



# GRANTED

## IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

### ORDER AND FINAL JUDGMENT

This matter came before the Court for hearing pursuant to the Order of this Court, dated December 15, 2008 (the "Order"), on the application of the Parties for approval of the Settlement set forth in the Stipulation of Settlement dated as of August 15, 2008 (the "Settlement Agreement"). Due and adequate notice having been given to the settlement Class as required in the Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the Settlement Agreement.

2. This Court has personal jurisdiction over all Class members and has subject matter jurisdiction to approve the terms of the Settlement set forth in the Settlement Agreement, including its exhibits, and including all documents submitted to the Court in connection with the implementation of the Settlement Agreement.

3. In compliance with the Scheduling Order, notice has been disseminated to the Class by: (i) mailing by first class mail to the members of the Class the Notice of Pendency of Class Action, Proposed Settlement, Settlement Hearing, Right for Exclusion and Right to Appear (the "Notice"); and (ii) publishing the Summary Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing (the "Summary Notice") once in *The Wall Street Journal*, *The*

*New York Times* and *USA Today*. The Notice, the Summary Notice and the notice methodology implemented pursuant to the Settlement Agreement (i) constitute the best practicable notice; (ii) constitute notice that was reasonably calculated, under the circumstances, to apprise Class members of the pendency of the Action, of the effect of the Settlement Agreement, including the release of their right to object to the proposed Settlement, of the right of Class members to exclude themselves from the Class, and of the right of Class members to appear at the Settlement Hearing; (iii) are reasonable and constitute due, adequate and sufficient notice to all persons or entities entitled to receive notice; and (iv) meet all applicable requirements of Delaware law, the United States Constitution (including the Due Process Clause), the Rules of this Court and any other applicable law.

4. The Action is hereby finally certified as a class action pursuant to Court of Chancery Rules 23(a) and 23(b)(3) consisting of 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 Pharmaceuticals, Inc. (“APP”) by Fresenius Kabi on September 10, 2008, owned common shares of Abraxis BioScience, Inc. (“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”).

5. The named plaintiffs in the Action, Market Street Securities, Inc., William H. Olinger and Martin Senson are hereby designated as the Class representatives and Plaintiffs’ Lead Counsel, Wolf Haldenstein Adler Freeman & Herz LLP, Schiffrin Barroway Topaz &

Kessler, LLP and Rigrodsky & Long, P.A. are certified as Class counsel (“Class Counsel”). The Court finds that (i) the Class is so numerous that joinder of all members is impracticable; (ii) there are questions of law or fact common to the Class; (iii) the claims and defenses of Plaintiffs are typical of the claims of the Class; (iv) Plaintiffs’ Lead Counsel have fairly and adequately protected and represented the interests of the Class, and (v) the Action falls within the criteria of Chancery Court Rules 23(a) and 23(b)(3).

6. The Settlement, and all transactions incident thereto, are found to be fair, reasonable, adequate, consistent and in compliance with all applicable requirements of Rules of the Court of Chancery of the State of Delaware, the United States Constitution (including the Due Process Clause) and any other applicable law, and in the best interests of the Class, and the Settlement is hereby approved. The Parties and their counsel are hereby authorized and directed to implement and consummate the Settlement Agreement according to its terms and provisions, and the Register in Chancery is directed to enter and docket this Order and Final Judgment in the Action.

7. The Action is hereby dismissed on the merits and with prejudice, without fees or costs to any Party, except as provided in the Settlement Agreement.

8. All claims – including any claims that Plaintiffs and members of the Class, their heirs, executors, administrators, and assigns (the “Releasing Persons”) do not know or suspect to exist at any time or before the date hereof, including any claim for new or additional damages or injuries, that, if known, might have affected the decision to enter into the Settlement Agreement, to object or not object to the Settlement or to request exclusion from the Class – legal or equitable, held by the Plaintiffs or members of 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 (the “Released Claims”), are hereby fully, finally and forever released, relinquished, settled, discharged and dismissed with prejudice as to (i) Defendants; (ii) Abraxis; (iii) APP; (iv) all persons controlled by, controlling, or under common control with Defendants, Abraxis or APP; and (v) all directors, officers, employees, trustees, financial advisors, attorneys, agents, representatives, insurers, successors and assigns of the foregoing (the “Released Persons”). The Released Claims shall not include any claim to enforce the Settlement Agreement.

9. All claims held by the Defendants that arise from or relate to the institution, prosecution or settlement of the Action are hereby fully, finally and forever released, relinquished, settled, discharged and dismissed with prejudice as to Plaintiffs and their counsel.

10. All Releasing Persons are permanently barred and enjoined from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order against any Released Person in any jurisdiction that is based upon, arises out of or relates to any Released Claims, including, but not limited to, any claim that is based upon, arises out of or relates to the Action or the transactions and occurrences referred to in the First Amended Complaint.

11. This Judgment and 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, the Order and the Judgment, and the Settlement contemplated therein. The Released Persons may file or otherwise offer the Settlement Agreement and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12. The Parties, without further approval from the Court are authorized to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement, and all exhibits attached thereto, as (i) are not materially inconsistent with this Judgment and (ii) do not materially limit the rights of Class members under this Settlement Agreement.

13. The Plan of Allocation as described in the Notice is hereby approved.

14. Plaintiffs' Lead Counsel is hereby awarded attorneys' fees of \$3,150,000 which the Court finds to be fair and reasonable. Plaintiffs' Lead Counsel are hereby awarded a total of \$205,830.47 in reimbursement of expenses and disbursements. The foregoing awards of fees and expenses shall be paid to Plaintiffs' Lead Counsel from the Settlement Amount five (5) days from the day this Judgment becomes effective. Plaintiffs' Lead Counsel shall allocate the awards of fees and expenses among themselves as they deem appropriate; *provided, however*, if Plaintiffs' Lead Counsel are unable to agree on such an allocation, they shall agree, by majority

vote, to submit the dispute either to binding mediation (before a mediator agreed to by all Plaintiffs' Lead Counsel) or to the Court.

15. This Court finds that there is no just reason to delay the entry of this Judgment and directs that this Judgment be entered as final in accordance with Court of Chancery Rule 54(b).

16. This Court retains exclusive jurisdiction to adjudicate all matters relating in any way to the enforcement, interpretation and implementation of this Settlement Agreement.

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Vice Chancellor

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** Stephen P Lamb

**File & Serve**

**Transaction ID:** 22911070

**Current Date:** Dec 16, 2008

**Case Number:** 1823-VCL

**Case Name:** CONF ORDER In Re American Pharmaceutical Partners Inc Shareholders Litigation

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/s/ **Judge Stephen P Lamb**