

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE AMERICAN PHARMACEUTICAL )  
PARTNERS, INC. SHAREHOLDERS ) CONSOLIDATED  
LITIGATION ) C.A. No. 1823-VCL  
)

NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT OF CLASS ACTION, SETTLEMENT HEARING, RIGHT FOR EXCLUSION AND RIGHT TO APPEAR

TO: ALL RECORD OR BENEFICIAL OWNERS OF COMMON STOCK OF **AMERICAN PHARMACEUTICAL PARTNERS, INC.** ON NOVEMBER 27, 2005, AND THEIR TRANSFEREES, SUCCESSORS AND ASSIGNS, INCLUDING ALL PERSONS WHO, AS OF THE TIME IMMEDIATELY PRIOR TO THE CONSUMMATION OF THE ACQUISITION OF APP BY FRESENIUS KABI ON SEPTEMBER 10, 2008, OWNED COMMON SHARES OF **ABRAXIS BIOSCIENCE, INC. OR APP PHARMACEUTICALS, INC.** (THE "CLASS").

**PLEASE READ ALL OF THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS CLASS ACTION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS OF THE PROPOSED SETTLEMENT OR FROM PURSUING THE RELEASED CLAIMS (DEFINED BELOW).**

**I. PURPOSE OF NOTICE**

This Notice is sent to you pursuant to Rule 23 of the Delaware Court of Chancery to inform you (i) that the captioned civil action ("Action") has been provisionally certified as a class action; (ii) that you are a member of the Class provisionally certified by the Court in the Action; (iii) that there is a proposal to settle the Action (the "Settlement") as provided for in a Stipulation of Settlement (the "Settlement Agreement"); and (iv) to give you notice of your rights, among other things, to attend and participate in a hearing to be held on December 15, 2008, at 10:00 a.m., before the Court at New Castle County Courthouse, Wilmington, Delaware 19801 (the "Settlement Hearing"). The purpose of the Settlement Hearing is to determine whether the Court should (i) finally certify the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Court of Chancery Rules; (ii) approve the Settlement as fair, reasonable, adequate and in the best interests of the named plaintiffs (the "Plaintiffs") and the Class; (iii) enter an Order and Final Judgment dismissing all claims against the Defendants with prejudice and without costs; and (iv) consider a request for an award of attorneys' fees and expenses to Plaintiffs' counsel.

This Notice describes the rights you may have in the Action and under the Settlement Agreement, and what steps you may take, but are not required to take, in relation to the Settlement.

If the Court approves the Settlement, the parties shall jointly request at the Settlement Hearing that the Court enter an Order and Final Judgment dismissing the Action with prejudice in accordance with the terms of the Settlement Agreement.

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

**II. BACKGROUND OF THE ACTION**

On November 27, 2005, American Pharmaceutical Partners, Inc. ("American Pharmaceutical"), which was publicly traded, entered into an Agreement and Plan of Merger with privately-held American BioScience, Inc. ("ABI") (the "Merger Agreement"), under which ABI eventually merged with and into American Pharmaceutical in a stock-for-stock transaction (the "Merger"). Prior to the Merger, ABI owned approximately 66.2% of the shares of American Pharmaceutical. This Action challenged the merger as financially unfair to public shareholders, and a breach of fiduciary duty by the directors of American Pharmaceutical.

Specifically, on December 7, 2005, (i) plaintiff William H. Olinger filed a putative class action in this Court entitled *Olinger v. Soon-Shiong, et al.*, C.A. No. 1823-VCL (the "Olinger Action") asserting breach of fiduciary duty claims against Defendants; (ii) plaintiff Martin Senson filed a lawsuit in this Court entitled *Senson v. Soon-Shiong, et al.*, C.A. No. 1826-VCL (the "Senson Action"), alleging both putative class action and shareholder derivative claims against the Defendants and American Pharmaceutical; and (iii) plaintiff Market Street Securities, Inc. filed a lawsuit in this Court entitled *Market Street Securities, Inc. v. American BioScience, Inc., et al.*, C.A. No. 1827-VCL (the "Market Street Action"), alleging both

putative class action and shareholder derivative claims against the Defendants, ABI and American Pharmaceutical. All three actions alleged, in substance, that the Merger unfairly benefited ABI and its shareholders, who were also controlling shareholders of American Pharmaceutical.

On January 31, 2006, the Court consolidated the Olinger Action, the Senson Action and the Market Street Action under the caption *In re American Pharmaceutical Partners, Inc. Shareholders Litigation*, Consolidated C.A. No. 1823-VCL.

On March 10, 2006, American Pharmaceutical filed with the Securities and Exchange Commission a Definitive Information Statement pursuant to Section 14(c) of the Securities Exchange Act setting forth the terms of the Merger. The Information Statement stated that the holders of 67.2% of American Pharmaceutical's outstanding common stock, consisting of ABI and certain shareholders affiliated with defendant Patrick Soon-Shiong (the controlling shareholder of ABI) had approved the transaction, and that under applicable law, their consent was sufficient to approve the Merger without further approval from any of the public shareholders of American Pharmaceutical. The Merger was completed on April 18, 2006.

On June 21, 2006, Plaintiffs filed their Consolidated Amended Class Action and Derivative Complaint ("Consolidated Amended Complaint"), which sought to set aside the Merger and to recover damages on behalf of American Pharmaceutical's minority shareholders. Defendants subsequently moved to dismiss the Consolidated Amended Complaint, but that motion was never argued or decided. Instead, on June 4, 2007, Plaintiffs submitted and the Court granted a stipulation to dismiss Plaintiffs' derivative and unjust enrichment claims, and on June 19, 2007, Plaintiffs filed their First Consolidated Amended Class Action Complaint (the "First Amended Complaint") and their Motion for Class Certification.

On July 2, 2007, Defendants answered the First Amended Complaint. On July 3, 2007, Plaintiffs served their first document request on Defendants. Beginning in July 2007, Plaintiffs also served document and deposition subpoenas on the financial advisors and analysts who assisted American Pharmaceutical's special committee of the Board of Directors, and on other non-parties who had analyzed and commented on the Merger. Defendants produced certain documents in response to Plaintiffs' request, and the non-parties together produced thousands of pages of documents in response to Plaintiffs' subpoenas.

In November 2007, the entity formerly known as American Pharmaceutical Partners, Inc., and by then known as Abraxis Bioscience, Inc. ("Abraxis"), spun off one of its businesses to its shareholders, naming the spun off entity Abraxis Bioscience, Inc. and renaming the continuing entity as APP Pharmaceuticals, Inc. ("APP").

As of December 31, 2007, there were approximately 160 million shares of APP outstanding, of which approximately 132 million were owned by insiders and would be excluded from the Class. As of the same date, there were approximately 40 million shares of Abraxis outstanding, of which approximately 33 million were owned by insiders and would be excluded from the Class.

### **III. THE SETTLEMENT**

Beginning in the summer of 2007, counsel for the parties began discussing the possibility of settlement. These negotiations continued over the course of the next year. In October 2007, Plaintiffs notified the Court that the parties were in discussions that may lead to the resolution of the Action, and requested and were granted permission to defer submission of a Stipulation and Proposed Order on Class Certification pending the outcome of the settlement discussions. That deferral was further extended by the Court over the ensuing months.

In furtherance of their ongoing settlement discussions, the parties enlisted the assistance of the Hon. Nicholas Politan (U.S.D.J.) (Ret.) to help mediate a resolution, and participated in a mediation session with Judge Politan on July 9, 2008. At the conclusion of that mediation, the parties reached an agreement in principle to settle the Action, and that agreement is now embodied in the Settlement Agreement.

If the Settlement is approved by the Court, on or before August 15, 2008, Defendants shall pay or cause to be paid in to an escrow account (the "Settlement Account") the aggregate sum of \$14.3 million (the "Settlement Amount"). If any portion of the "Settlement Amount" is not deposited by August 15, 2008, the unpaid balance shall accrue interest from that date until such payment is made at the rate of 30-day LIBOR plus 0.75%.

The Settlement Amount will be reduced by such amounts as are disbursed to pay for costs, expenses, and taxes on interest earned thereon as may be awarded by the Court and by amounts for costs incurred in giving this Notice and in the administering of the Settlement. Additionally, the Settlement Amount will be reduced by such amounts as may be awarded by the Court in legal fees and expenses to Plaintiffs' Lead Counsel, as described below.

The parties to the Settlement Agreement have agreed that the Settlement Agreement, its terms or provisions, the negotiations leading up to it, and the proceedings connected with it, (a) shall not be deemed to be (i) a presumption, concession, or admission by Defendants of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the action, or any other action or proceeding; or (ii) a presumption, concession, or admission by Plaintiffs of any lack of merit in any claim of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the action, or any other action or proceeding; and (b) shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any member of the settlement Class or the parties to the Action or in any other action or proceeding, whether civil, criminal, or administrative, except for purposes of enforcement of the terms and conditions of the Settlement Agreement.

If you are a Class member, and the Settlement Agreement and the Settlement receive final approval by the Court, you will be bound by any Judgment entered in the Action unless you affirmatively seek to exclude yourself. You may request exclusion from the Class, but if you do nothing, you will be bound by the proceedings in this Action.

#### **IV. DISMISSAL OF ACTION AND RELEASES**

The Settlement Agreement provides that, subject to Court approval of the Settlement, and in consideration for the benefits provided by the Settlement, the Action shall be dismissed, with prejudice, without fees or costs except as expressly provided in the Settlement Agreement.

The Settlement Agreement includes releases for the benefit of the Defendants and their related and affiliated persons and entities. Specifically, it provides that Plaintiffs and the “Releasing Persons” shall be deemed to have, and by operation of law and of any judgment to be entered shall have, fully, finally, and forever released, relinquished, settled, and discharged the “Released Persons” from all “Released Claims.”

The Settlement Agreement also includes releases for the benefit of Class members. Specifically, it provides that the Defendants and the “Released Persons” shall be deemed to have, and by operation of law and of any judgment to be entered shall have fully, finally, and forever released, relinquished, settled, and discharged the Plaintiffs and their counsel from any claims arising from or relating to the institution, prosecution or settlement of the Action.

The Settlement Agreement defines “Released Claims” as all claims, including Unknown Claims, legal or equitable, held by Plaintiffs or the Class (directly, derivatively or in any other capacity) that arise out of or relate to the facts and circumstances alleged and transactions described in the First Amended Complaint in this Action, and that could have been asserted in this Action (whether or not actually asserted) by or on behalf of any member of the Class, including but not limited to all claims of any sort whatsoever arising out of or relating to the Merger; *provided, however*, that Released Claims shall not include any claim to enforce the terms of the Settlement Agreement.

The Settlement Agreement defines “Released Persons” as (i) Defendants; (ii) Abraxis; (iii) APP; (iv) all Persons controlled by, controlling, or under common control with the Defendants, Abraxis or APP; and (v) all directors, officers, employees, trustees, financial advisors, attorneys, agents, representatives, insurers, successors and assigns of any of the foregoing Released Persons.

The Settlement Agreement defines “Releasing Persons” as Plaintiffs and members of the Class, their heirs, executors, administrators, successors, and assigns.

The Settlement Agreement also provides that the parties granting releases waive any rights that may have the effect of limiting such releases, including a waiver of any rights pursuant to Section 1542 of the California Civil Code and any similar, comparable or equivalent provision.

#### **V. REASONS FOR THE SETTLEMENT**

Plaintiffs believe that the claims asserted in the Action have merit. Plaintiffs, through their counsel, have conducted a thorough investigation of the facts and analyzed the applicable law with respect to their claims against the Defendants, the asserted and potential defenses thereto, and the likelihood of prevailing and recovering damages at trial. However, Plaintiffs and their counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action through trial and appeals. Plaintiffs and their counsel have also considered the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Plaintiffs and their counsel also considered the inherent problems of proof and possible defenses to the claims asserted in the Action. Plaintiffs’ counsel are confident that the proposed Settlement set forth in the Settlement Agreement confers, and has conferred, substantial benefits upon the Class. Based on their evaluation, Plaintiffs and their counsel are of the opinion that the Settlement set forth in this Settlement Agreement is in the best interests of, and fair to, Plaintiffs and the Class.

Defendants have denied and continue to deny that they have committed any act or omission giving rise to any liability and/or violation of law, or that Plaintiffs or the Class have suffered damage from the conduct complained of in the Action. While denying any fault or wrongdoing, and without conceding any infirmity in their defenses against the claims alleged in the Action, Defendants consider it desirable that the Action be settled and dismissed, subject to the terms and conditions of the Settlement Agreement.

The parties recognized the time and expense that would be incurred by further litigation in this matter, and the uncertainties inherent in such litigation and so, without admitting the strength or weaknesses of any claims or defenses, agreed, subject to Court approval, that the Action will be settled and dismissed on the merits and with prejudice, on the terms and conditions described herein.

The Settlement Agreement provides that Plaintiffs shall complete such additional discovery as may reasonably be necessary, together with the discovery and investigation already undertaken, to confirm that this Settlement Agreement is fair, reasonable and in the best interests of the Class. This Settlement Agreement may be terminated at the sole option and discretion of the Plaintiffs if, after the completion of this additional discovery, Plaintiffs' Lead Counsel concludes the Settlement is not in the best interests of the Class.

## **VI. APPLICATION FOR ATTORNEY'S FEES AND EXPENSES**

If the Court approves the Settlement, Plaintiffs' Lead Counsel intend jointly to apply to the Court for an award of attorneys' fees of 22% of the Settlement Amount, and reimbursement of expenses and costs in the amount of actual out-of-pocket expenses (plus interest) of Plaintiffs' Lead Counsel, also to be paid from the Settlement Amount ("Attorneys' Fees and Expenses Award"). Defendants have agreed that they will not oppose such an application. Any amount of attorneys' fees and expenses awarded by the Court (plus interest) shall be paid from the Settlement Amount to Plaintiffs' Lead Counsel five (5) business days after the effective date of the Judgment. Plaintiffs' Lead Counsel also reserves the right to make a further application for attorneys' fees and expenses in connection with the administration of the Settlement for work and expenses following approval of the Settlement, also to be paid from the Settlement Amount (plus accrued interest).

## **VII. YOUR RIGHT TO SHARE IN THE SETTLEMENT PROCEEDS**

The Settlement Amount, net of any taxes on the income thereof, shall be used to pay (i) the Notice and Administrative Expenses as defined in paragraph 1.12 of the Settlement Agreement, and (ii) the Attorneys' Fees and Expense Award as approved by the Court. The balance of the Settlement Amount after the above payments shall be the "Net Settlement Amount," which will be distributed among Authorized Claimants.

An "Authorized Claimant" is a member of the Class who owned common shares of Abraxis or APP as of the time immediately prior to the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008, and who does not submit a valid and timely request for exclusion from the Class in accordance with the procedures and deadlines established by the Court for that purpose. Each Authorized Claimant whose claim is accepted and allowed by the Claims Administrator shall be allocated a pro rata share of the Net Settlement Amount pursuant to the Plan of Allocation described below. No compensation shall be paid to members of the Class or their counsel for settlement of the Action other than from the Settlement Amount. The Plan of Allocation proposed in this Notice is not a necessary term of this Settlement Agreement and it is not a condition of the Settlement Agreement that the Plan of Allocation be approved.

Only those members of the Class who owned common shares of Abraxis or APP as of the time immediately prior to the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008, may be "Authorized Claimants." For purposes of determining the extent, if any, to which a Class member shall be entitled to be treated as an "Authorized Claimant," the following conditions shall apply:

a. Class members shall be required to submit a "Proof of Claim" (enclosed with this Notice), supported by such documents as are designated therein, including proof of the claimant's holdings as of the time immediately prior to the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008, or such other documents or proof as the Claims Administrator in its discretion, may deem acceptable.

b. All Proofs of Claim must be submitted by the date specified in the Proof of Claim unless such period is extended by Order of the Court. Any Class member who fails to submit a Proof of Claim by such date, shall be forever barred from receiving any payment pursuant to this Settlement (unless, by Order of the Court, a later submitted Proof of Claim by such Class member is approved), but shall in all other respects be bound by all of the terms of the Settlement Agreement and the Settlement including the terms of the Judgment to be entered in the Action and the releases provided for therein, and will be barred from bringing any action against the Released Persons concerning the Released Claims. A

Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

c. Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Plaintiffs' Lead Counsel, who shall determine the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below.

d. Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the claimant in order to remedy the curable deficiencies in the Proofs of Claim submitted. The Claims Administrator, under supervision of Plaintiffs' Lead Counsel, shall notify, in a timely fashion and in writing, all claimants whose Proofs of Claim it proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (e) below.

e. If any claimant whose claim has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Proof of Claim cannot be otherwise resolved, Plaintiffs' Lead Counsel shall thereafter present the request for review to the Court.

f. Claimants whose Proofs of Claim are accepted and allowed by the Claims Administrator shall be Authorized Claimants entitled to a pro rata share of the Net Settlement Amount, as explained in Section VIII below; and

g. The administrative determinations of the Claims Administrator accepting and rejecting Proofs of Claim shall be presented to the Court, on notice to Defendants' counsel, for approval by the Court.

Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's Proof of Claim, and the Proof of Claim will be subject to investigation and discovery under the Rules of the Delaware Court of Chancery; *provided, however*, that such investigation and discovery shall be limited to that claimant's status as a Class member, an Authorized Claimant, and/or the validity and amount of the claimant's Proof of Claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim. Payment pursuant to the Settlement Agreement shall be deemed final and conclusive against all Class members. All Class members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Amount, but otherwise shall be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Persons concerning the Released Claims.

Any member of the Class who is not an Authorized Claimant or, who is an Authorized Claimant but does not submit a valid Proof of Claim, will not be entitled to receive any of the proceeds from the Net Settlement Amount. All members of the Class will be bound by all of the terms of the Settlement Agreement and the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Persons concerning the Released Claims, whether or not they submit a Proof of Claim. All proceedings with respect to the administration, processing and determination of claims described above and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

The Net Settlement Amount shall be finally distributed to Authorized Claimants whose claims are accepted and allowed by the Claims Administrator only after: (a) all Proofs of Claim have been processed, and all claimants whose Proofs of Claim have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (b) all objections with respect to all rejected or disallowed Proofs of Claim have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (c) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court; and (d) all costs of administration have been paid.

## **VIII. PLAN OF ALLOCATION**

Only Authorized Claimants whose claims are accepted and allowed by the Claims Administrator will share in the Net Settlement Fund.

As a result of the November 2007 spinoff of Abraxis, each holder of one share of American Pharmaceutical received one share of Abraxis (NASDAQ:ABII) and four shares of APP (NASDAQ:APPX). To account for this 4:1 distribution of shares, the Net Settlement Fund will be divided into two funds based on the ratio of the closing price of APP common stock to the closing price of Abraxis common stock at the time immediately prior to the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008. The "APP Fund" will hold the portion of the Net Settlement Fund that represents the relative value of APP shares to Abraxis shares, and the "Abraxis Fund" will hold the remaining portion of the Net Settlement Fund that represents the relative value of Abraxis shares to APP shares.

Each Authorized Claimant who owned common shares of APP as of the time immediately preceding the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008, will receive a pro rata share of the APP Fund. The pro rata share will be equal to the number of APP shares held by the Authorized Claimant as approved by the Claims Administrator divided by the total of all APP shares of all Authorized Claimants approved by the Claims Administrator. The ratio will then be multiplied by the APP Fund to determine each Authorized Claimant's award.

Each Authorized Claimant who owned common shares of Abraxis as of the time immediately prior to the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008, will receive a pro rata share of the Abraxis Fund. The pro rata share will be equal to the number of Abraxis shares held by the Authorized Claimant as approved by the Claims Administrator divided by the total of all Abraxis shares of all Authorized Claimants approved by the Claims Administrator. The ratio will then be multiplied by the Abraxis Fund to determine each Authorized Claimant's award.

## **IX. ADMINISTRATION OF THE SETTLEMENT**

Plaintiffs' Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Amount by the Claims Administrator. Plaintiffs' Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proof of Claim submitted in the interests of achieving substantial justice.

Except to the extent provided in the Settlement Agreement, Defendants and their counsel shall have no liability, obligation or responsibility for the provision of Notice to the Class, the administration of the Settlement, or the disbursement of the Net Settlement Amount. Defendants shall not be entitled to any return of Settlement Amount (or interest thereon) once the Settlement is finally approved by the Court.

## **X. CLASS ACTION DETERMINATION**

The Court has determined that for settlement purposes only, the Action should be preliminarily certified as a class action pursuant to Court of Chancery Rules 23(a) and 23(b)(3) on behalf of a class consisting of all Persons who were record or beneficial owners of common stock of American Pharmaceutical Partners, Inc. on November 27, 2005, and their transferees, successors and assigns, including all persons who, as of the time immediately preceding the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008, owned common shares of Abraxis or APP, but excluding (i) the Defendants, (ii) any person controlled by, controlling or under common control with any Defendant, and (iii) any person who submits a timely and complete request for exclusion from the Class in accordance with the procedures and deadlines established by the Court for that purpose (the "Class"). The named plaintiffs in the Action are preliminarily designated as the Class representatives with Plaintiffs' Lead Counsel of record as class counsel ("Class Counsel").

## **XI. SETTLEMENT HEARING**

The Court has scheduled a Settlement Hearing which will be held on December 15, 2008, at 10:00 a.m., at The New Castle County Courthouse, Wilmington, Delaware 19801, to:

- a. determine whether the preliminary certification of the Class, and the preliminary designation of the named plaintiffs as the Class representatives and the appointment of Plaintiffs' Lead Counsel as Class Counsel, should be made final;
- b. determine whether the Settlement should be approved by the Court as fair, reasonable, adequate and in the best interests of the Class;
- c. determine whether an Order and Final Judgment should be entered pursuant to the Settlement Agreement;
- d. consider the Class representatives' application for an award of attorneys' fees and expenses for Plaintiffs' Lead Counsel; and
- e. rule on such other matters as the Court may deem appropriate.

The Court has reserved the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the application for attorneys' fees and reimbursement of expenses, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof. The Court has also reserved the right to approve the Settlement at or after the Settlement Hearing with such modifications as may be approved by the parties to the Settlement Agreement and without further notice to the Class.

## **XII. RIGHT TO APPEAR AND OBJECT**

Any Class member who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement or to any term(s) of the Settlement Agreement, or to the application for attorneys' fees and expenses, must both effect service on Plaintiffs' Liaison Counsel and the Defendants' counsel (identified below), and file with the Court by no later than thirty (30) days before the Settlement Hearing – meaning no later than November 15, 2008 – a statement of his, her or its objection(s); *provided however*, that a potential Class member who requests exclusion (see Section XIII, below) from the Class shall not be entitled to submit an objection, and no such objection shall be heard unless otherwise ordered by the Court. If a Class member timely and properly serves and files written objections, Plaintiffs' Lead Counsel and Defendants' counsel may, as they deem appropriate, submit reply papers in support of the Settlement Agreement or to the application for attorneys' fees and expenses no later than fourteen (14) days before the Settlement Hearing – meaning no later than December 1, 2008. Objections shall be served on the following counsel:

### *Plaintiffs' Liaison Counsel*

Pamela S. Tikellis, Esquire  
CHIMICLES & TIKELLIS LLP  
One Rodney Square  
P.O. Box 1035  
Wilmington, DE 19899  
(302) 656-2500

### *Counsel for Defendants*

William Lafferty, Esquire  
MORRIS, NICHOLS, ARSHT &  
TUNNELL, LLP  
1201 N. Market Street, 18<sup>th</sup> Floor  
P.O. Box 1347  
Wilmington, DE 19899

Andre G. Bouchard, Esquire  
BOUCHARD MARGULES &  
FRIEDLANDER, P.A.  
222 Delaware Avenue  
P.O. Box 2306  
Wilmington, DE 19899

The statement of objection of the Class member shall state (i) whether the Class member is a Class member; (ii) the number of APP and/or Abraxis shares the Class member owned as of the time immediately prior to the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008; (iii) the date(s) on which those shares were acquired; (iv) which part of the Settlement the Class member objects to; and (v) the specific reason(s), if any, for each such objection made by the Class member, including any legal support the Class member wishes to bring to the Court's attention and any evidence the Class member wishes to introduce in support of such objection.

Any Class member may file an objection on his, her or its own, or through an attorney hired at his, her or its own expense.

Any Class member who files and serves a written objection – and only such Class members – may appear at the Settlement Hearing, either in person or through counsel hired at the Class member's expense, to object to the fairness, reasonableness or adequacy of this Settlement Agreement, to any term(s) of the Settlement Agreement, or to the application for attorneys' fees and expenses. Class members or their attorneys intending to make an appearance at the Settlement Hearing must both effect service on Plaintiffs' Liaison Counsel and Defendants' counsel, and file with the Court a notice of intention to appear by no later than ten (10) days before the Settlement Hearing – meaning no later than December 5, 2008.

Any Class member who fails to comply with any of the provisions described in this Section XII shall waive and forfeit any and all rights he, she or it may otherwise have to appear separately at the Settlement Hearing and/or to object to the Settlement, and shall be bound by all the terms of the Settlement and by all proceedings, orders and judgments in the Action.

## **XIII. REQUESTS FOR EXCLUSION**

A class action is a lawsuit in which one or more representative plaintiffs bring suit on behalf of themselves and all other persons who are similarly situated. The result reached in the lawsuit, whether favorable or not, is binding on all class members who do not timely exclude themselves.

A potential Class member who wishes to be excluded from the Class must mail by first class mail or otherwise deliver a written request for exclusion containing: (i) name; (ii) address; (iii) telephone number; (iv) number of shares of APP and/or Abraxis owned as of the time immediately prior to the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008; and (v) the date on which such shares were acquired, to the Claims Administrator, Garden City Group, Inc., at:

American Pharmaceutical Partners, Inc. Settlement Exclusions  
c/o The Garden City Group, Inc.  
P.O. Box 9312  
Dublin, Ohio 43017-4212

such that it is postmarked or delivered no later than thirty (30) days before the Settlement Hearing – meaning no later than November 15, 2008. A list of the persons who have validly and timely requested exclusion from the Class shall be provided by Plaintiffs' Lead Counsel to the Court at or before the Settlement Hearing.

Unless otherwise ordered by the Court, any potential Class member who does not file a timely written request for exclusion as provided by this Section XIII shall nevertheless be bound by the Settlement and by all proceedings, orders and judgments in the Action.

Within seven (7) business days of receipt by Plaintiffs' Lead Counsel or the Claims Administrator of any request for exclusion, copies of such request shall be provided to counsel for Defendants.

As set forth in a confidential supplemental stipulation between the parties dated as of August 15, 2008, in the event the shares represented by valid and timely requests for exclusion from Class members exceed a predetermined percentage of the stockholders of APP or Abraxis, by no later than two (2) days before the Settlement Hearing, the Defendants (as a group) may unilaterally withdraw from and terminate the Settlement in its entirety.

#### **XIV. ORDER AND FINAL JUDGMENT OF THE COURT**

If the Court determines that this Settlement, as provided for in the Settlement Agreement, is fair, reasonable, adequate and in the best interests of the Class, the parties shall jointly request that the Court enter an Order and Final Judgment, which will, among other things:

- a. approve the Settlement and adjudge the terms of the Settlement and all transactions incident thereto, to be fair, reasonable, adequate and in the best interests of the Class, pursuant to Rule 23(e) of the Court of Chancery Rules;
- b. make final the Court's previous determination to (i) certify the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Court of Chancery Rules, and (ii) designate the named plaintiffs in the Action as the Class representatives with Plaintiffs' Lead Counsel as Class Counsel;
- c. authorize and direct the performance of the Settlement in accordance with its terms and conditions and retain exclusive jurisdiction to supervise the consummation of the Settlement;
- d. dismiss the Action with prejudice in accordance with the terms of the Settlement Agreement, and grant the releases described herein in accordance with the terms and conditions of the Settlement Agreement; and
- e. award attorneys' fees and expenses to Plaintiffs' Lead Counsel.

#### **XV. NOTICE TO PERSONS OR ENTITIES HOLDING OWNERSHIP ON BEHALF OF OTHERS**

Brokerage firms, banks and/or other persons or entities who held common stock of American Pharmaceutical Partners, Inc. on November 27, 2005, and their transferees, successors and assigns, including all persons who, as of the time immediately prior to the consummation of the acquisition of APP by Fresenius Kabi on September 10, 2008, owned common shares of Abraxis or APP for the benefit of others are requested promptly to send this Notice to all of their respective beneficial owners. If additional copies of the Notice are needed for forwarding to such beneficial owners, any requests for such additional copies may be made to the Claims Administrator at: American Pharmaceutical Partners, Inc. Settlement, c/o The Garden City Group, Inc., P.O. Box 9312, Dublin, Ohio 43017-4212. Nominees may submit to the Claims Administrator, requests for reimbursement of documented actual out-of-pocket expenses incurred by nominees in identifying beneficial holders. Such requests must be RECEIVED by the Claims Administrator no later than December 1, 2008, and will be considered and determined by Plaintiffs' Lead Counsel in its sole discretion.

#### **XVI. SCOPE OF THIS NOTICE**

This Notice is not all-inclusive. The references in this Notice to the pleadings in the Action, the Settlement Agreement and other papers and proceedings, are only summaries and do not purport to be comprehensive. For the full details of the Action, the claims which have been asserted by the parties and the terms and conditions of the Settlement, including a complete copy of the Settlement Agreement, members of the Class are referred to the Court files in the Action. You or your attorney may examine the Court files during regular business hours of each business day at the office of the Register in Chancery, Court of Chancery, 500 King Street, Wilmington, Delaware 19801. In addition, you may review documents relating to the Settlement on the websites of Plaintiffs' Lead Counsel, Wolf Haldenstein Adler Freeman & Herz LLP at [www.whafh.com](http://www.whafh.com); Schiffrin Barroway Topaz & Kessler, LLP at [www.sbtclaw.com](http://www.sbtclaw.com); or Rigrodsky & Long, P.A. at [www.rigrodsky.com](http://www.rigrodsky.com).

**DO NOT CALL THE COURT.**

Dated: September 26, 2008

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Register in Chancery