

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE EDWARD M. MORGAN

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THE 5TH DAY OF
FEBRUARY, 2021

BETWEEN:

LINA RIZZI

Plaintiff

- and -

DR. VIVEK (VICK) HANDA, UPPER MIDDLE DENTAL and
VICK HANDA DENTISTRY PROFESSIONAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O 1992 c. 6 as amended

SETTLEMENT APPROVAL O R D E R

THIS MOTION, made by the Plaintiff, on consent, for an order approving the settlement of this action pursuant to section 29(2) of the *Class Proceedings Act, 1992*, SO 1992, c 6 (the “CPA”), in accordance with the terms of the Settlement Agreement between the Plaintiff and Defendants dated January 22, 2021 (the “Settlement Agreement”);

AND THIS MOTION, made by Class Counsel for approval of their fees and disbursements payable under a contingency fee agreement between the Plaintiff and Class Counsel dated June 26, 2017, in accordance with section 32(2) of the CPA,

were heard this day via videoconference call at the Osgoode Hall Courthouse, 130 Queen Street West, Toronto, Ontario.

ON READING the Affidavit of Candace Mak sworn January 23, 2021, the Affidavit of Lina Rizzi sworn January 22, 2021, the Affidavit of Colin Dale Procnier sworn January 22, 2021, the Factum and Brief of Authorities of the Plaintiff and Class Counsel, filed, including the **Settlement Agreement** attached to this Order as **Schedule “A”**, and on hearing the submissions of Class Counsel and the lawyers for the Defendant, and noting that there were no appearances by Class Members who objected to the terms of the Settlement Agreement or Class Counsel fees,

AND ON BEING ADVISED that the Ontario Ministry of Health consents to this Order,

AND ON BEING ADVISED that the parties consent to this Order, without any admission of liability by the Defendant whatsoever,

1. THIS COURT ORDERS AND DECLARES that the Settlement Agreement attached hereto as **Schedule “A”** is fair, reasonable and in the best interests of the Class;
2. THIS COURT ORDERS AND DECLARES that the Settlement Agreement is approved pursuant to Section 29(3) of the *Class Proceedings Act* (“CPA”) and shall be implemented in accordance with its terms;
3. THIS COURT ORDERS that the Defendant shall pay to and for the benefit of the Class the all-inclusive amount of \$1,611,500 (CAD) for all damages, costs, disbursements and HST, in full and final settlement of the Released Claims (“the Gross Settlement Fund”);
4. THIS COURT ORDERS that within thirty (30) days of the Settlement Approval Order being made and this Order being signed, the Defendant shall transfer the Gross Settlement Fund to Class Counsel to be held in Trust;
5. THIS COURT ORDERS that The Ontario Ministry of Health shall be awarded the sum of \$20,000 (CAD) representing satisfaction of its subrogated claim relating to Uninfected Claimants (“OHIP Uninfected subrogated claim recovery”), and this amount shall be paid from the Gross Settlement Fund by Class Counsel before transferring the net Settlement Funds to the Claims Administrator;

6. THIS COURT ORDERS AND DECLARES that the Contingency Fee Agreement as between the Representative Plaintiff and Class Counsel is approved, and Class Counsel fees are hereby fixed and approved in the amount of \$465,000 for fees, \$60,450 for HST and \$27,550 for disbursements inclusive of taxes, which are a first charge upon the Gross Settlement Fund, and may be deducted by Class Counsel from the Gross Settlement Fund before transferring the net Settlement Fund to the Claims Administrator;
7. THIS COURT ORDERS that within 10 days of Class Counsel receiving the Gross Settlement Fund, and after payment of (1) the OHIP Uninfected Subrogated Claim Recovery and (2) approved Class Counsel fees, Class Counsel shall transfer the remaining funds, including any accrued interest on that amount (the "Net Settlement Fund") to the Claims Administrator to be held in Trust for the benefit of the Class, pending distribution to the Class Members in accordance with the Distribution Protocol at Appendix "A" to the Settlement Agreement;
8. THIS COURT ORDERS that Ricepoint is hereby appointed as the Claims Administrator;
9. THIS COURT ORDERS that John Burnes is hereby appointed as the Claims Adjudicator for all Infected claims, Cross-Infected claims, and associated claims pursuant to the *Family Law Act*, and that he may appoint such designates as he deems fit, and who are qualified to assist him in fulfilling the role of Claims Adjudicator;
10. THIS COURT ORDERS that the Defendant shall be responsible for, and shall pay directly to the Claims Administrator and the Claims Adjudicator, all costs associated with providing notice pursuant to the Notice Plan, administration of the Claims Administration Process and Distribution Protocol, and Claims Adjudication Process;
11. THIS COURT ORDERS that the Claims Administrator shall provide notice of Settlement Approval and Claims Process pursuant to the Notice Plan attached hereto as **Schedule "B"**, and shall facilitate the Claims Administration Process and Distribution Protocol, and report to the Court and the Parties in accordance with the terms of the Settlement Agreement;

12. THIS COURT ORDERS that the Claims Administrator and the Claims Adjudicator shall maintain confidentiality over and shall not share the information provided in accordance with the Claims Administration Process and Claims Adjudication Process to any other person, except for Class Counsel and Counsel for the Defendant, unless doing so is necessary for effecting the Notice Plan (in the case of the Claims Administrator) and facilitating the Claims Administration Process in accordance with the Settlement Agreement (in the cases of both the Claims Administrator and the Claims Adjudication Process);
13. THIS COURT ORDERS the production of the Releasors' information, including contact information, dates of dental service and dental services, from the Defendant, within the meaning of applicable privacy laws, and that such Order satisfies the requirements of section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 and section 41(1)(d)(i) of the *Personal Health Information Protection Act, 2004*, SO 2004 c 3, and that the Releasors are deemed to consent to the release of this information, and that the Defendant is deemed to comply with such Order without consent from the Releasor(s);
14. THIS COURT ORDERS that the Defendant, Class Counsel, Claims Administrator and Claims Adjudicator are released from any and all obligations pursuant to any and all applicable privacy laws, including common law, statutes and regulations in relation to the disclosure of personal information or personal health information required by this Order;
15. THIS COURT ORDERS that the Releasors forever and absolutely release the Releasees from the Released Claims;
16. THIS COURT ORDERS that the Releasors shall not make any claim or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims;
17. THIS COURT ORDERS that in consideration of the payments made to the Ontario Minister of Health, as permitted in the Settlement Agreement, the Ontario Minister of Health is deemed to forever and absolutely release the Releasees from the Released Claims and the Ontario Minister of Health shall be bound by the Settlement Agreement;

18. THIS COURT ORDERS that each Class Member, whether or not he or she submits a claim or otherwise receives an award, and the Ontario Minister of Health, is deemed to have completely and unconditionally released and forever discharged the Releasees from any and all Released Claims;
19. THIS COURT ORDERS that each Class Member, whether or not he or she submits a claim or otherwise receives an award, and the Ontario Minister of Health, is forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively or derivatively, asserting against the Defendant or Releasees any claims that relate to or constitute any Released Claims;
20. THIS COURT ORDERS that the Settlement Agreement is binding upon the Plaintiffs and each Class Member, and the Ontario Ministry of Health, whether or not they submit a claim to participate in the distribution of the Settlement Fund, including those persons who are minors or are mentally incapable, and the requirements of Rule 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action;
21. THIS COURT ORDERS that any other action or proceeding commenced in Ontario by a Class Member relating to the Released Claims shall be and is hereby dismissed against the Defendant, without costs and with prejudice;
22. THIS COURT ORDERS that no person may bring any action or take any proceeding against Class Counsel, counsel for the Defendant, the Claims Administrator or the Claims Adjudicator, or any of their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of the Settlement Approval Order or the administration of the Settlement Agreement, except with leave of the Court;
23. THIS COURT ORDERS that the Notice of Settlement Approval shall be disseminated in accordance with the Notice Plan set out at **Schedule “B”** and the Long Form and Short Form Notice of Settlement Approval are hereby approved substantially in the form attached as **Schedule “C” and “D”** respectively;

24. THIS COURT ORDERS that the Claims Bar Deadline is ninety (90) days after the date on which the Notice of Settlement Approval is first published, and any claim forms submitted after that date shall be invalid, subject only to the Claims Administrator reasonably exercising its discretion to accept late claim forms for up to 15 days after the Claims Bar Deadline where the Class Member submitting a late claim has a reasonable explanation for the late delivery of the claim; and
25. THIS COURT ORDERS that this action, including the Third Party Claim, is hereby dismissed without costs and with prejudice.

A handwritten signature in blue ink, appearing to read "Morgan J.", is centered on the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Morgan J.

RIZZI
Plaintiff

and

HANDA et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding under the *Class Proceedings Act, 1992*,
SO 1992, c 6, as amended

Proceeding commenced at TORONTO

ORDER

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