

Form 27

[Rules 6.3 and 10.52(1)]



COURT FILE NUMBER 1201 12838

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE Calgary

PLAINTIFFS Fiona Singh And Muzaffar Hussain, by his litigation Representative Fiona Singh

DEFENDANTS GlaxoSmithKline Inc., GlaxoSmithKline LLC and GlaxoSmithKline PLC

DOCUMENT **APPLICATION (ALTERNATE PROPOSED LEGAL COSTS)**

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CMH
Dec 6, 2024

NOTICE TO RESPONDENTS

This Application is made against you. You are a Respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the Application is heard as shown below:

Date:	December 6, 2024
Time:	10:00 am
Where:	Calgary Courts Centre, 601 - 5 Street S.W. Calgary, AB T2P 5P7
Before Whom:	The Honourable Justice E. Jane Sidnell, Case Management Justice

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order approving the Settlement Application as it relates to (a) legal costs, disbursements and taxes (collectively, the “**Legal Costs**”); and (b) an honorarium for the representative plaintiff, Ms. Fiona Singh, (the “**Proposed Honorarium**”) on the following terms, (collectively, the “**Alternate Proposed Legal Costs**” as defined in the November 13, 2024, endorsement of Justice Sidnell (“**Endorsement**”)):

- (a) “Class Counsel Fee” of \$500,000, separate and apart from Lawyer’s Fees;
- (b) “Lawyer’s Fees” mean up to 35% of Compensatory Payments paid to Eligible Claimants who are represented by Class Counsel or another lawyer of their choosing who has a valid and enforceable retainer agreement with an Eligible Claimant. Lawyer’s Fees paid to lawyers other than Class Counsel shall not exceed 25% where the retainers were executed before the Notice of Settlement Approval Hearing is given and 10% where the retainers were executed after. Class Counsel will receive 15% of Compensatory Payments that are made to Eligible Claimants who are unrepresented; and
- (c) The aggregate amount of the Class Counsel Fee and Lawyer’s Fees shall not exceed 35% of the global settlement amount; or

2. An Order varying the Proposed Legal Costs to such terms that are fair and reasonable in the circumstances and in this Court’s discretion; and

3. A Proposed Honorarium for the representative plaintiff in the amount of \$50,000.

Grounds for making this Application:

4. Pursuant to s. 35(2) of the *Class Proceedings Act*, a class proceeding may be settled only with approval of the Court;
5. Any award for legal fees and disbursements must be fair and reasonable and should not fetter any individual retainers on the part of class members;
6. Any apportionment of legal fees and disbursements must reflect relative contribution of firms;
7. The parties negotiated and understood that the Alternate Proposed Legal Costs arrangement described above was the fairest to the class and all parties involved, including all parties with interests in legal costs by way of undertaking or otherwise, and that it constituted the bargain between the parties that would be submitted to this Court for approval;
8. The Alternate Proposed Legal Costs described above reflect the medical idiosyncrasies and individual retainer work that has been and will be required to identify class members;
9. The Proposed Legal Costs submitted to this Court for the September 24, 2024 Settlement Approval Hearing by Casey R. Churko were contrary to the negotiated agreement, and ignorant of the best interests of the class;
10. The Proposed Legal Costs submitted to this Court for the September 24, 2024 Settlement Approval Hearing are the product of late-breaking and discreet discussions between Merchant Law Group LLP and Casey R. Churko, in which each stood to benefit to the detriment of the class, and the law firm that prosecuted this Action.

11. As such, Napoli Shkolnik Canada and Docken submit that the Alternate Proposed Legal Costs are not “alternate” at all. They reflect the agreement of the parties and, in any event, are fairer to counsel and to the class than the Proposed Legal Costs (as defined in the Endorsement).

Material or evidence to be relied on:

12. Affidavit of Clint Docken, sworn November 20, 2024;
13. Affidavit of Mario D’Angelo, sworn November 20, 2024;
14. Affidavit of class member Amy Kerrivan, sworn November 19, 2024;
15. Affidavit of class member Stephanie Shea, sworn November 18, 2024;
16. The pleadings and proceedings herein; and
17. Such other materials as shall subsequently be filed and served.

Applicable rules:

18. *Alberta Rules of Court*, Alta Reg 124/2010, Rule 2.9

Applicable Acts and regulations:

19. *Class Proceedings Act*, SA 20023, s C-16.5

Any irregularity complained of or objection relied on:

20. None.

How the Application is proposed to be heard or considered:

21. Orally or by video conference before the Case Management Justice.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.