

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HOLLY EMMETT

PLAINTIFF

AND:

**APOTEX INC.,
LABORATORIOS LEÓN FARMA**

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

SETTLEMENT AGREEMENT

Dated _____, 2022

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RECITALS

(a) **WHEREAS** Holly Nunn (nee Emmett), in her capacity as plaintiff (the “Plaintiff”), and the defendants, Apotex Inc., and Laboratorios León Farma (the “Defendants”) (collectively, the “Parties”), hereby enter into this Settlement Agreement (the “Settlement Agreement”) providing for settlement of the application described below, pursuant to the terms and conditions set forth below, subject to approval of the Court;

(b) **AND WHEREAS** a proposed multi-jurisdictional class proceeding was commenced by the Plaintiff, in the Supreme Court of British Columbia, Court File Number No. S189260 (the “BC Proceeding”) against the Defendants pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, in which it is alleged, among other things, that a certain oral contraceptive tablet (“Alysená”), manufactured by Laboratorios León Farma and distributed and sold in Canada by Apotex Inc., was defective due to chipping or edgewear in some of the pills, which allegedly resulted in damage or loss to Class Members;

(c) **AND WHEREAS** a proposed multi-jurisdictional class proceeding was also commenced by Mathew Baker and Katie-Lynne O’Connell pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, in the Ontario Superior Court of Justice, Court File No. 18-595393-CP00 (the “Ontario Action”), that relates to the same or similar subject matter as the BC Proceeding;

(d) **AND WHEREAS** class counsel in the BC Proceeding and in the Ontario Action chose to work together and the Parties have proceeded on the basis that the BC

Proceeding would proceed on behalf of a proposed national class and that the Ontario Action would be presumptively stayed;

(e) **AND WHEREAS** the Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any of the allegations of breach of duty or unlawful conduct alleged in either the BC Proceeding or the Ontario Action, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the BC Proceeding and the Ontario Action;

(f) **AND WHEREAS** the Plaintiff, Class Counsel and the Defendants agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission by or evidence against the Defendants or evidence of the truth of any of the Plaintiff's allegations against the Defendants, which allegations are expressly denied by the Defendants;

(g) **AND WHEREAS** the Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Defendants by the Plaintiff and the Class in the BC Proceeding or the Ontario Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

(h) **AND WHEREAS** Counsel for the Defendants and Class Counsel have engaged in arm's length settlement discussions and negotiations, including with the assistance of a mediator, resulting in this Settlement Agreement;

(i) **AND WHEREAS** as a result of these settlement discussions and negotiations, the Defendants and the Plaintiff have entered into this Settlement

Agreement, which embodies all of the terms and conditions of the settlement between the Defendants and the Plaintiff, both individually and on behalf of the Class the Plaintiff seeks to represent, subject to approval of the Court;

(j) **AND WHEREAS** Class Counsel, on their own behalf and on behalf of the Plaintiff, the proposed Class, and the Public Health Insurers, have reviewed and fully understand the terms of this Settlement Agreement, and based on their analysis of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expenses associated with prosecuting the BC Proceeding and the Ontario Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the proposed Class;

(k) **AND WHEREAS** the Parties therefore wish to resolve on a national basis, without admission of liability, the BC Proceeding and Ontario Action as against the Defendants;

(l) **AND WHEREAS** the Parties consent to certification of the BC Proceeding as a class proceeding, and to the Class, and to the Common Issues for Settlement Purposes and the Class Period in respect of the BC Proceeding solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approval by the Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

(m) **AND WHEREAS** the Plaintiff asserts that she is an adequate class representative for the Class she seeks to represent and will seek to be appointed as representative plaintiff for the Class;

(n) **AND WHEREAS** the Parties intend to pursue the approval of this Settlement Agreement through the Supreme Court of British Columbia and leave of the Ontario Court to discontinue the Ontario Action;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the BC Proceeding be settled and dismissed with prejudice as to the Defendants, and the Ontario Action be discontinued with prejudice as to the Defendants, all without costs as to the Plaintiff, the Class she seeks to represent, and the Defendants, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

1. The terms herein have the following definitions, including in the Recitals and Schedules hereto:

- (a) **Acknowledgement Letter** means a letter of the Claims Administrator to a Claimant, acknowledging receipt of the Claimant's Claim Package. The Acknowledgement Letter is to be sent within seven (7) days of receipt of the Claimant's Claim Package.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (c) **Affected Lots** means lots of Alysena purchased in Canada and ingested between December 22, 2017 and March 8, 2018.

- (d) **Alysen** means the prescription combination oral contraceptive containing levonorgestrel and ethinyl estradiol, manufactured, packaged, and labelled at Laboratorios León Farma's facility in Spain, and distributed and sold in Canada by Apotex Inc.
- (e) **Approved Claim** means a Claimant's Claim for a Compensatory Payment approved by the Claims Administrator.
- (f) **BC Plaintiff** means in respect of the BC Proceeding, the named plaintiff, Holly Nunn (nee Emmett).
- (g) **BC Proceeding** means the proceeding commenced by the Plaintiff, Holly Nunn (nee Emmett), in the Supreme Court of British Columbia, Court File Number No. S189260 (the "BC Proceeding") against Apotex Inc., and Laboratorios León Farma, pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- (h) **Certification and Notice Approval Hearing** means the hearing on the application before the Court for the certification of the BC Proceeding as a class action for settlement purposes and the approval of the form, content, and manner of dissemination of the Notice.
- (i) **Claim** means the claim of a Class Member for a Compensatory Payment.
- (j) **Claim Determination Decision** means a written decision of the Claims Administrator pronouncing a Claimant's eligibility for Compensatory Payments under the Settlement Agreement.
- (k) **Claim Package** means a package provided by the Claims Administrator, to be submitted by a Claimant pursuant to the Claims Administration Procedure.
- (l) **Claim Period** means the period commencing on the Effective Date, and expiring at 12:01am, PST, on the one hundred and twentieth (120) day after the Effective Date.
- (m) **Claimant** means any Class Member who submits a Claim Package during the Claim Period.
- (n) **Claims Administration Procedure** means the procedure described in paragraphs 16-28 of the Settlement Agreement.
- (o) **Claims Administrator** means the firm proposed by Class Counsel, Epiq Class Action Services Canada Inc., and appointed by the Court to administer the Claims Administration Procedure in accordance with the provisions of this Settlement Agreement.
- (p) **Class** means all women, resident in Canada, who were prescribed Alysen 21 or Alysen 28 for the purposes of contraceptive protection and who

purchased and ingested said medication between February 9, 2017 and October 31, 2019, other than Persons who validly opt-out before the Opt-Out Deadline.

- (q) **Class Counsel** means Rice Harbut Elliott LLP and Merchant Law Group LLP.
- (r) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the BC Proceeding.
- (s) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon.
- (t) **Class Members** means members of the Class who do not opt-out of this action.
- (u) **Class Period** means the period of time between February 9, 2017 and October 31, 2019.
- (v) **Common Issues for Settlement Purposes** means the common issues listed in Schedule "A".
- (w) **Compensatory Payment** means a payment made to a Claimant pursuant to the categories specified in paragraphs 30(a)(i)-(iii) of this Settlement Agreement.
- (x) **Counsel for the Defendants** means:
 - (i) with respect to Apotex Inc., Lerners LLP and their agent Farris LLP;
 - (ii) with respect to Laboratorios León Farma, McCarthy Tétrault LLP and their agent Nash Johnston LLP.
- (y) **Court** means the Supreme Court of British Columbia.
- (z) **Date of Execution** means the date on which the Parties have executed this Settlement Agreement.
- (aa) **Defendants** means Apotex Inc., and Laboratorios León Farma.
- (bb) **Deficiency Letter** means a letter of the Claims Administrator advising the Claimant of any deficiencies in their Claim Package. The Deficiency Letter is to be sent within ten (10) days of receipt of the Claimant's Claim Package.
- (cc) **Effective Date** means the date when Final Orders have been received from the Court approving this Settlement Agreement and from the Ontario Court discontinuing the Ontario Action.
- (dd) **Final Order** means a final order, judgment or equivalent decree entered by:

- (i) the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals; and
 - (ii) the Ontario Court discontinuing the Ontario Action, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.
- (ee) **Final Report** means a report, prepared by the Claims Administrator, setting out, *inter alia*:
 - (i) the number and most recent addresses of the Claimants;
 - (ii) the number of Approved Claims;
 - (iii) the number of Claims rejected by the Claims Administrator; and
 - (iv) the Compensatory Payment paid to each Class Member, by category.
- (ff) **Final Settlement Approval Order** means an order of the Court approving the Settlement Agreement pursuant to section 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- (gg) **Notice** means the notice in the form attached hereto as Schedule “B”, and approved by the Court, to be distributed to the Class Members, in advance of the Settlement Approval Hearing, in respect of (1) the certification of the BC Proceeding as a class proceeding as against the Defendants for settlement purposes; (2) the right to opt out of the BC Proceeding and Objection and Notice of Intention to Appear at the Settlement Approval Hearing; and (3) the date and time of the Settlement Approval Hearing. If this Settlement Agreement is approved, Class Members will receive further notice in the form attached as Schedule “C”, and approved by the Court, to be distributed to the Class Members, after the Settlement Approval Hearing, in respect of: (1) the approval of this Settlement Agreement; and (2) the process by which Class Members may apply to obtain compensation.
- (hh) **Objection and Notice of Intention to Appear** means an objection to the Settlement Agreement of a Class Member, and a statement of whether they intend to appear and make submissions at the Settlement Approval Hearing as set out in paragraphs 51-55.
- (ii) **Objection Deadline** means the date which is sixty (60) days after the date on which the Notice is first published, which is for the purpose of filing an Objection and Notice of Intention to Appear at the Settlement Approval Hearing.

- (jj) **Ontario Action** means the proceeding commenced by Mathew Baker and Katie-Lynne O'Connell, pursuant to the *Class Proceedings Act, 1992* in the Ontario Superior Court of Justice, Court File No. 18-595393-CP00, related to the same or similar subject matter as the application herein.
- (kk) **Ontario Counsel** means in respect of the Ontario Action, Merchant Law Group LLP.
- (ll) **Ontario Court** means the Ontario Superior Court of Justice.
- (mm) **Ontario Plaintiffs** mean Mathew Baker and Katie-Lynne O'Connell, the named plaintiffs in the Ontario Action.
- (nn) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the Notice is first published.
- (oo) **Opt-Out Form** means a confirmation of a Class Member to opt-out of this Proceeding as set out in paragraph 45.
- (pp) **Party and Parties** means the Defendants, the Plaintiff, and, where necessary, the Class Members.
- (qq) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (rr) **Plaintiff** means the BC Plaintiff, Holly Nunn (nee Emmett).
- (ss) **Proceeding** means the application commenced by the Plaintiff, Holly Nunn, in the Supreme Court of British Columbia, Court File Number No. S189260 (the "BC Proceeding") against Apotex Inc., and Laboratorios León Farma, pursuant to the *Class Proceedings Act, R.S.B.C. 1996, c. 50*.
- (tt) **Public Health Insurers or PHIs** means any statutory Canadian, provincial or territorial health or medical care body, plan, commission or other entity, including government agency or ministry (for example, the Minister of Health of British Columbia), which is specifically empowered by its respective enabling legislation to make subrogated claims to recover the costs of providing healthcare or other valid medical services to Class Members respecting Released Claims.
- (uu) **Public Health Insurers Payments or PHI Payments** means a payment made to the PHIs pursuant to the categories specified in paragraphs 30(b)(i)-(ii).

- (vv) **Public Health Insurers Report** means a report prepared by the Claims Administrator, setting out any subrogated claims made by the Public Health Insurers with respect to Claimants who have been awarded a Compensatory Payment, setting out the total number of claims received by category, and the total amounts payable by category to each Public Health Insurer, to be broken out by province and/or territory.
- (ww) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, including assigned whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, liquidated or unliquidated, in law, under statute or in equity, that the Plaintiff or Class Members ever had, now have or hereafter can, shall, or may ever have, relating in any way to any conduct related to, arising from, or described in the Proceeding.
- (xx) **Releasees** means, jointly and severally, individually and collectively, the Defendants and each of their past and present parents, subsidiaries, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the foregoing have been, or are now, affiliated, and each of their respective past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, and insurers, and the predecessors, successors, heirs, executors, administrators and assigns of any of the foregoing;
- (i) any and all suppliers of components, materials, services, and technology used in the manufacture of Alysena including the labelling and packaging thereof, and their respective affiliates, divisions, parents, predecessors, subsidiaries, successors, and trustees, and each of their respective agents, directors, employees, insurers, lawyers, officers, and current and former shareholders;
 - (ii) all distributors of Alysena including wholesale distributors, private label distributors, retail distributors, hospitals and clinics;
 - (iii) any other person against whom the Class Members could attempt to assert any claim, liability, or right to payment arising out of or related in any way to the packaging of Alysena, whether as a joint tortfeasor or otherwise, under any theory of law or equity; and
 - (iv) any past, present or future officer, director, shareholder, subsidiary, employee, agent, servant, attorney, predecessor, trustee, successor or assignee of any of the above.
- (yy) **Releasers** means, jointly and severally, individually, and collectively, the Plaintiff and the Class Members, and all of their respective heirs, executors,

trustees, administrators, assigns, attorneys, representatives, partners, and insurers, any party with a subrogated right of action, and their predecessors, successors, heirs executors, trustees, administrators, and assignees.

- (zz) **Representative Plaintiff** means Holly Nunn (nee Emmett).
- (aaa) **Settlement Agreement** means this agreement, including the recitals, and schedules.
- (bbb) **Settlement Approval Hearing** means the hearing at which the Parties seek the Final Settlement Approval Order and approval of Class Counsel Fees and Class Counsel Disbursements.
- (ccc) **Special Circumstances Compensation Fund** means a fund to be paid for by the Defendants for the purpose of being distributed to Class Members who are in special circumstances as specified in this Settlement Agreement.
- (ddd) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Class Counsel or the Claims Administrator, if appointed, for the benefit of the Class Members or the Defendants, as provided for in this Settlement Agreement.

SECTION 2 – SETTLEMENT APPROVAL

2.1 Best Efforts

2. Upon the execution of the Settlement Agreement, Class Counsel shall use their best efforts to implement its terms and to secure the prompt, complete and final dismissal, with prejudice, of the BC Proceeding against the Defendants and to secure the prompt and complete discontinuance with prejudice, of the Ontario Action, with leave of the Ontario Court, and without costs to the Defendants.

2.2 Application Seeking Certification and Approval of Notice

3. As soon as practicable after the Date of Execution, the Plaintiff shall bring an application before the Court, for orders certifying the BC Proceeding for settlement purposes only and approving the Notice.

4. The order certifying the BC Proceeding for settlement purposes and approving the Notice and certifying the BC Proceeding shall be substantially in the form attached as Schedule “D”.

2.3 Application Seeking Approval of the Settlement Agreement

5. The Plaintiff shall make best efforts to bring an application before the Court for an order approving this Settlement Agreement within two weeks after the expiration of the Opt-Out Deadline and Objection Deadline or as soon as practicable thereafter.

6. The order approving this Settlement Agreement shall be substantially in the form attached as Schedule “E”.

2.4 Pre-Application Confidentiality

7. Until the date on which the action is certified and Notice is approved, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

2.5 Settlement Agreement Effective

8. This Settlement Agreement shall only become final and binding on the Effective Date.

SECTION 3 – CLAIMS ADMINISTRATOR AND CLAIMS ADMINISTRATION PROCEDURE

3.1 Appointment and Role of the Claims Administrator

9. The Claims Administrator shall be responsible for:

- (a) receiving, reviewing, and creating and storing electronic copies of every submitted Claim Package;
- (b) setting up and maintaining a website to disseminate information about the Claims Administration Procedure, to answer commonly asked questions, and to publish the Settlement Agreement and related documentation;
- (c) periodically preparing a report for Class Counsel and Counsel for the Defendants summarizing the number of Claim Packages received on an anonymous basis;
- (d) providing notices of Claim and other matters required by the Settlement Agreement to Public Health Insurers;
- (e) preparing and sending Acknowledgement Letters, Deficiency Letters, Claim Determination Decisions, lists of each Claimant with an Approved Claim authorized for a Compensatory Payment, and any other necessary correspondence or communications to, from, or between Claimants, Class Counsel, Public Health Insurers, and Counsel for the Defendants, as required by, or incidental to the administration of the Settlement Agreement;
- (f) reporting to Counsel for the Defendants the total number of Claims received by category, calculating any necessary pro rata reductions, and the total amounts payable by category and requisitioning funds to pay Compensatory Payments, Public Health Insurer Payments, and any other amounts under the Settlement Agreement;
- (g) distributing the requisitioned funds to pay Compensatory Payments to Claimants with an Approved Claim and any other amounts under the Settlement Agreement,
- (h) distributing the requisitioned funds to pay the Public Health Insurer Payments to the Public Health Insurers, and
- (i) anything that is required by, or incidental to, the duties of the Claims Administrator, described in the Settlement Agreement.

10. Any information provided by or regarding Class Members, or otherwise obtained pursuant to the Settlement Agreement, shall be kept strictly confidential and shall not be disclosed except to appropriate persons, and only to the extent necessary to process a Claim or to provide benefits under the Settlement Agreement, as otherwise expressly provided for in the Settlement Agreement, or as required by law.

11. The Claims Administrator and any persons appointed by them to assist in the administration of the Settlement Agreement shall execute a confidentiality agreement, in a form satisfactory to the Parties, pursuant to which they shall agree to keep confidential any information whatsoever concerning a Claim, except information that is required to be disclosed to the Public Health Insurers, as specified herein.

12. The Claims Administrator shall institute and maintain strict internal procedures to reasonably protect the identity of all Claimants and all information regarding their Claim. In particular, Claim Packages shall be kept strictly confidential and shall not be provided to any person or entity unless provided for in the Settlement Agreement or as required by law.

13. Class Counsel shall have access to all information maintained by the Claims Administrator regarding each Claimant and the processing and payment of a Claim.

14. All written communications with each Claimant shall be conducted by e-mail or by regular mail to the last known address provided by the Claimant. Each Claimant shall keep the Claims Administrator apprised of their current contact information.

15. If, for any reason, the Claims Administrator becomes unable or unwilling to continue to act in this role, the Parties may choose an alternate claims administrator, subject to the approval of the Court.

3.2 Claims Administration Procedure

16. Upon the Effective Date, the Claims Administrator shall issue the Notice described in Section 11 advising of the approval of this Settlement Agreement, of the process for submitting a Claim and the Claim Period.

17. All Class Members will be required to submit a completed Claim form in the form attached as Schedule "F" to the Claims Administrator before the end of the Claim Period to be entitled to receive any benefits under the settlement.

18. All Claims with supporting documents must be received by the Claims Administrator before the end of the Claim Period. The Claims Administrator shall deny any Claim received or completed after that date and time. The Claims Administrator shall issue an Acknowledgement Letter to the Claimant within seven (7) days of receipt of the Claimant's Claim Package.

19. The Claims Administrator will review the Claim Package submitted by the Claimant to determine eligibility.

20. If a Claim Package is not properly completed, the required documents have not been submitted by a Class Member making a Claim under this Settlement Agreement, there is a discrepancy disclosed by a given Claim Package and the Claim Form or other documentation submitted by the Class Member, or the Claim Package is in any way deficient, the Claims Administrator shall send a Deficiency Letter within ten (10) days of receipt of the Claimant's Claim Package to the Claimant, and shall grant the Claimant forty-five (45) days to amend or supplement it.

21. Once the Claim Package is complete, the Claims Administrator shall assess the Claim for eligibility for a Compensatory Payment, and shall prepare and send a Claim Determination Decision to the Claimant.

22. The Claims Administrator will be at liberty to determine the Compensatory Payment to Class Members in accordance with paragraphs 30(a)(i)-(iii) of the Settlement

Agreement. The Claims Administrator shall use the best available evidence in making their determination. The Claims Administrator's decision as to the eligibility of a Class Member is final.

23. As a condition precedent to the receipt of a Compensatory Payment under paragraph 30(a)(i) a Claimant must:

- (a) produce proof that they were prescribed Alysena and purchased Alysena from one of the Affected Lots, and swear or affirm a statement that to the best of their knowledge, they took Alysena for contraceptive purposes, they took Alysena as directed, and that they became pregnant and carried the pregnancy to term; and
- (b) provide their name, address, name of their PHI(s), and public health insurance numbers to the Claims Administrator, together with a written consent to permit the Claims Administrator or Class Counsel to forward that information to their PHI(s) and to obtain information from the PHI(s) pertaining to their care and treatment.

24. As a condition precedent to the receipt of a Compensatory Payment under paragraph 30(a)(ii), a Claimant must:

- (a) produce proof that they were prescribed Alysena and purchased Alysena from one of the Affected Lots, and swear or affirm a statement that to the best of their knowledge, they took Alysena for contraceptive purposes, they took Alysena as directed, and that they became pregnant and did not carry the pregnancy to term; and
- (b) provide their name, address, name of their PHI(s), and public health insurance numbers to the Claims Administrator, together with a written consent to permit the Claims Administrator or Class Counsel to forward that information to their PHI(s) and to obtain information from the PHI(s) pertaining to their care and treatment.

25. As a condition precedent to the receipt of a Compensatory Payment under paragraph 30(a)(iii), a Claimant must:

- (a) produce proof that she was prescribed Alysena and purchased Alysena, and swear or affirm a statement that they took Alysena for contraceptive purposes, did not become pregnant but suffered psychological stress and

anxiety during the Class Period upon learning of the possible increased risk of pregnancy and sought medical advice as a result of reading or becoming aware of the Health Canada Advisory issued February 9, 2018, Apotex Inc.'s Recall Letter dated February 9, 2018, Apotex Inc.'s Dear Health Care Professional letter dated March 8, 2018, or Health Canada Advisory issued March 8, 2018.

26. A Claimant awarded a Compensatory Payment under paragraph 30(a)(iii) will not be eligible to receive compensation from any other paragraphs of the Settlement Agreement.

27. The Claims Administrator will be at liberty to apply to the Court for directions if any problem arises in the claims administration process, which they are unable to resolve.

28. All Claims with supporting documents must be received by the Claims Administrator by 5:00pm Pacific Standard Time ("PST") on the last day of the Claim Period. The Claims Administrator shall deny any Claim received or completed after that date and time.

SECTION 4 – SETTLEMENT BENEFITS

4.1 Applicable Currency

29. All dollar amounts set forth in the Settlement Agreement are expressed in Canadian currency.

4.2 Distribution of the Settlement Amount

30. Pursuant to the terms and conditions of the Settlement Agreement, the Defendants shall pay:

- (a) Compensatory Payments in accordance with the Claims Administration Procedure pursuant to one of the following categories:
 - (i) Respecting a Claimant who became pregnant while taking Alysena as directed from one of the Affected Lots and who carried to term the sum of \$26,000, all inclusive. The aggregate amount payable under this paragraph shall be a maximum of \$520,000. If the total quantum

of allowed claims under this paragraph exceeds \$520,000, then each individual award shall be reduced on a pro rata basis such that the total payable by the Defendants in respect of such claims shall not exceed \$520,000.

- (ii) Respecting a Claimant who became pregnant while taking Alysena as directed from one of the Affected Lots but who did not carry the pregnancy to term the sum of \$13,000, all inclusive. The aggregate amount payable under this paragraph shall be a maximum of \$210,000. If the total quantum of allowed claims under this paragraph exceeds \$210,000, then each individual award shall be reduced on a pro rata basis such that the total payable by the Defendants in respect of such claims shall not exceed \$210,000.
 - (iii) Respecting a Claimant who took Alysena, who did not become pregnant but suffered psychological stress and anxiety during the Class Period in regard to the risk of pregnancy and sought medical advice as a result of reading or becoming aware of the Health Canada Advisory issued on February 9, 2018, Apotex Inc.'s Recall Letter dated February 9, 2018, Apotex Inc.'s Dear Healthcare Professional letter dated March 8, 2018, or Health Canada Advisory issued on March 8, 2018, the sum of \$50 for each Claimant. The aggregate amount payable under this paragraph shall be a maximum of \$50,000. If the total quantum of allowed claims under this paragraph exceeds \$50,000, then each individual award shall be reduced on a pro rata basis such that the total payable by the Defendants in respect of such claims shall not exceed \$50,000.
- (b) Public Health Insurer Payments pursuant to one of the following categories:
- (i) In respect of each Claimant with an Approved Claim who became pregnant and gave birth, the Defendants will pay the PHIs the sum of \$7,500 for medical costs incurred. The aggregate amount payable under this paragraph shall be a maximum of \$250,000. If the total quantum of allowed claims under this paragraph exceeds \$250,000, then the sum paid to each provincial and territorial PHI shall be reduced on a pro rata basis such that the total payable by the Defendants to the PHIs in respect of such claims shall not exceed \$250,000.
 - (ii) In respect of each Claimant with an Approved Claim who became pregnant but did not carry the pregnancy to term, the Defendants will pay the PHIs the sum of \$800 for medical costs incurred. The aggregate amount payable under this paragraph shall be a maximum of \$25,600. If the total quantum of allowed claims under this paragraph exceeds \$25,600, then the sum paid to each provincial and territorial PHI will be reduced on a pro rata basis such that the

total payable by the Defendants to the PHIs in respect of such claims shall not exceed \$25,600.

- (c) the sum of \$300,000 to establish a Special Circumstances Compensation Fund, paid for by the Defendants for the purpose of being distributed to Class Members who became pregnant while taking Alysena as directed and who:
 - (i) Suffered medical or psychological damage resulting from or attributable to the pregnancy, subject to evidence from a duly qualified physician or psychologist, provided that any medical psychological, or psychiatric opinion, was made concurrent with the causal event or within three months thereafter;
 - (ii) Suffered medically verified, documented complications resulting from the pregnancy and/or associated child birth; and/or
 - (iii) Gave birth to a child resulting from the pregnancy with one or more medical conditions that gives rise to extra needs.

The structure and distribution for this category of funds will be determined by Class Counsel and subject to Court approval. If the full amount of \$300,000 is not awarded, the remainder shall be distributed by the Claims Administrator, once the terms are established, and approved, to Class Members who became pregnant.

- (d) costs of Notice and Claims Administration Procedure up to \$175,000 as stipulated in the Settlement Agreement; and
- (e) the sum of \$500,000 as a contribution towards Plaintiff's legal costs and disbursements inclusive of all applicable taxes as stipulated in the Settlement Agreement. For greater certainty, the Plaintiff shall not seek from the Defendants, and the Defendants shall not be liable for, any further cost or disbursements of the Plaintiff.

31. Within thirty (30) days of receipt of the order approving the Notice and certifying the BC Proceeding for settlement purposes, the Defendants shall pay the sum of \$175,000, to Class Counsel, for deposit into the Trust Account, in respect to all costs of Notice and Claims Administration Procedure, if the full amount is not used, the remainder of which will be returned to the Defendants. Should the total costs of Notice and Claims Administration Procedure exceed this amount, it shall be for the account of the Class.

32. Within thirty (30) days after the Effective Date, the Defendants shall pay the following amounts:

- (a) the sum of \$500,000, as a contribution towards the Plaintiffs' legal costs and disbursements, inclusive of all applicable taxes, to Class Counsel, for deposit into the Trust Account; and
- (b) the sum of \$300,000, all inclusive, to Class Counsel, for deposit into the Trust Account, to establish the Special Circumstances Compensation Fund.

33. Payment of the amounts above-mentioned shall be made by wire transfer. Class Counsel will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

34. Thereafter, the Defendants shall pay any additional sums required pursuant to the definitions of a Compensatory Payment, and Public Health Insurer Payment in the following manner:

- (a) Within ten (10) days of the end of the Claim Period and resolution of all Deficiency Letters, the Claims Administrator will deliver a report to Class Counsel, and Counsel for the Defendants, setting out the total number of Claims received by category, and the total amounts payable by category, after accounting for court approved counsel fees and disbursements;
- (b) Within twenty (20) days of receipt of the report described in the above paragraph, the Defendants will pay the Compensatory Payments, to the Claims Administrator, for deposit into the Trust Account;
- (c) The Claims Administrator shall issue the requisite Compensatory Payment by cheque to each Claimant with an Approved Claim, withholding applicable court approved counsel fees and disbursements;
- (d) Within five (5) days of the issuance of the Compensatory Payments to Claimants with Approved Claims, the Claims Administrator shall provide the Public Health Insurers a list identifying each Claimant who has been awarded a Compensatory Payment in accordance with the Settlement

Agreement, together with any information provided by each Claimant pursuant to paragraphs 23(b) and 24(b) of this Settlement Agreement;

- (e) Within thirty (30) days of receipt of the list described in the paragraph above, a Public Health Insurer may submit a claim to the Claims Administrator for a Public Health Insurer Payment;
- (f) After all the claims from the Public Health Insurers are received, the Claims Administrator will deliver the Public Health Insurers Report to Class Counsel, and the Counsel for the Defendants, setting out the total number of claims received, and the total amounts payable by category, after accounting for court approved counsel fees and disbursements;
- (g) Within twenty (20) days of receipt of the Public Health Insurers Report, the Defendants will deposit the Public Health Insurer Payments, to the Claims Administrator, for deposit into the Trust Account; and
- (h) The Claims Administrator shall issue the requisite Public Health Insurer Payment by cheque to the Public Health Insurers, withholding applicable court approved counsel fees and disbursements.

35. The Parties agree that the Defendants shall not be liable for, or be a proper party to any dispute related to any alleged harm or injury suffered by any Class Member by reason of the use or alleged misuse of funds administered under the Settlement Agreement, or of any erroneous disbursement(s) or other action taken, or failure to act, with respect to such funds.

36. The Claims Administrator will deliver a Final Report to Class Counsel, Counsel for the Defendants, and the Court within one hundred and fifty (150) days of the end of the Claim Period and resolution of all Deficiency Letters.

37. The Defendants shall have no obligation to pay any amount in addition to the amounts above-mentioned, for any reason, pursuant to or in furtherance of this Settlement Agreement.

38. Once the Claims Administrator has been appointed in the BC Proceeding, Class Counsel shall transfer control of the related portion of the Trust Account to the Claims Administrator.

39. Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.

40. Class Counsel and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

4.3 Taxes and Interest

41. All interest earned in the Trust Account shall accrue to the benefit of the Class and become and remain part of the Trust Account.

42. The Plaintiff and Class Counsel shall bear all risks related to investment of the funds in the Trust Account.

43. All taxes payable on any interest which accrues on funds in the Trust Account shall be paid from the Trust Account. The Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the amounts in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due, with respect to the income earned in the Trust Account, shall be paid from the Trust Account.

44. The Defendants shall have no responsibility to make any filings related to the Trust Account and will have no responsibility to pay any taxes on any income earned or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned in the Trust Account or otherwise shall be paid to the Defendants, who in

such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel.

SECTION 5 – OPTING-OUT AND OBJECTIONS

5.1 Opt-Out Procedure

45. Class Counsel will seek approval from the Court of the following opt-out process as part of the order certifying the BC Proceeding as a class proceeding for settlement purposes:

- (a) Persons seeking to opt-out of the BC Proceeding must do so by sending a written election to opt-out signed by the Person or the Person's designee, by pre-paid mail, courier, fax or email to the Claims Administrator at an address to be identified in the Notice.
- (b) An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the Notice. Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by the Claims Administrator. Where the opt-out election is sent by email or facsimile, it must be received on or before the Opt-Out Deadline.
- (c) The written election to opt-out in the form attached as Schedule "G" must be signed by the Class Member and must contain the following information in order to be valid:
 - (i) the Class Member's full name, current address, and telephone number;
 - (ii) a statement to the effect that the Class Member wishes to be excluded from the BC Proceeding; and
 - (iii) whether the Class Member became pregnant, and the reason for opting out of the BC Proceeding.
- (d) Any person who validly opts out of the BC Proceeding shall be excluded from the BC Proceeding and Class, and shall no longer participate or have the opportunity to participate in the BC Proceeding or to share in the distribution of any funds received as a result of the settlement in the BC Proceeding.
- (e) Any Class Member who does not validly opt out of the BC Proceeding in the manner and time prescribed above, shall be deemed to have elected to

participate in the Proceeding and no further right to opt out of the BC Proceeding will be provided in the future.

46. Within seven (7) days of the Opt-Out Deadline, the Claims Administrator will provide to the Defendants and Class Counsel a report containing the names of each proposed Class Member who has validly and timely opted-out of the BC Proceeding, the reason for the opt-out, if known, and a summary of the information delivered.

47. If any potential Class Member states in their opt-out election that they intend to commence litigation against the Defendants, the Claims Administrator shall forward their opt-out election to the Defendants.

48. With respect to any person who validly opts out of the BC Proceeding, the Defendants reserve all of their legal rights and defences.

49. Class Counsel shall not act for any Class Member who validly opts out of the BC Proceeding against the Defendants in any proceeding that relates to the same or similar subject matter as the Proceeding.

50. The BC Plaintiff and the Ontario Plaintiffs through their respective Class Counsel expressly waive all rights to opt out of the BC Proceeding.

5.2 Objection Procedure

51. A Class Member may object to the approval of the Settlement Agreement by sending a written objection by pre-paid mail, courier, fax, or email to the Claims Administrator. The Claims Administrator is required to forward all objections to the Defendants and Class Counsel within 48 hours after receiving an objection.

52. Objections must be received before 5:00pm PST on or before the Objection Deadline.

53. A Class Member who wishes to object to the approval of the Settlement Agreement shall state in their objection:

- (a) The full name, current mailing address, fax number, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;
- (c) A declaration that the person believes they are a member of the Class and the reason for that belief; and
- (d) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, fax number, and email address of counsel.

54. Within seven (7) days of the Objection Deadline, the Claims Administrator will report to the Court, with a copy to Counsel for the Defendants and Class Counsel, the names of persons who objected and copies of any objections.

55. A Class Member who opts out shall not be entitled to submit a written objection or appear or be heard at the Settlement Approval Hearing.

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

56. The Defendants shall have the right, in their sole discretion, to terminate this Settlement Agreement if:

- (a) The Court declines to certify the BC Proceeding for the purposes of the Settlement Agreement;
- (b) The Ontario Court declines to discontinue the Ontario Action;
- (c) Any order dismissing the BC Proceeding does not become a Final Order;

- (d) The Court declines to approve this Settlement Agreement or any term or part thereof deemed material by the Defendants;
- (e) The Court approves this Settlement Agreement in a materially modified form;
- (f) The Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule "E";
- (g) Any order approving this Settlement Agreement made by the Court does not become a Final Order;
- (h) Any order discontinuing the Ontario Action made by the Ontario Court does not become a Final Order;
- (i) Three (3) or more proposed Class Members with pregnancy claims under paragraphs 30(a)(i)-(ii) above opt out of the Class during the court approved Opt-Out Deadline; or
- (j) Ten (10) or more proposed Class Members who did not become pregnant but suffered psychological stress and anxiety under paragraph 30(a)(iii) above opt out of the Class during the Court approved Opt-Out Deadline.

57. To exercise a right of termination, the Defendants shall deliver a written notice of termination to Class Counsel. Upon delivery of such a written notice, the Settlement Agreement is terminated, this Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

58. Any order, ruling or determination made or rejected by the Court with respect to Class Counsel Fees or Class Counsel Disbursements shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

59. If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no application to certify this BC Proceeding as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order certifying the BC Proceeding as a class proceeding on the basis of this Settlement Agreement set aside and declared null and void and of no force or effect, and any party shall be estopped from asserting otherwise;
- (c) any prior certification of the BC Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Classes and the Common Issues for Settlement Purposes pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Defendants may later take on any issue in the BC Proceeding, or any subsequent proceedings; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall make reasonable efforts to destroy all documents or other materials provided by the Defendants and/or Counsel for the Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Defendants and/or Counsel for the Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Defendants and/or Counsel for the Defendants to any other Person, shall make reasonable efforts to recover and destroy such documents or information. Class Counsel shall provide Counsel for the Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this paragraph shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Defendants and/or Counsel for the Defendants, or received from the Defendants and/or Counsel for the Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the relevant Defendant(s). Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

6.3 Return of the Settlement Amounts Following Termination

60. If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Class Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Defendants the amount the Defendants paid to Class Counsel

pursuant to Section 4, plus all accrued interest thereon, and less any costs of Notices and Settlement Administration Costs incurred or payable, if applicable.

6.4 Survival of the Provisions After Termination

61. If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of paragraphs 39, 44, 57, 59, 60, 61, 78, 79, 86 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of paragraphs 39, 44, 57, 59, 60, 61, 78, 79, and 86 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 – RELEASES, DISCONTINUANCE AND DISMISSAL

7.1 Release of Releasees

62. Upon the Effective Date, and in consideration of Compensation Payment and for other valuable consideration set forth in this Settlement Agreement, the Releasors shall forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have. And for the consideration provided herein, the Releasors agree not to make any claim or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act*, the *Business Practices and Consumer Protection Act*, or other comparable provincial or territorial legislation and any amendments thereto, the common

law, Québec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.

63. The Plaintiff and Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

64. An order will be sought at the hearing for Settlement Approval Hearing which shall include a term releasing the claims of the Public Health Insurers in substantially the following form:

In consideration of the payments made to the PHIs set out in this Settlement Agreement, the PHIs will be deemed to release and forever discharge any and all manner of claims which the PHIs ever had, now have, or hereafter can, shall or may have pursuant to the PHIs' rights of recovery arising out of or in any way related to the actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, claims and demands whatsoever that were asserted or which could have been asserted, or which hereafter may or could be asserted, by or on behalf of any Class Member relating to purchase of Alysena and other claims asserted in the Proceeding, whether known or unknown, past or future, direct or indirect, subrogated or otherwise, relating in any way to the Released Claims (as defined in the Settlement Agreement) during the Class Period, and including, without limitation and by way of example, all subrogated and/or direct claims in respect of the Class Members that were or could have been brought by any of the PHI, whether pursuant to provincial or territorial legislation, that permits recovery of healthcare costs or medical expenses from third parties or otherwise, for the cost of medical care or treatment provided to Class Members, as well as medical screening or monitoring arising from the facts alleged in the Proceeding against the Releasees (all as defined in the Settlement Agreement). The PHIs may not make any claims, or take or continue any proceedings against any person, partnership, corporation, or other entity who might claim contribution or indemnity or any other relief of a monetary, declaratory or injunctive nature from the Releasees in connection with the claims released in this Settlement Agreement.

65. Without limiting any other provisions herein, each Class Member, whether or not he or she submits a claim or otherwise receives an award, and each PHI, will be deemed by this Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims.

66. Each Class Member, whether or not he or she submits a claim or otherwise receives an award, and each PHI, will be forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively or derivatively, asserting against any of the Defendants or Releasees any claims that relate to or constitute any Released Claims.

67. The Ontario Plaintiffs in the Ontario Action shall forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have. And for the consideration provided herein, the Releasers agree not to make any claim or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act*, the *Business Practices and Consumer Protection Act*, or other comparable provincial or territorial legislation and any amendments thereto, the common law, Québec civil law, or any other statute, for any

relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.

7.2 Covenant Not to Sue

68. Upon the Effective Date, and notwithstanding paragraphs 62 – 67 above, for any Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead the Releasors covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

69. Upon the Effective Date, each of the Releasors, the Ontario Plaintiffs, and Class Counsel shall not then or thereafter 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, any action, suit, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For greater certainty and without limiting the generality of the foregoing, each of the Releasors and Ontario Plaintiffs shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

70. In the event that litigation, commenced or continued by any Class Member against another person, or by another person against a Class Member, arising out of or in any way relating to the Released Claims, results in a claim over or judgment against the Defendants, that Class Member shall fully hold harmless, reimburse, and indemnify the Defendants for such amount.

7.4 Discontinuance of the Ontario Action

71. Upon the Effective Date, Class Counsel will take steps to effect the discontinuance of the Ontario Action, with leave of the Ontario Court with prejudice, and without costs against the Defendants.

72. Upon the Effective Date, each Class Member shall be deemed to irrevocably consent to the discontinuance of the Ontario Action, without costs and with prejudice against the Defendants.

7.5 Dismissal of the BC Proceeding

73. Upon the Effective Date, Class Counsel will take steps to effect the dismissal of the BC Proceeding with prejudice, and without costs against the Defendants.

74. Upon the Effective Date, each Class Member shall be deemed to irrevocably consent to the dismissal of the BC Proceeding, without costs and with prejudice against the Defendants.

7.6 Material Term

75. The releases, covenants, discontinuances, dismissals, and granting of consent contemplated in this Section 7 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases, covenants, discontinuances, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 6 of the Settlement Agreement.

SECTION 8 – BAR ORDER

76. The Plaintiff, Class Counsel, and the Defendants agree that the order approving this Settlement Agreement must include a bar order from the Court providing for the following:

- (a) to the extent such claims are recognized at law, all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs

relating to or arising from the Released Claims which were or could have been brought in this BC Proceeding or that have been, or could have been, asserted by a separate action by any Defendants or by any other person or party against the Defendants, or by the Defendants against any Defendants, shall be barred, prohibited and enjoined (unless such a claim is made in respect of a claim by a person who has validly opted out of the BC Proceeding);

- (b) if the Court, ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
 - (i) the Plaintiffs and/or members of the Class Members shall not claim or be entitled to recover from the Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) that correspond to the proportionate liability of any of the Defendants as proven at trial; and
 - (ii) the Court shall have full authority to determine the proportionate liability at the trial or other disposition of the Proceeding, whether or not the Releasees remain in the Proceeding or appear at the trial or other disposition, and the proportionate liability of the Releasees shall be determined as if the Releasees are Parties to the BC Proceeding and any determination by the Court, as applicable, in respect of the proportionate liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceedings.

77. The Parties acknowledge that the bar order contemplated in Section 8 shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the bar order contemplated herein shall give rise to a right of termination pursuant to Section 6 of the Settlement Agreement.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

78. The Plaintiff and the Defendants expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and

proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement (including the certification of the BC Proceeding as against the Defendants for settlement purposes), shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability whatsoever by the Defendants, or of the truth of any of the claims or allegations contained in the Proceeding against the Defendants and cannot be used for any purpose whatsoever in any subsequent proceeding relating to the matters in issue.

9.2 Agreement not Evidence

79. The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement (including the certification of the BC Proceeding against the Defendants for settlement purposes), shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

9.3 No Further Litigation

80. No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Defendants which relates to or arises from the Released Claims, except if the BC Proceeding is not certified, the continuation of the claims asserted in such Proceedings

on an individual basis or otherwise. Moreover, Class Counsel or anyone currently or hereafter employed by or a partner with Class Counsel may not divulge to anyone for any purpose any information obtained in the course of the BC Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent such information was, is or becomes otherwise publicly available or unless ordered to do so by a court.

81. This section shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under s. 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct* by refraining from participation or involvement in any claim or action in a British Columbia Court.

SECTION 10 – CERTIFICATION FOR SETTLEMENT ONLY

10.1 Certification Solely for the Purposes of Settlement

82. The Parties agree that the BC Proceeding shall be certified as a class proceeding as against the Defendants solely for purposes of settlement of the BC Proceeding and the approval of this Settlement Agreement by the Court.

83. The Plaintiff agrees that, in the motion for certification of the BC Proceeding as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issues that they will seek to define are the Common Issues for Settlement Purposes and the only class that they will assert is the Class.

SECTION 11 – NOTICES TO SETTLEMENT CLASS

11.1 Notices Required

84. Class Members shall be given a single Notice in the form attached as Schedule “B” of: (i) the certification of the BC Proceeding as a class proceeding as against the Defendants for settlement purposes; (ii) the right to opt out of the BC Proceeding and Objection and Notice of Intention to Appear at the Settlement Approval Hearing (iii) the

hearing at which the Court will be asked to approve the Settlement Agreement; and (iv) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.

85. If this Settlement is approved, Class Members will receive further notice in the form attached as Schedule "C" advising of the process for applying to receive settlement benefits.

86. If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

11.2 Form and Distribution of Notices

87. The Notices described in the above paragraphs shall be in a form attached as Schedules "B" and "C", and approved by the Court.

88. The Notices shall be disseminated by a method agreed upon by the Parties and approved by the Court.

SECTION 12 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

12.1 Responsibility for Fees, Disbursements and Taxes

89. The Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or Class Members, or any lien of any Person on any payment to any Class Member.

12.2 Court Approval for Class Counsel Fees and Disbursements

90. Class Counsel may seek the Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. Except as

provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

SECTION 13 – MISCELLANEOUS

13.1 Authorship

91. The Settlement Agreement shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them solely by reason of authorship.

13.2 Public Comments

92. The Parties and their respective counsel agree that when publicly commenting on the Claims that have been settled pursuant to the Settlement Agreement, they shall, amongst other things:

- (a) inform the inquirer that all Claims have been settled pursuant to the Settlement Agreement and to the satisfaction of the Parties and the Claimants;
- (b) inform the inquirer that the settlement of the Claims, which are subject to the Settlement Agreement, is fair, reasonable, and in the best interests of the Class;
- (c) decline to comment in a manner that would cast the conduct of any party in a negative light, or reveal anything expressed, either orally or in writing, during settlement negotiations; and
- (d) inform the inquirer the Settlement Agreement is not to be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability whatsoever by the Defendants, or of the truth of any of the claims or allegations contained in the Proceeding against the Defendants.

13.3 Motions for Direction

93. Class Counsel or the Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

94. All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

13.4 Headings, etc.

95. In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

13.5 Computation of Time

96. In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Supreme Court Civil Rules*, BC Reg 168/2009, the act may be done on the next day that is not a holiday.

13.6 Ongoing Jurisdiction

97. The Court shall maintain jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiff, Class Members, and Defendants attorn to the jurisdiction of the Court for such purposes. The provision shall not be used by any entity, whether or not a party to these proceedings, in an effort to establish any of the alleged facts, the jurisdiction of the Canadian courts over any foreign party, or the certification of any other proceedings in any province of Canada.

13.7 Governing Law

98. This Settlement Agreement and all disputes arising out of or in connection with it shall be governed by and construed and interpreted exclusively in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

13.8 Entire Agreement

99. This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.9 Amendments

100. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

13.10 Binding Effect

101. This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendants, the Releasors, the Releasees and all of their successors and assigns, in all jurisdictions in Canada. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees in all jurisdictions of Canada.

13.11 Counterparts

102. This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.12 Negotiated Agreement

103. This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

13.13 Language

104. The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English.

13.14 Recitals

105. The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

13.15 Schedules

106. The schedules annexed hereto form part of this Settlement Agreement.

13.16 Acknowledgements

107. Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.17 Authorized Signatures

108. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

13.18 Notice

109. Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel in the BC Proceeding:

Anthony Leoni and Jesse Kendall

Rice Harbut Elliott LLP

Injury Trial Lawyers

Suite #820 – 980 Howe Street

Vancouver, BC V6Z 0C8

Tel: 604-682-3771

Fax: 604-682-0587

Email: ALeoni@rhelaw.com

E.F. Anthony Merchant, Q.C. and Anthony Tibbs

Merchant Law Group LLP

Suite 100 - 2401 Saskatchewan Drive

Regina, SK S4P4H8

Tel: 306-359-7777

Fax: 306-522-3299

Email: tmerchant@merchantlaw.com

For the Defendant Apotex Inc.

Angus T. McKinnon and Jacqueline Palef

LERNERS LLP

225 King Street West, Suite 1500

Toronto, ON M5V 3M2

Tel: 416-360-2632

Fax: 416-867-2398

Email: amckinnon@lernalers.ca

Matthew Pierce

Farris LLP

Barristers & Solicitors

2500 - 700 West Georgia Street

Vancouver, British Columbia V7Y 1B3

Tel: 604-661-9368

Fax: 604-661-9349

Email: mpierce@farris.com

For the Defendant Laboratorios León Farma

Frank McLaughlin, Dorothy Charach, and Emilie Bruneau

McCarthy Tétrault LLP

PO Box 48, Suite 5300

Toronto-Dominion Bank Tower

Toronto ON M5K 1E6

Tel: 416-601-7531

Fax: 416-868-0673

Email: fmclaugh@mccarthy.ca

Brent Johnston

Nash Johnston LLP

505 Burrard Street, Suite 1710

PO Box 31- One Bentall Centre

Vancouver, British Columbia V7X 1M6

Tel: 604-569-0470

Fax: 604-669-0823

Email: brent.johnston@nashlitigation.com

13.19 Date of Execution

110. The Parties have executed this Settlement Agreement as of the date on the cover page.

PLAINTIFFS AND CLASS COUNSEL:

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Holly Nunn (nee Emmett), on behalf of herself and the Class

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Mathew Baker

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Katie-Lynne O'Connell

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Rice Harbut Elliott LLP

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Merchant Law Group LLP

APOTEX INC.

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

LABORATORIOS LEÓN FARMA

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

Schedule “A” – COMMON ISSUES FOR SETTLEMENT PURPOSES

The Plaintiff seeks certification of the following common issues for settlement purposes only:

1. Were the Defendants negligent in failing to ensure that there were no defects due to chipping or edgewear in Alysena pills from the Affected Lots?
2. Were the Defendants negligent in failing to warn the Class of the risk of becoming pregnant when taking defective Alysena pills due to chipping or edgewear in some pills?
3. If so, are the Defendants liable in damages to the Class or the Provincial Health Insurers?

**Schedule “B” – Notice of Proposed Settlement and Settlement Approval Hearing
(short form)**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND SETTLEMENT APPROVAL
HEARING**

**WERE YOU PRESCRIBED AND DID YOU PURCHASE AND INGEST ALYSENA 21 OR 28 IN
CANADA BETWEEN FEBRUARY 9, 2017 AND OCTOBER 31, 2019?**

YOUR LEGAL RIGHTS MAY BE AFFECTED

A class action settlement has been reached in *Emmett v. Apotex Inc. et al.*, S.C.B.C. No. VLC S-189280. The action was certified as a class proceeding by the British Columbia Supreme Court on behalf of all persons in Canada who were prescribed, purchased and ingested Alysena 21 or Alysena 28 in Canada between February 9, 2017 and October 31, 2019 (“**Class Members**”).

The settlement is a compromise and is not an admission of liability or wrongdoing or fault by any of the defendants. The proposed settlement is subject to Court approval.

For the payment of up to \$2,030,600, the Class will release the defendants from all claims. The settlement funds, after payment of Class Counsel fees, expenses, and any honorarium to the plaintiff, will be distributed to the Class. The amount of compensation each member of the Class is entitled to is dependant on the particular circumstances of each member of the Class and will be determined by reference to a distribution protocol that is subject to Court approval.

The representative plaintiff has entered into a contingency fee agreement with class counsel providing for a maximum fee of 30% (plus taxes and disbursements). Class Counsel will seek approval of their fees after the settlement approval hearing. The court will determine the amount to be paid to class counsel for legal fees and disbursements.

If you are a Class Member, you are automatically included in the Class, and will be bound by the settlement if approved by the Court, unless you opt out. If you do not want to be part of the lawsuit, you must opt out of the proceeding by delivering an opt out form to Epiq Class Action Services Canada Inc. by no later than _____, 2023.

For members of the Class that wish to object to the settlement, Distribution Protocol, Class Counsel fees or the honoraria to the plaintiff, you must notify Class Counsel no later than _____, **2023**, in the manner set out in the long form notice.

Class Counsel are Rice Harbut Elliott LLP and Merchant Law Group LLP. More information on the settlement (including the opt-out form, and Settlement Agreement) is available at <https://rhelaw.com/class-action/alysena-21-and-28-new/>.

This notice has been authorized by the British Columbia Supreme Court.

**Schedule “B” – Notice of Proposed Settlement and Settlement Approval Hearing
(long form)**

NOTICE OF PROPOSED SETTLEMENT AND SETTLEMENT APPROVAL HEARING

**WERE YOU PRESCRIBED AND DID YOU PURCHASE AND INGEST ALYSENA 21 OR 28 IN
CANADA BETWEEN FEBRUARY 9, 2017 AND OCTOBER 31, 2019?**

YOUR LEGAL RIGHTS MAY BE AFFECTED

A class action settlement has been reached in *Emmett v. Apotex Inc. et al.*, S.C.B.C. No. VLC S-189280.

The British Columbia Supreme Court has certified the class action for the purposes of implementing the proposed settlement. The settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing or fault by any of the Defendants. The proposed settlement is subject to Court approval.

The defendants are Apotex Inc. and Laboratorios León Farma.

What are the proceedings about?

The claim alleges that Alysena 21 and 28 distributed by the Defendants in Canada is defective and unfit for its intended purpose of preventing pregnancy. The plaintiffs sought to recover damages for Class Members for alleged losses as a result of the defective nature of the medication. The Defendants deny the allegations, which have not been proven, and are defending the lawsuit.

Who are in the Class and affected by the settlement?

The Class consists of “all persons in Canada who were prescribed, purchased and ingested Alysena 21 or Alysena 28 in Canada between February 9, 2017 and October 31, 2019”.

The Court has appointed Holly Nunn (nee Emmett) as Representative Plaintiff. Class Counsel are Rice Harbut Elliott LLP and Merchant Law Group LLP.

What are the terms of the settlement?

The settlement provides for the payment of up to **\$2,030,600** by the Defendants, including costs reimbursement in exchange for a full release of all claims against them by the Class and the public health insurers who have paid for health services for Class members.

A further hearing will be held to seek approval of the Settlement Agreement by the Court. The hearing will take place at 800 Smithe Street, Vancouver, B.C., before the Honourable Madam Justice Lyster.

If approved, the settlement will be binding on all members of the Class who do not opt out of the proceeding.

The full settlement terms and court documents are available at the following link:
www.AlysenaClassAction.ca

How do I participate?

If you want to be a member of this class action and participate in the settlement, you do not need to do anything. You are automatically included as a member of the Class, unless you opt out of the applicable proceeding. After the settlement is approved, a process will be announced for submitting an application for compensation. You may contact Class Counsel if you would like to be notified when this information becomes available.

What if I do NOT want to participate?

If you do not want to participate in the class action, you may exclude yourself (“opt-out”). In order to opt out, you must complete and sign an opt out form and deliver it to Class Counsel by mail, courier, or email no later than _____, 2023. The opt-out form is available at www.AlysenaClassAction.ca

The opt-out form must be emailed to info@AlysenaClassAction.ca, or mailed or couriered to:

Epiq Class Action Services Canada Inc.
Attention: Alysena Class Action Administrator
PO Box 507 STN B
Ottawa, ON K1P 5P6
Attention: Dawn McPherson

Will I receive compensation from this settlement?

The amount of compensation each member of the Class is entitled to is dependant on the particular circumstances of each member of the Class and will be determined by reference to a distribution protocol that is subject to Court approval.

What are the fee arrangements?

Under the terms of their retainer agreement with the representative plaintiff, Class Counsel will seek approval of a fee of up to 30% of the settlement amount, plus disbursements and applicable taxes. Class Counsel will also seek payment of up to \$1,500 as an honorarium for the representative plaintiff.

Class Counsel fees, disbursements and any payments to the representative plaintiff are subject to Court approval.

Objections

All members of the Class have the right to let the Court know of any objection they have to the approval of the Settlement Agreement, Distribution Protocol, Class Counsel fees or honorarium to the representative plaintiff by delivering a letter or written objection to Class Counsel on or before

_____, 2023. If a class member wishes to object, the following information must be included in the letter or written objection delivered to Class Counsel:

- (a) The objector's full name, current mailing address, telephone number and email address;
- (b) A brief statement of the nature and reasons for the objection;
- (c) Confirmation that the objector is a member of the Class;
- (d) Whether the objector intends to appear at the court hearing on their own behalf or through a lawyer, and if by a lawyer, the name, address, telephone number and email address of the lawyer; and
- (e) A statement that the foregoing information is true and correct.

For more information or a copy of the Settlement Agreement, go to the following website:

www.AlysenaClassAction.ca

You may also contact Class Counsel at nbeauprefulton@rhelaw.com or via mail at the address listed at rhelaw.com.

This notice has been authorized by order of the British Columbia Supreme Court.

Schedule “C” – Notice of Claims Deadline

Class Action Legal Notice

IF YOU PURCHASED AND INGESTED ALYSENA 21 OR 28 IN CANADA BETWEEN FEBRUARY 9, 2017 AND OCTOBER 31, 2019 YOU MAY BE ENTITLED TO RECEIVE MONEY

www. [insert website address]

WHAT IS THIS ABOUT?

Two separate class action lawsuits have ended with a settlement for women who were taking Alysena 21 or 28 and became pregnant while taking Affected Lots (defined as lots of Alysena purchased in Canada and ingested between December 22, 2017 and March 8, 2018) or suffered psychological stress and anxiety as a result of reading or becoming aware of the Health Canada Advisory issued on February 9, 2018, Apotex Inc.’s Recall Letter dated February 9, 2018, Apotex Inc.’s Dear Health Care Professional letter dated March 8, 2018, or Health Canada Advisory issued March 8, 2018. A settlement fund of approximately **\$2,030,600** is available to pay all eligible claimants, known as Class Members, who make a claim.

DEADLINE FOR MAKING A CLAIM

Important: The deadline for making a claim is X, 2023. All claims must be received by the Claims Administrator, **NO LATER THAN X, 2023**. If a paper Claim Form is used, the postmark on the envelope will be considered as the day the Claim Form was submitted to the Claims Administrator.

WHO CAN CLAIM?

Make a claim if either:

Option A		Option B
<ul style="list-style-type: none">• You became pregnant while taking Alysena as directed from a lot of Alysena purchased in Canada for contraceptive purposes• You ingested Alysena as described above BETWEEN December 22, 2017 and March 8, 2018• Whether or not you carried the pregnancy to term	<u>OR</u>	<ul style="list-style-type: none">• You did not become pregnant but suffered psychological stress and anxiety between February 9, 2017 and October 31, 2019 upon learning of the possible increased risk of pregnancy• You sought medical advice as a result of reading or becoming aware of the Health Canada Advisory issued on February 9, 2018, Apotex Inc.’s Recall Letter dated February 9, 2018, Apotex Inc.’s Dear Healthcare Professional letter dated March 8, 2018, or the Health Canada Advisory issued on March 8, 2018

HOW DO I MAKE A CLAIM?

You must fully complete the Court-approved Claim Form. To get a claim form you have two (2) options:

1	2
Download and print the Claim Form by going to the website: www. [insert website address]	Write to request a Claim Form. Epiq Class Action Services address

WHAT ARE MY OPTIONS?

Submit a Claim Form	If you want to receive money you MUST SUBMIT a Claim Form to the Claims Administrator NO LATER THAN X, 2023
Do Nothing	If you do not make a claim, you will not get any money and you will give up the right to get money in the future.

Schedule “D” – Consent Certification and Notice Approval Order

No. S-189260
Vancouver Registry

In the Supreme Court of British Columbia

Between

HOLLY EMMETT

Plaintiff

and

APOTEX INC., LABORATORIOS LEÓN FARMA

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE } THE HONOURABLE JUSTICE LYSTER } ___/___/2023

ON THE APPLICATION of the plaintiff, Holly Emmett, coming on for hearing at Vancouver, BC on _____; and on hearing Anthony Leoni and Jesse R. Kendall for the plaintiff Holly Emmett; and Angus T. McKinnon for the Defendant Apotex Inc.; and Frank McLaughlin for the Defendant Laboratorios León Farma,

AND ON READING all materials filed and on hearing the submissions of counsel, and **BY CONSENT**;

THIS COURT ORDERS that:

1. For the purposes of the Order, except to the extent that they are modified in this Order, the definitions set out in the settlement agreement dated _____ (“**Settlement Agreement**”), and attached as **Schedule A** to this Order, apply to and are incorporated into this Order;

2. This action is certified as a class proceeding as against the Defendants for settlement purposes only;
3. The class is defined as: “all women, resident in Canada, who were prescribed Alysena 21 or Alysena 28 for the purposes of contraceptive protection and who purchased and ingested said medication between February 9, 2017 and October 31, 2019” (the “**Class**” and “**Class Members**”);
4. Holly Emmett is appointed the representative plaintiff on behalf of the Class,;
5. Rice Harbut Elliott LLP and Merchant Law Group are appointed class counsel on behalf of the Class (“**Class Counsel**”);
6. The following common issues are certified:
 1. Were the Defendants negligent in failing to ensure that there were no defects due to chipping or edgewear in Alysena pills from the Affected Lots?
 2. Were the Defendants negligent in failing to warn the Class of the risk of becoming pregnant when taking defective Alysena pills due to chipping or edgewear in some pills?
 3. If so, are the Defendants liable in damages to the Class or the Provincial Health Insurers?
7. Notice is approved in the form set out as Schedule “B” to the Settlement Agreement;
8. Notice of certification will be distributed by advertisements on Google Display Network, Facebook, and Instagram with an additional press release over PR Newswire’s Canadian Bilingual newslines in English and French.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

.....
Signature of
Lawyer for Class

.....
Signature of Frank McLaughlin
Lawyer for the Defendant Laboratorios León Farma

.....
Signature of Angus T. McKinnon
Lawyer for the Defendant Apotex Inc.

By the Court.

.....
Registrar

SCHEDULE A
[Settlement Agreement]

SCHEDULE B

[Notice of Proposed Settlement and Settlement Approval Hearing]

Schedule "E" – Settlement Approval Order

No. S-189260
Vancouver Registry

In the Supreme Court of British Columbia

Between

HOLLY EMMETT

Plaintiff

and

APOTEX INC., LABORATORIOS LEÓN FARMA

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

BEFORE } THE HONOURABLE JUSTICE LYSTER } ____/____/____

ON THE APPLICATION OF Holly Emmett coming on for hearing before the Honourable Madam Justice Lyster at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on _____; and on hearing Anthony Leoni and Jesse R. Kendall for the plaintiff Holly Emmett; and Angus T. McKinnon for the Defendant Apotex Inc.; and Frank McLaughlin for the Defendant Laboratorios León Farma,

ON READING all materials filed and on hearing the submissions of counsel for the parties;

AND ON BEING ADVISED that all parties consent to the Order;

1. THIS COURT ORDERS that the terms of the settlement agreement reached between the parties as set out in the Settlement Agreement attached as **Schedule “A”** to this Order are hereby approved and that all capitalized terms in this Order have the same meaning as defined in such Settlement Agreement;

2. THIS COURT ORDERS AND DECLARES that the Settlement Agreement is fair, reasonable and in the best interest of the Class;

3. THIS COURT ORDERS AND DECLARES that, in accordance with the Settlement Agreement, this proceeding was certified on consent as a class proceeding, subject to the terms and conditions of this Settlement Agreement, including the Defendants’ express reservation of rights to contest certification or authorization of any other related or unrelated proceedings and their rights to defend on the merits any other related or unrelated proceedings;

4. THIS COURT ORDERS AND DECLARES that the Releasors have fully and finally released the Released Parties from the Released Claims;

5. THIS COURT ORDERS AND DECLARES that that this Court retains continuing exclusive jurisdiction over the BC Class to administer, supervise, construe and enforce this Settlement Agreement;

6. THIS COURT ORDERS AND DECLARES that the parties may bring such motions to this Court for directions as may be required until the Effective Date;

7. THIS COURT ORDERS that the Action will be dismissed without costs following the full implementation of the terms established by the Settlement Agreement.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

.....
Signature of
Lawyer for Class

.....
Signature of Frank McLaughlin
Lawyer for the Defendant Laboratorios León Farma

.....
Signature of Angus T. McKinnon
Lawyer for the Defendant Apotex Inc.

By the Court.

.....
Registrar

Schedule "E" – Fee approval order

No. S-189260
Vancouver Registry

In the Supreme Court of British Columbia

Between

HOLLY EMMETT

Plaintiff

and

APOTEX INC., LABORATORIOS LEÓN FARMA

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

BEFORE } THE HONOURABLE JUSTICE LYSTER } _____/_____/_____

ON THE APPLICATION OF Holly Emmett coming on for hearing before the Honourable Justice Lyster at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on_____, 2023; and on hearing Anthony Leoni and Jesse R. Kendall for the plaintiff Holly Emmett; and Angus T. McKinnon for the Defendant Apotex Inc.; and Frank McLaughlin for the Defendant Laboratorios León Farma,

AND ON READING all materials filed and on hearing the submissions of counsel for the plaintiff, and the defendants taking no position;

THIS COURT ORDERS that:

1. The retainer agreements entered into with the representative plaintiffs Holly Emmett are approved under the *Class Proceedings Act*, section 38;
2. A fee of \$530,340 plus applicable taxes is approved and awarded to Rice Harbut Elliott LLP and Merchant Law Group as Class Counsel payable as a first charge on the settlement funds;
3. Disbursements of \$73,363.32 are approved and are payable to Rice Harbut Elliott LLP and Merchant Law Group as Class Counsel as a first charge on the settlement funds;
4. An honorarium of \$1,500 is approved and awarded to Holly Emmett payable as a first charge on the settlement funds;
5. The legal fees, disbursements, and applicable taxes shall be paid from the settlement funds, pursuant to the terms of the Settlement Agreement.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER

Signature of lawyer for the Plaintiff

By the Court:

Registrar

Schedule "F" – Claims Form

www.AlysenaClassAction.ca

CLASS ACTION CLAIM FORM

Two separate class action lawsuits have ended with a settlement for women who were taking Alysena 21 or 28 and became pregnant while taking Affected Lots (defined as lots of Alysena purchased in Canada and ingested between December 22, 2017 and March 8, 2018) or suffered psychological stress and anxiety as a result of reading or becoming aware of the Health Canada Advisory issued on February 9, 2018. A settlement fund of approximately **\$2,030,600** is available to pay all eligible claimants, known as Class Members, who make a claim.

Class Members who ingested Alysena who meet Option A or B criteria below can claim money using this Claim Form. As part of this claims settlement process, your claim for money will be received and assessed by an independent Administrator and, in some cases, by Class Counsel. Your claim information will be reviewed and a decision will be made about whether you are eligible for money, and if so, how much.

WHO CAN MAKE A CLAIM?

This Claim Form is for persons who ingested Alysena purchased in Canada during the class period. You must match Option A or B.

Claimant – Option A			Claimant – Option B	
✓	You became pregnant while taking Alysena as directed from a lot of Alysena purchased in Canada for contraceptive purposes	OR	✓	You were prescribed Alysena 21 or Alysena 28 for the purposes of contraceptive protection and you purchased and ingested said medication between February 9, 2017 and October 31, 2019
✓	You purchased and ingested Alysena as described above BETWEEN December 22, 2017 and March 8, 2018		✓	You did not become pregnant but suffered psychological stress and anxiety upon learning of the possible increased risk of pregnancy between February 9, 2017 and October 31, 2019
✓	Whether or not you carried the pregnancy to term		✓	You sought medical advice as a result of reading or becoming aware of Health Canada Advisory issued on February 9, 2018, Apotex Inc.'s Recall Letter dated February 9, 2018, Apotex Inc.'s Dear Healthcare Professional letter dated March 8, 2018, or the Health Canada Advisory issued on March 8, 2018
✓	Additional compensation is available if you or your child suffered complications or special circumstances.			

NEED HELP WITH COMPLETING THIS CLAIM FORM?

If you are unable to complete this form and need help, you can contact the Administrator.

Email: info@AlysenaClassAction.ca

Website: www.AlysenaClassAction.ca

If you require legal advice as you complete this Claim Form, have any further questions which cannot be answered by the Administrator, Class Counsel are also available (at no cost) to help you. You can reach Class Counsel by calling the numbers below:

(604) 682-3771

You may also decide to consult another lawyer of your choosing.

CLASS ACTION CLAIM FORM

HOW TO MAKE A CLAIM FOR MONEY?

CLAIM BY MAIL	
Mail your paper Claim Form to:	
English: Epiq Class Action Services Canada Inc. Attention: Alysena Class Action Administrator PO Box 507 STN B Ottawa, ON K1P 5P6	Francais: Les services d'actions collectives Epiq Canada Attention : Administrateur de l'Action collective concernant Alysena Case postale 507, succursale B Ottawa (Ontario) K1P 5P6
Important: The deadline for making a claim has been set by the Court. This completed Claim Form must be submitted to the Administrator NO LATER THAN , 2023.	

COMPLETE THIS CLAIM FORM TO CLAIM MONEY

INSTRUCTIONS

Please ensure that you complete all sections of the Claim Form that apply to you. When filling out the Claim Form, remember to:

- Read all questions and requests for information carefully before answering.
- Return the entire claim form even if you think some sections don't apply to you.
- Write clearly and legibly.
- Make sure you have read and signed the Consent to Disclosure and Release of Records and Declaration section of the Claim Form.

Please include a photocopy or scanned copy of a government-issued piece of photo identification and your provincial health care services card with your Claims Form.

If you need to make changes to any information in your Claim Form after you have sent it to the Administrator, please do so as soon as possible. Examples of important changes include a change of address and corrections to any information. If your Claim Form is incomplete or does not contain all of the required information, you will be asked to provide more details. This may delay the processing of your claim. The information you provide in your Claim Form is a very important part of what will be considered when deciding whether to pay you money and if so, how much money.

CLAIM FORM – START ON NEXT PAGE



CLASS ACTION CLAIM FORM

SECTION A: CLAIMANT INFORMATION

(*indicates required fields)

First Name*		Middle Name	Last Name*	
City/Town	Province	Country	Postal Code	
Daytime Telephone Number		Evening Telephone Number	Email Address	
Date of Birth (MM-DD-YYYY)*			Personal Health Number (PHN)*	

Important Note: Correspondence from the Administrator and/or Class Counsel will be sent to the address you provide above.

SECTION B: DOCTOR INFORMATION

Name and Address of Doctor (or other health care practitioner) who prescribed you Alysena

Name and Address of Doctor (or other health care practitioner) who Treated you During your Pregnancy (if different than above)

SECTION C: DESCRIPTION OF CLAIM

Question #1: Were you prescribed and did you purchase Alysena in Canada between December 22, 2017 and March 8, 2018 for contraceptive purposes?

If yes, you need to provide proof of your prescription during those dates. This could be a receipt, a printout from your pharmacy, a copy of your prescription label during those dates, or a clinical record of a prescription having been made by your doctor during those dates.

YES

NO

Question #2: Did you become pregnant while taking Alysena as directed for contraceptive purposes, that you purchased in Canada between December 22, 2017 and March 8, 2018?

YES

NO

(Go to question #3)

(Go to question #5)

Question #3: Did you carry your pregnancy to term?

YES

NO

Question #4: If you carried your pregnancy to term, did you or your child suffer complications or special circumstances as described below?

- i. medical or psychological damage resulting from or attributable to the pregnancy, subject to evidence from a duly qualified physician or psychologist, provided that any medical, psychological, or psychiatric opinion, was made concurrent with the pregnancy or within three months thereafter;
- ii. medically verified, documented complications resulting from the pregnancy and/or associated child birth; and/or
- iii. gave birth to a child resulting from the pregnancy with one or more medical conditions that gives rise to extra needs.

Attach as much documentary evidence as possible to permit assessment of your claim. Examples of documents confirming complications or special circumstances include, clinical records of your family doctor contemporaneous with your pregnancy or childbirth, clinical reports from specialists or health care practitioners documenting or confirming the complications or extra needs of your child, medical notes or letters indicating a specific diagnosis of your child as it relates to a complication or medical condition, or a formal designation of extra needs of your child from a school or government entity.

YES

NO

Question #5: If you did **not** become pregnant, did you take Alysena for contraceptive purposes **AND** did you suffer psychological stress or anxiety upon learning of the possible increased risk of pregnancy **AND** you sought medical advice as a result of reading or becoming aware of the Health Canada Advisory issued on February 9, 2018, Apotex Inc.'s Recall Letter dated February 9, 2018, Apotex Inc.'s Dear Healthcare Professional letter dated March 8, 2018, or Health Canada Advisory issued on March 8, 2018?

YES

NO

IMPORTANT: You will need to meet the formal class definitions for *Emmett*, which are found in the Settlement Agreement. Some preconditions may apply. Claims under Option B are not limited to persons who were prescribed Alysena between December 22, 2017 and March 8, 2018. For Option B, claimants must only produce evidence that they were prescribed Alysena 21 or Alysena 28 between **February 9, 2017 and October 31, 2019 AND** provide the declaration in Question #5, above.

CLASS ACTION CLAIM FORM

SECTION D: LAWYER REPRESENTATION – CLAIMANT HAS OPTIONS

Class Counsel are the lawyers that have been representing all current and class members since 2018 and achieved settlement of these class action cases. Your *Class Counsel* are **Rice Harbut Elliott LLP** and **Merchant Law Group**.

Now that it is time to submit a claim, *Class Counsel* will continue to represent you on your claim, **unless** you choose to represent yourself or you want to use a different lawyer. You **DO NOT** need to get a new lawyer to represent you.

Class Counsel have already been paid for their work, so you will not be responsible for lawyers' fees.

If you choose to be represented by a different lawyer, you will be responsible for paying that lawyer's fees.

Question #6: Select one (1) of the three (3) options below:

- Option 1:** I want to continue to be represented by *Class Counsel*.
- Option 2:** I do **not** want to be represented by *Class Counsel*. I want to represent myself. I understand that *Class Counsel* **will not** continue to act for me, and I will be responsible for taking any steps necessary to make my claim.
- Option 3:** I do **not** want to be represented by *Class Counsel*. I have retained a different lawyer. I understand that *Class Counsel* **will not** continue to act for me, and my new lawyer will be responsible for taking any steps necessary to make my claim, and that I will be responsible for paying my new lawyer's fees.

If you select Option 3, please provide the contact information of your new lawyer below:

Name of your Lawyer	
Mailing Address (Street, P.O. Box if applicable)	
City/Town	Province
Country	Postal Code
Daytime Telephone Number	
Email Address	

If you do not check any of the boxes above, it will be assumed that you want to continue to be represented by *Class Counsel*.

CLASS ACTION CLAIM FORM

SECTION E: YOU ARE CLAIMING ON BEHALF OF SOMEONE WHO IS DECEASED, INCOMPETENT, OR UNDER POWER OF ATTORNEY

Question #7: Are you making a claim on behalf of someone as their legally authorized representative?

YES

NO

If you selected "YES", please attach any documents you may have that confirm your ability to act as the legal representative of the person. The Administrator may contact you to obtain more information.

Representative First Name	Representative Last Name
Representative Middle Name	Basis of Representation
Has the person on whose behalf you are submitting this claim died?	If the individual has died, please indicate their date of death (MM-DD-YYYY):

**SECTION F: DECLARATION AND CONSENT TO RELEASE MEDICAL AND
PUBLIC HEALTH INSURER RECORDS**

I acknowledge that the Administrator is authorized to contact me to obtain further information.

By completing and submitting this Claim Form, I acknowledge that my doctor and the provincial health insurer in the Province where I reside are authorized to provide relevant information in my (or the claimant on whose behalf I am submitting this form, as may be applicable) medical file to the Administrator, Defendants' lawyers, Class Counsel, my lawyer, the expert assigned to my claim, and/or to the Court.

Under the Penalties of Perjury, I swear or affirm that all of the information provided by me on this form is true, correct, and complete, and that the documents submitted herewith are true and correct copies of what they purport to be.

Signature of Claimant

Print Full Name of Claimant

Date

Important: If you are a legally authorized representative, you MUST complete the following:

Signature of Representative Completing Form

Print Full Name of Representative Completing Form

Date

In the Event of a **Representative** completing this Claim Form, is Proof of Authority to File included in your submission? YES NO

Schedule “G” – Opt Out Form

Can I Remove Myself from the Class Action?

If you do not want to participate in the class action, you can opt-out as outlined below.

What is the Consequence of Opting-Out?

When you opt-out, you lose your right to claim and/or receive any money through the class actions.

Is Opting-Out Final?

Yes, opting-out is a final decision that cannot be undone.

How do I Opt-Out?

In order to properly opt-out, you must prepare and submit a written letter (called an “Opt-Out Election Letter”) to the Claims Administrator identified below.

The Opt-Out Election Letter:

- (a) must contain a statement of intention to opt out of the class actions by you or a person authorized to bind you;
- (b) must outline your full name, address, telephone number and/or email address (if available);
- (c) must include the date and your signature; and
- (d) must advise whether you became pregnant and your reason for opting out.

The Claims Administrator must receive your Opt-Out Election Letter by **no later than [date], 2023 (“Opt-Out Deadline”)**.

Opt-Out Election Letters must be sent to:

Epiq Class Action Services Canada Inc.
Attention: Alysena Class Action Administrator
PO Box 507 STN B
Ottawa, ON K1P 5P6

Or

Email: info@AlysenaClassAction.ca

An Opt-Out Election Letter that does not contain all of the required information or is received after the Opt-Out Deadline will **not** be valid.