

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: BLOOD REAGENTS ANTITRUST  
LITIGATION

MDL Docket No. 09-2081

THIS DOCUMENT RELATES TO ALL  
ACTIONS

HON. JAN E. DUBOIS

**[REDACTED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY  
APPROVAL OF PROPOSED SETTLEMENT WITH ORTHO-CLINICAL  
DIAGNOSTICS, INC., PRELIMINARY APPROVAL OF THE PROPOSED  
DISTRIBUTION PLAN, AND AUTHORIZATION TO DISSEMINATE NOTICE**

Upon consideration of the Plaintiffs' Motion for Preliminary Approval of Proposed Settlement with Ortho-Clinical Diagnostics, Inc., Preliminary Approval of the Proposed Distribution Plan, and Authorization to Disseminate Notice (the "Motion") and the accompanying Memorandum;

WHEREAS, this multidistrict litigation involves allegations of a conspiracy in restraint of trade among manufacturers of traditional blood reagents, including Ortho-Clinical Diagnostics, Inc. ("Ortho"), and Ortho denies liability and the existence of any conspiracy in violation of the Sherman Act or any other law;

WHEREAS, discovery has proceeded on issues relating to conspiracy, and Plaintiffs have had an opportunity to review extensive document productions, numerous depositions, and the Court's summary judgment, class certification and *Daubert* rulings;

WHEREAS, Ortho denies any wrongdoing or liability relating to any of Plaintiffs' allegations, and it is agreed among Ortho and Plaintiffs that the Settlement Agreement shall not

constitute, and shall not be construed as or deemed to be evidence of or an admission of any fault, wrongdoing, or liability by Ortho or any other person or entity; and

WHEREAS, the Court has considered the Settlement Agreement, the proposed forms of notice, and the other documents submitted in connection with Plaintiffs' request for preliminary approval of the Settlement Agreement, and good cause appearing therefore;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. The Motion is **GRANTED**.
2. Terms used in this Order that are defined in the Settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreement.

**Preliminary Approval of the Settlement and Distribution Plan**

3. The Court finds that: (a) the proposed Settlement with Ortho, as set forth in the Settlement Agreement, is sufficiently fair, reasonable and adequate to authorize the dissemination of notice of the Settlement to the Class and to schedule a fairness hearing to determine whether to grant final approval of the proposed Settlement under Fed. R. Civ. P. 23(e); (b) the Settlement Agreement was negotiated at arm's-length by experienced counsel acting in good faith, and with the assistance of an experienced mediator; and (c) there has been adequate opportunity for discovery for experienced counsel to evaluate the claims and risks at this stage of the litigation.

4. The Court finds that the proposed Distribution Plan is sufficiently fair, reasonable, and adequate to disseminate notice to the Class, which includes all members of the previously certified Immucor Settlement Class.

5. The Court finds that preliminary approval is appropriate and hereby grants preliminary approval of the Settlement and Distribution Plan subject to final determination following notice and hearing.

**Identification of the Class, Class Representatives, and Class Counsel**

6. The Court previously certified the following class (the “Class”) for all purposes, including settlement:

All individuals and entities who purchased Traditional Blood Reagents in the United States directly from Defendants, at any time during the period from and including November 4, 2000 through and including October 19, 2015. Excluded from the Class are Defendants, and their respective parents, subsidiaries and affiliates, as well as any federal governmental entities.

7. The Court appointed Plaintiffs F. Baragaño Pharmaceuticals, Inc., Community Medical Center Health Care System, Professional Resources Management of Crenshaw LLC d/b/a Crenshaw Community Hospital, Douglas County Hospital, Health Network Laboratories L.P., Larkin Community Hospital, Legacy Health System, Mary Hitchcock Memorial Hospital, Inc., Regional Medical Center Board d/b/a Northeast Alabama Regional Medical Center, Hospital Sisters Health System,<sup>1</sup> Schuylkill Medical Center,<sup>2</sup> and Warren General Hospital as the Class Representatives.

8. The Court appointed the law firm of Spector Roseman & Kodroff, P.C. as Class Counsel.

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<sup>1</sup> Hospital Sisters Health System (“HSHS”) is comprised of the following hospitals Sacred Heart Hospital of the Hospital Sisters of the Third Order of St Francis, St Anthony’s Memorial Hospital, of the Hospital Sisters of the Third Order of St Francis, St Elizabeth’s Hospital of the Hospital Sisters of the Third Order of St Francis, St Francis Hospital, of the Hospital Sisters of the Third Order of St Francis, St John’s Hospital of the Hospital Sisters of the Third Order of St Francis, St Joseph’s Hospital, Breese, of the Hospital Sisters of the Third Order of St Francis, St Joseph’s Hospital of the Hospital Sisters of the Third Order of St Francis (Chippewa Falls), St Joseph’s Hospital, of the Hospital Sisters of the Third Order of St Francis (Highland), St Mary’s Hospital Medical Center of Green Bay, Inc , St Mary’s Hospital, Streator, of the Hospital Sisters of the Third Order of St Francis, St Mary’s Hospital, Decatur, of the Hospital Sisters of the Third Order of St Francis, St Nicholas Hospital of the Hospital Sisters of the Third Order of St Francis, and St Vincent Hospital of the Hospital Sisters of the Third Order of St Francis

<sup>2</sup> Schuylkill Medical Center (“SMC”) is comprised of Schuylkill Medical Center – East Norwegian Street and Schuylkill Medical Center – South Jackson Street

**CAFA Notice**

9. Within ten (10) days after filing with the Court the motion papers seeking preliminary approval of the Settlement, Ortho shall provide notice of the Settlement to the appropriate state and federal officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

**Notice to Members of the Class**

10. The Court finds that the proposed Settlement with Ortho, as set forth in the Settlement Agreement, subject to final determination following proper notice and a fairness hearing, is sufficiently fair, reasonable, and adequate to authorize dissemination of notice to the Class.

11. The Court approves the form and content of the: (a) long-form notice of the proposed settlement and distribution plan, attached as Exhibit C to the accompanying Memorandum; and (b) banner advertisement of the proposed settlement and distribution plan, attached as Exhibit D to the accompanying Memorandum (collectively “Notices”).

12. The Court finds that the dissemination of the Notices in the manner set forth herein constitutes the best notice practicable under the circumstances; is valid, due, and sufficient notice to all persons entitled to notice; and complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process.

13. By **August 2, 2018**, the long-form notice, in substantially the same form as Exhibit C to the Memorandum, shall be mailed by first class mail, postage prepaid, to all Class Members whose names and addresses can be derived from the electronic transactional sales information produced by Defendants. The long-form notice shall also be provided to all persons who request

it. In addition, copies of the long-form notice shall be posted on the Internet on a website dedicated to this litigation.

14. Within two weeks of the provision of individual mailed notice, banner advertisements, in substantially the same form as Exhibit D to the Memorandum, shall be placed in two different editions of the *AABB SmartBrief*, a daily e-newsletter which is distributed to over 11,000 subscribers by a significant trade organization and licensing entity in the blood bank industry.

15. By **September 12, 2018**, Class Counsel shall file with the Court their motion for final approval of the Settlement, along with proof that notice was provided to Class Members as directed by this Order. On the same date, Class Counsel will file all briefs and materials in support of the proposed plan of distribution (including a sample claim form), petition for fees and costs and any application for service awards for the class representatives (the "Distribution Plan").

16. Any Class Member who objects to the proposed Settlement or Distribution Plan must do so in writing, postmarked no later than **September 27, 2018**, and shall otherwise comply with the requirements set forth in the long-form notice.

17. Class Counsel shall file with the Court and serve on the parties their responses to any objection(s) to the Settlement or the Distribution Plan on or before **October 9, 2018**.

18. The Court will hold a fairness hearing on **October 24, 2018, at 2:00 p.m.**, at the James A. Byrne United States Courthouse, Courtroom 12-B, 601 Market Street, Philadelphia, PA, to determine the fairness, reasonableness, and adequacy of the proposed Settlement and to consider whether to approve the proposed Distribution Plan. Any Class Member who follows the procedure set forth in the long-form notice may appear and be heard. The fairness hearing may be rescheduled, adjourned or continued without further notice to the Class Members.

**Other Provisions**

19. In the event that the Settlement is validly terminated as provided for in the Settlement Agreement, all proceedings in connection with the Settlement and any orders regarding the Settlement shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of the Plaintiffs, Ortho, and Class Members.

20. In the event that the Settlement does not become final and effective for any reason, nothing in the Settlement Agreement, this Order, or proceedings or orders regarding the Settlement shall be construed to prejudice any position that any of the parties may assert in any aspect of this litigation.

21. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings in connection with it, shall be construed as an admission or concession by Ortho of the truth of any allegations in the litigation, or of any fault or wrongdoing of any kind, or by Plaintiffs of any lack of merit of Plaintiffs' allegations.

22. The Court approves the establishment of the escrow account under the Settlement Agreement as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. Class Counsel and their designees are authorized to expend funds from the escrow account to pay Taxes, Tax Expenses and Notice and Administration Costs, as set forth in the Settlement Agreement.

23. Kurtzman Carson Consultants LLC is approved to serve as settlement administrator for the purpose of issuing notice.

24. The litigation against Ortho is stayed except as provided for in the Settlement Agreement and to the extent necessary to obtain final approval of the Settlement.

Dated this <sup>12<sup>th</sup></sup> day of July, 2018

BY THE COURT:

  
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HONORABLE JAN E. DUBOIS