shall apply to this proceeding including without limitation:
    - (1) Section 5(1.1) respecting requirements for certification;
    - (2) Section 4.1 respecting the early resolution of issues, and
    - (3) Section 30 respecting appeals; and
  - (iv) The following timetable is established, subject to future agreement of the parties to revise and/or subject to further order:

the defendants shall advise by October 31, 2022, whether any are bringing preliminary motions, after which the parties shall agree upon and file a further timetable (or, failing agreement, a further timetable will be established by the court), with the certification motion, in any event, not to be scheduled to be heard prior to December 31, 2023.

2. THIS COURT ORDERS that this Order does not bind Purdue Pharma L.P. or The Purdue Frederick Company Inc., pursuant to the terms of the stays of proceeding set forth in the Initial Recognition Order (Foreign Main Proceeding) dated September 19, 2019, the Supplemental Order (Foreign Main Proceeding) dated September 19, 2019, and the Order (Re: Related Party Stay) dated December 30, 2019, and any subsequent extensions or amendments to those orders.

3. THIS COURT ORDERS that this Order does and shall not have any effect upon any rights or ability of any of the parties, including those listed on Schedule B hereto, to challenge the jurisdiction of this Court on any basis in respect of this proceeding.

4. THIS COURT ORDERS that this Order and all its provisions are effective from the date it is made without any need for entry and filing.

*Perrell, J.*

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**SCHEDULE "A" - MOVING DEFENDANTS (CONSENT)**

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**DARRYL GEBIEN**  
Plaintiff

-and-

**APOTEX INC. et al.**  
Defendants

Court File No. CV-19-00620048-00CP

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
**TORONTO**

**ORDER**

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