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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In Re: WELLNX MARKETING and SALES PRACTICES LITIGATION

MDL DOCKET No. 07-md-1861-RGS

Member cases:

07-cv-11641-RGS	07-cv-11643-RGS
07-cv-11645-RGS	07-cv-11646-RGS
07-cv-11648-RGS	07-cv-11650-RGS
07-cv-11651-RGS	07-cv-11654-RGS
07-cv-11656-RGS	07-cv-11899-RGS
07-cv-11901-RGS	07-cv-11904-RGS
07-cv-11905-RGS	07-cv-11906-RGS
07-cv-11909-RGS	07-cv-11217-RGS

BEFORE THE HONORABLE RICHARD G. STEARNS
UNITED STATES DISTRICT JUDGE
SETTLEMENT APPROVAL HEARING
November 22, 2011

Courtroom No. 21
1 Courthouse Way
Boston, Massachusetts 02210

JAMES P. GIBBONS, RPR/RMR
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APPEARANCES:

SUGARMAN, ROGERS, BARSHAK & COHEN, (By David A. Barry, Esq.), 101 Merrimac Street, 9th Floor, Boston, Massachusetts 02114, on behalf of Plaintiffs

POPE, McGLAMRY, KILPATRICK, MORRISON & NORWOOD, LLP, (By Wade H. Tomlinson, Esq.) Synovus Centre, 1111 Bay Avenue, Suite 450, Columbus, Georgia 31901-2412, on behalf of Plaintiffs

DUANE MORRIS, LLP (By Thomas B.K. Ringe, Esq.), 30 South 17th Street, Philadelphia, Pennsylvania 01903-4196, on behalf of Plaintiffs

VENABLE, LLP, (By Edward P. Boyle, Esq.), 405 Lexington Avenue, 56th Floor, New York, New York 10174, on behalf of Defendants

RUBIN & RUDMAN, LLP, (By Alan K. Posner, Esq.) 50 Rowes Wharf, Boston, Massachusetts 02110, on behalf of Defendant Swiss Caps USA, Inc.

ADLER, POLLOCK & SHEEHAN, (By Jeffrey T. Rotella, Esq.), 175 Federal Street, Boston, Massachusetts 02110, on behalf of Defendant Robinson Pharma, Inc.

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P R O C E E D I N G S

THE CLERK: All rise for the Honorable Court.

This is MDL No. 07-1861, In Re: WellNx Marketing and Sales Practices Litigation.

If counsel who will addressing the Court can please introduce themselves.

MR. BARRY: Good morning, your Honor. David Barry for the plaintiffs.

MR. TOMLINSON: Good morning, your Honor. Trip Tomlinson for the plaintiffs.

MR. BOYLE: Good morning, your Honor. Edward Boyle for the defendant WellNx and the Woodgates.

MR. POSNER: Alan Posner, representing defendant Swiss Caps.

MR. ROTELLA: Jeffrey Rotella, your Honor, representing Robinson Pharma.

THE COURT: I have reviewed, obviously, a significant amount of information that has been given to me about the settlement.

Mr. Barry, I would be happy to have you address the salient features that you think should be expressed for purposes of the public record.

I realize that there is a motion before me for reimbursement of attorneys' fees and costs, as well as a motion for the award of modest incentive payments to the

1 class representatives.

2 Quite honestly, I have no problem with either.
3 Ordinarily I do have some questions about attorney's fees,
4 but, as pointed out by counsel, the lodestar in this case is
5 significantly above the actual fee award being requested.
6 And so while it appears to be a large figure, I think it is
7 a very reasonable request under the circumstances, and
8 defendants do not tell me otherwise. So I am inclined to
9 allow the attorneys' fee request as submitted.

10 I note, in general, unless something has happened in
11 the last hour, no objection has been filed with us as a
12 court, as I understand no objections were filed with
13 counsel.

14 I recognize, because obviously it is a case we have
15 followed very carefully, given the fact it does fall under
16 the MDL docket, that this was a case of more complexity than
17 was apparent at the very beginning. First of all, just
18 given the number of cases that are consolidated, but also
19 the necessity that counsel, both on plaintiffs' and on
20 defendants' side had in dealing with delicate matters of
21 potential insolvency of the defendant in the case, and then,
22 of course, the interests of many attorneys general which
23 required counsel to accommodate their concerns and to work
24 out a settlement that satisfied not only the civil parties
25 to the case but also the regulatory authorities who took an

1 interest in how the case turned out.

2 To my mind, one of the benefits, or one of the strong
3 points, of the settlement is that there are no coupons or
4 any of the criticized forms of relief allowed. And I think
5 there were significant measures taken, as set out in the
6 agreement, which, in effect, would be the content of
7 injunctive relief, if that were the issue, about future
8 advertising of the products in question.

9 So, both in general and specific terms, I am quite
10 satisfied with what plaintiffs' counsel have achieved. In
11 fact, I think it's an excellent achievement on both sides,
12 and I actually admire the work that brought about a
13 settlement in a case that I did not think would actually
14 reach this point.

15 So having said that, Mr. Barry, perhaps I've given your
16 speech for you --

17 (Laughter.)

18 THE COURT: -- but, for the record, I invite you.

19 MR. BARRY: I think I should quit while I'm ahead,
20 but to the extent the Court wants to hear anything more
21 about the salient points of the settlement, I will defer, as
22 I did when we were last here on August 5, to Mr. Tomlinson,
23 also counsel for the plaintiffs, but perhaps there isn't
24 much more to say.

25 THE COURT: Mr. Tomlinson.

1 MR. TOMLINSON: Your Honor, you've made a better
2 record than I ever could, actually. So, really, I think
3 everything happened as the Court previously directed,
4 pursuant to notice, and so we're very satisfied with the way
5 things happened. There was an awful lot of notice that was
6 given here, and a lot of hits. I was prepared to go through
7 some of that in detail, but I really don't know that that's
8 necessary.

9 As you pointed out, there are no objections, and so if
10 the Court is satisfied with where we are, then I, as one
11 Judge told me, "Look, you've won; don't keep talking..."

12 (Laughter.)

13 THE COURT: "... Don't talk me out of it."

14 You did allude to one thing that I should have stressed
15 for the record, which is the effort to provide notice to the
16 class went well beyond what due process would require at its
17 minimum. In fact, it was both an intelligent and effusive,
18 if I can use that word, notification process, which has
19 given me now some ideas for similar cases in the future for
20 the proper way of giving notice in a case like this where it
21 is hard to otherwise ascertain the identity of the class
22 members.

23 MR. TOMLINSON: It worked very, very well and
24 reached all the potential class members. We think it was a
25 tremendous reach of notice. And we had to give notice to

1 the attorneys general of the various states because of the
2 type of case it was, and we had only one comment from an
3 attorney general, I think from the state of Texas, which was
4 very favorable, and so everything went as directed.

5 THE COURT: Do the defendants wish to add anything
6 for the record?

7 MR. BOYLE: No, your Honor.

8 THE COURT: That was succinct, as you have been
9 throughout --

10 (Laughter.)

11 MR. BOYLE: My finest oral argument of the year,
12 your Honor.

13 (Laughter.)

14 THE COURT: All right. All motions before the
15 Court then will be allowed and the settlement will be
16 approved. It will be signed and docketed by the end of the
17 day today.

18 This order you just gave me is the clean copy?

19 MR. BARRY: Yes, your Honor.

20 MR. TOMLINSON: And, Judge, it did not get on the
21 record, but thank you for all of your help during this case.
22 It was really a pleasure to appear before the Court. Thank
23 you.

24 THE COURT: I seldom hear that, so...

25 (Laughter.)

1 MR. BARRY: That was the one thing I was going to
2 add, your Honor. Thank you very much for accommodating us
3 with this date for the timing reasons.

4 MR. TOMLINSON: For those of us out of state, it
5 was a pleasure to appear before you.

6 THE COURT: Thank you. I will make sure the court
7 reporter gets all of that.

8 (Laughter.)

9 MR. BARRY: That's not meant to suggest for those
10 of us in state it was not a pleasure.

11 (Laughter.)

12 THE COURT: Thank you.

13 MR. BOYLE: Thank you, your Honor.

14 THE COURT: Court is adjourned.

15 THE CLERK: All rise.

16 Court is in recess.

17 (Proceedings adjourned.)

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C E R T I F I C A T E

I, James P. Gibbons, Official Court Reporter for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/James P. Gibbons

December 16, 2011

James P. Gibbons

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