

DRAFT NOTICE OF SETTLEMENT APPROVAL HEARING (LONG FORM)

**THIS NOTICE IS TO ALL INDIVIDUALS WHO RECEIVED DENTAL SERVICES PRIOR TO
JUNE 9, 2017 AT THE OFFICE OF DR. VIVEK (VICK) HANDA AND UPPER MIDDLE
DENTAL LOCATED AT 1900 WALKERS LINE IN BURLINGTON, ONTARIO**

LEGAL NOTICE OF PROPOSED SETTLEMENT

This Notice may affect your rights. Please read it carefully.

1. What is this lawsuit about?

A representative Plaintiff, Lina Rizzi, has commenced a Class Proceeding against DR. VIVEK (VICK) HANDA, UPPER MIDDLE DENTAL and VICK HANDA DENTISTRY PROFESSIONAL CORPORATION ("the Defendants"), seeking damages on behalf of individuals who received dental services prior to June 9, 2017, and their family members, as a result of being exposed to the risk of infection of hepatitis B, hepatitis C and human immunodeficiency virus (HIV) from improperly sterilized dental equipment, devices and instruments used by the Defendants.

The Defendants have not admitted any wrongdoing or liability in connection with the Class Proceeding.

The purpose of this document is to provide notice to Class Members that the parties have entered into a proposed Settlement Agreement that is subject to Court approval and a hearing to determine whether the Settlement Agreement will be approved will be held in Toronto **on February 5, 2021 at 10:00 AM by Zoom**. Class Counsel can provide Zoom log-in details to Class Members prior to the motion date.

2. Am I a member of the Class?

You are a member of the Class and entitled to participate in the proceeding if you are one of the following and you did not previously opt-out of the class proceeding:

- (a) Patients of Upper Middle Dental who received dental services prior to June 9, 2017, and had a positive laboratory test for Hepatitis B, Hepatitis C and/or HIV after receiving said services, and contracted Hepatitis B, Hepatitis C and/or HIV (the "Infected Class");

- (b) All persons who had a positive laboratory test for Hepatitis B, Hepatitis C and/or HIV, and contracted Hepatitis B, Hepatitis C and/or HIV, after an Infected Class Member received dental services from Upper Middle Dental prior to June 9, 2017 (the "Cross-Infected Class");
- (c) Patients of Upper Middle Dental who received dental services prior to June 9, 2017, and who were notified by a health authority, or were otherwise advised by a health authority that they were put at risk of contracting Hepatitis B, Hepatitis C and/or HIV, after receiving said services (the "Exposed Class");
- (d) All living parents, grandparents, children, siblings and spouses within the meaning of section 61 of the Family Law Act, R.S.O. 1990, c.F-3, as amended, of the persons described in paragraphs a and b above (the "FLA Class").

3. Has the action been certified as a Class Proceeding?

The Court certified the action as a Class Proceeding against all named Defendants by Order dated March 20, 2019.

4. What proposed settlement has been reached in this Class Proceeding?

The Settlement Agreement provides that the Defendants shall pay \$1,550,000, plus additional amounts described below, in exchange for a full and final release of the claims against them ("the Proposed Settlement"). The Proposed Settlement is subject to Court approval. You are not entitled to recover under the Proposed Settlement until it is approved by the Court and, if approved by the Court, until your claim is approved pursuant to the claims process, as described in more detail below. The settlement, if approved, will conclude the Class Proceeding.

Under the terms of the Proposed Settlement Agreement, the Defendants shall pay the total sum of \$1,550,000 (the "Settlement Funds") to compensate all Class Members.

In addition to payment by the Defendant of the Settlement Funds, the Defendants shall also pay the reasonable costs associated with appointment of the Litigation Administrator and Arbitrator, as well as all costs associated with giving of notice of the Settlement Approval Hearing, notice of Settlement Approval and Notice of the claims process and Distribution Protocol.

Further, the Defendants shall pay costs of \$50,000.00, plus HST and disbursements to Class Counsel, within thirty (30) days from the approval of the settlement. This amount is applied against the Court-approved legal fees and other expenses.

Class Counsel shall seek, with the consent of the Defendants, Court approval of a 30% contingency fee agreement to be paid from the settlement funds (“the Fee Approval Hearing”).

5. How will the settlement funds be paid to class members (Distribution Protocol)?

At the same time that it hears the Settlement Approval Hearing and Fee Approval Hearing, the Court will also consider whether to approve a protocol for distributing the settlement amounts paid by the Defendants (the “Distribution Protocol”). The Distribution Protocol shall pay approved claims from the Settlement Funds, and less Court approved legal fees and other expenses, and less any subrogated claim of the Ontario Minister of Health (“the Net Settlement Funds”).

The Distribution Protocol, if approved, will provide that the Net Settlement Funds shall be divided so as 30% shall be payable for Exposed/Uninfected Class Members (“the Exposed/Uninfected Fund”), and 70% shall be payable for Infected Class Members (“the Infected Fund”).

Each Exposed/Uninfected Class Member shall be paid an equal amount of 30% of the Exposed/Uninfected net settlement funds. The maximum recovery for each Exposed/Uninfected Class Member shall be \$500.00, and in no event shall the total amount exceed 30% of the Net Settlement Funds.

Each Infected and Cross-Infected Class Member (and corresponding *FLA* Class Members) shall submit a Claim Form to the Litigation Administrator by the Claims Deadline set by the Court, including proof of Hepatitis B or C or HIV infection, and in the case of a Cross-Infected Class Member, a relationship with an Infected Class Member. The Arbiter appointed by the Court shall convene a hearing with the Class Member to consider oral submissions, in addition to the materials provided by the Class Member, if the Arbiter deems it necessary. Each Infected and Cross-Infected Class Member (and corresponding *FLA* Class Members) shall be paid an amount to be ascertained by the Arbiter at the end of the claims deadline, and the total of all claims paid shall not exceed 70% of the Net Settlement Funds. The decision of the Arbiter is final and binding, and there is no right of appeal.

If the Court approves the Proposed Settlement and approves the Distribution Protocol, class members will receive a letter inviting them to complete a form in order to make a claim. The notification will set out the details and deadline for making a claim under the Distribution Protocol. This notice only summarizes the Distribution Protocol.

Any Net Settlement Funds remaining following the payment of claims shall be returned to the Defendants ("right of reversion").

6. Can I object to the proposed settlement?

If you are a Class Member, you can object to the Proposed Settlement if you don't think it is fair, reasonable, or in the best interests of the Class Members. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter stating that you object to the Proposed Settlement. Your objection must include:

- (a) Your full name, current mailing address, email address and telephone number;
- (b) A brief statement of the reason(s) for your objection; and
- (c) Your signature or the signature of your legal agent, acting with your instructions;

To be considered by the Court, your Objection Form must be received by the Class Counsel by mail by **no later than January 22, 2021 at 5:00PM**, at the address below:

HANDA DENTAL CLASS PROCEEDING
FLAHERTY MCCARTHY LLP
TORONTO-DOMINION CENTRE
95 WELLINGTON STREET WEST, SUITE 1000
TORONTO, ON M5J 2N7

7. Additional Information

Any questions about the matters in this notice should be addressed to Class Counsel.

The certification order and other information regarding the Class Proceeding is available on the Class Proceeding website: (WWW.HANDADENTALCLASSACTION.COM)

Requests for further information or questions for Class Counsel should be directed to:

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