

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
JUSTICE GLUSTEIN )  
 )  
 )  
 )  
 )

WEDNESDAY, THE  
10<sup>th</sup> DAY OF NOVEMBER 2021

**BETWEEN :**

ROBERT DRYNAN

Plaintiff

- and -

BAUSCH HEALTH COMPANIES INC.; BAUSCH HEALTH, CANADA INC.; VALEANT  
CANADA GP LIMITED; VALEANT CANADA LIMITED; VALEANT CANADA LP

Defendants

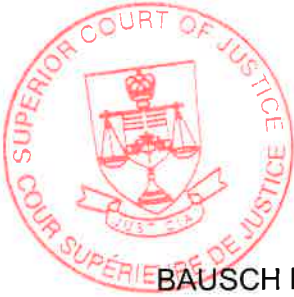
Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(CERTIFICATION)**

**THIS MOTION**, made by the Plaintiff, for an Order certifying this proceeding as a class proceeding, was heard October 6 to 8, 2021 by judicial videoconference at Toronto, Ontario.

**ON READING** the materials filed by the parties, and upon hearing the submissions of counsel for the parties:

1. **THIS COURT ORDERS** that the within action be and is hereby certified as a class proceeding as against the Defendants Bausch Health, Canada Inc. and Valeant Canada LP (the "**Bausch Canada Defendants**") pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "**Class Proceedings Act**").



Entered Jan 25/2022

2. **THIS COURT ORDERS** that the Class is defined as: All persons in Canada who purchased one or more COLD-FX Products between January 1, 2017 and the date the notice of certification is published (the “**Class Members**”).

3. **THIS COURT ORDERS** that Robert Drynan is hereby appointed as the representative plaintiff on behalf of the Class.

4. **THIS COURT ORDERS** that Tyr LLP is hereby appointed as Class Counsel in this action.

5. **THIS COURT DECLARES** that the following claims are asserted on behalf of the Class:

- (a) The Bausch Canada Defendants engaged in unfair practices under the *Consumer Protection Act, 2002*, S.O. 2002, c. 30 (the “**CPA**”) and equivalent provisions of consumer protection legislation in other provinces, being the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3 (formerly the *Fair Trading Act*, R.S.A. 2000, c. F-2); *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2; *Business Practices Act*, C.C.S.M c. B120; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1; *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1; *Consumer Protection Act*, R.S.N.W.T. 1988, c. C-17; *Consumer Protection Act*, R.S.N.S. 1989, c. 92; *Consumer Protection Act*, R.S.N.W.T. (Nu) 1988, c. C-17; *Business Practices Act*, R.S.P.E.I. 1988, c. B-7; *Consumer Protection Act*, CQLR c. P-40.1; *Consumer Protection and Business Practices Act*, S.S. 2013, c. C-30.2; *Consumers Protection Act*, R.S.Y. 2002, c. 40 (collectively, the “**Equivalent Consumer Protection Legislation**”);
- (b) The Bausch Canada Defendants breached section 52 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Competition Act**”); and
- (c) The Bausch Canada Defendants have been unjustly enriched by their unlawful conduct in breach of the CPA, Equivalent Consumer Protection

Legislation, the Competition Act, the *Food and Drugs Act*, RSC 1985, c. F-27, and Health Canada's Guidelines for Consumer Advertising of Health Products for Nonprescription Drugs, Natural Health Products, Vaccines and Medical Devices.

6. **THIS COURT DECLARES** that the relief sought by the Class is: a declaration that the Bausch Canada Defendants breached certain provisions of the CPA, Equivalent Consumer Protection Legislation, and the Competition Act; injunctive relief precluding the Bausch Canada Defendants from making certain representations about the efficacy of COLD-FX Products; damages under the CPA, Equivalent Consumer Protection Legislation, and Competition Act, and/or on grounds of unjust enrichment; and punitive damages, interest, and costs.

7. **THIS COURT ORDERS** that the certified common issues are as follows:

Consumer Protection:

- 1) Does the CPA or the Equivalent Consumer Protection Legislation apply to the Bausch Canada Defendants? If so, to which Bausch Canada Defendants?
- 2) Is contractual privity between the Bausch Canada Defendants, or any of them, and the Class members required to ground a claim under Part III of the CPA or parallel provisions of the Equivalent Consumer Protection Legislation?
- 3) If so, has contractual privity been established, either directly as between the Bausch Canada Defendants, or any of them, and Class members, or through the existence of an agency relationship between the Bausch Canada Defendants and their online and/or bricks and mortar sales agents?
- 4) Did the Bausch Canada Defendants, or any of them, engage in Unfair practices within the meaning of the CPA or the Equivalent Consumer Protection Legislation?

- 5) If so, are the Class members, or any of them, entitled to damages under the CPA or the Equivalent Consumer Protection Legislation?
- 6) Are the Bausch Canada Defendants liable jointly and severally with any person who entered into an agreement with the consumer for any amount to which the Class Members may be entitled under the CPA or parallel provisions of the Equivalent Consumer Protection Legislation?
- 7) Is it in the interests of justice to disregard the requirement to give notice that a consumer seeks to recover damages under the CPA or the Equivalent Consumer Protection Legislation?

Competition Act:

- 8) Did the Bausch Canada Defendants, or any of them, engage in conduct contrary to section 52 of the Competition Act?
- 9) If so, are the Bausch Canada Defendants, or any of them, liable to the Class members for loss or damage suffered, investigation costs, and/or costs of this proceeding under section 36(1) of the Competition Act?

Unjust Enrichment:

- 10) Were the Bausch Canada Defendants, or any of them, unjustly enriched from the sale of COLD-FX Products?
- 11) If so, did the Class members suffer a corresponding deprivation?
- 12) If so, is there a juristic reason for the Bausch Canada Defendants' enrichment?
- 13) If so, are the Class members entitled to restitution on the basis of unjust enrichment?

Aggregate Monetary Relief:

- 14) If common issues 5 and/or 9 are answered in the affirmative, can the amount of loss or damages suffered by the Class members be determined on an aggregate basis, and if so, in what amount?
  - 15) If common issue 13 is answered in the affirmative, can the amount of restitutionary relief or disgorgement to which the Class members are entitled be determined on an aggregate basis, and if so, in what amount?
  - 16) Are the Bausch Canada Defendants, or any of them, liable to pay punitive damages to the Class members, having regard to the nature of their conduct, and if so, what is the amount of punitive damages?
8. **THIS COURT DECLARES** that the Plaintiff has produced a workable litigation plan which meets the requirements of the Class Proceedings Act.
9. **THIS COURT ORDERS** that notice of the certification order (the “**Notice**”) shall be given to Class Members at the time and in the form and manner to be directed by the Court.
10. **THIS COURT ORDERS** that Class Members may opt out of this class proceeding by following the opt-out process set out in the Notice.
11. **THIS COURT ORDERS** that any person who opts out of this action in accordance with the provisions for doing so in the Notice shall be excluded from the Class and the action.
12. **THIS COURT ORDERS** that, thirty (30) days following the final resolution of all appeal proceedings arising from this Order, the Bausch Canada Defendants shall pay the Plaintiff the amount of \$450,000 for costs of the certification motion, inclusive of fees, disbursements and HST.



---

The Honourable Justice Glustein

ROBERT DRYNAN v. BAUSCH HEALTH COMPANIES INC. ET  
AL.  
Plaintiff Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**ORDER**

**Tyr LLP**  
488 Wellington Street West, Suite 300-302  
Toronto, ON M5V 1E3  
Fax: 416.987.2370

**Sean Campbell (LSO# 49514J)**  
Tel: 416.527.3934  
Email: scampbell@tyrllp.com

**James Bunting (LSO# 48244K)**  
Tel: 647.519.6607  
Email: jbunting@tyrllp.com

**Carlos Sayao (LSO# 68895W)**  
Tel: 416.294.7800  
Email: csayao@tyrllp.com

**Judith Manger (LSO# 75590A)**  
Tel: 647.281.7141  
Email: jmanger@tyrllp.com

Lawyers for the Plaintiff