

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CRAIG DZIEDZIEKO, Plaintiff

– and –

ADVANCED BIONICS LLC, NATIONAL HEARING SERVICES INC. c.o.b. as
CANOPY GROWTH CORPORATION, DAVID KLEIN, JUDY HONG and
KPMG LLP., Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Eli Karp and Hadi Davarinia*, for the Plaintiff

Dana Peebles, for the Defendant, KPMG LLP.

HEARD: Motion in writing

MOTION FOR LEAVE, CERTIFICATION AND NOTICE APPROVAL

[1] The Plaintiff and the Defendant, KPMG LLP (“KPMG”), have reached a proposed settlement of the action.

[2] KPMG has consented to the Plaintiff’s motion for leave to commence an action under ss. 138.3 and 138.8 of the Ontario *Securities Act*, RSO 1990, c. S.5 (“OSA”) and to certification of this action as a class proceeding pursuant to ss. 2 and 5 of the *Class Proceedings Act, 1992*, SO 1992, c. 6 (“CPA”). This consent applies solely for settlement purposes.

[3] The other Defendants take no position on this motion.

[4] The criteria set forth in s. 138.8 of the OSA are satisfied as against KPMG for settlement purposes only. In particular, a) the action is being brought in good faith against KPMG; and b) there is a reasonable possibility that the action against KPMG will be resolved at trial in favour of the Plaintiff.

[5] Similarly, the criteria set forth in s. 5(1) of the *CPA* are satisfied as against KPMG for settlement purposes only. In particular, a) the pleadings disclose a cause of action against KPMG, b) there exists an identifiable class of two or more persons that would be represented by the Plaintiff, c) the claims of the Class Members raises a common issue, d) a class proceeding is the preferable procedure for the resolution of the common issue; and e) the proposed representative Plaintiff will fairly and adequately represent the interests of the class, has a plan that sets out a workable method for the advancement of the proceeding on behalf of the class and of notifying class members of the proceeding; and does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

[6] Counsel have prepared Notices which will be published and disseminated to class members by electronic press release, publication on class counsel's website, via email to all individuals and entities who have contacted class counsel about this action or who request it (and for whom class counsel has an email address), publication of a link on class counsel's X (formerly Twitter) and LinkedIn accounts, and/or as an advertisement on Google, well in advance of the hearing of the settlement approval motion to advise class members of, among other things, the date of the hearing of the settlement approval motion and their right to opt-out of the action.

[7] The Defendant has approved the form and content of the proposed Notices. The proposed Notices advise class members of:

- a. the existence of the Agreement, its salient terms, and the date of the hearing of the settlement approval motion;
- b. the right to attend the hearing of the settlement approval motion;
- c. the granting of leave to proceed and certification of the action on behalf of class members against KPMG for settlement purposes only;
- d. the fact that the Plaintiff and class counsel will be recommending that the net settlement amount not be distributed at this time, but held until the conclusion of the action against all Defendants;
- e. their right to object to the terms of the Agreement;
- f. their right to opt-out of the action and the consequences of opting-out; and
- g. their right to object to class counsel's proposed fee request;

[8] Class Counsel proposes that it administer any opt-outs and objections to the proposed settlement.

[9] On this basis, the Plaintiff shall have an order,

- a. granting the Plaintiff leave of the court, pursuant to s. 138.8(1) of the *OSA*, on consent of KPMG and unopposed by the other Defendants and for settlement purposes only, to commence an action under s. 138.3 of the *OSA* and, if necessary, under the concordant provisions of the other provinces' securities statutes against KPMG;
- b. certifying this action as a class proceeding, pursuant to ss. 2 and 5 of the *CPA* against KPMG, on consent of KPMG and unopposed by the other Defendants and for settlement purposes only;
- c. defining the "Class Period" as the period from June 1, 2021 to June 22, 2023 inclusive;
- d. defining "Class" and "Class Members" to mean all persons or entities, other than the Excluded Persons, who during the Class Period acquired Canopy Growth Corporation's ("Canopy") securities in the secondary market and who held some or all of those securities until the close of trading on May 10, 2023 or June 22, 2023 and who either:
 - i. are residents of Canada or were residents of Canada at the time of such acquisitions, regardless of the location of the exchange on which they acquired Canopy's securities; or
 - ii. acquired Canopy's securities on an exchange in Canada or another exchange located outside of the United States, regardless of where they reside or are domiciled;
- e. appointing Craig Dziedziejko as the representative plaintiff for the Class;
- f. declaring that the certified cause of action against KPMG is a claim under s. 138.3 of the *OSA*, and, if necessary, the equivalent provisions of the other Securities Acts;
- g. appointing Plaintiff's counsel herein as "Class Counsel" to manage the Escrow Account in accordance with the terms of the Agreement;
- h. appointing Class Counsel to disseminate the Notices of Certification and Settlement Approval Hearing and to manage the program to opt-out of the action;
- i. declaring that the sole common issue for the purposes of settlement with KPMG is: Did KPMG's auditor's report for Canopy Growth Corporation for the fiscal year ended March 31, 2022 contain a misrepresentation within the meaning of the *OSA*?;
- j. declaring that any persons who wish to exclude themselves from the Action must do so by submitting to Class Counsel an approved Opt-Out Form, together with the information required by the approved Opt-Out Form, received by email on or before the date that is forty-five (45) days from the date of the first publication of the

approved Long-Form Notice of Certification and Settlement Approval Hearing (the “Opt-Out Deadline”);

k. declaring that any persons who validly exclude themselves from this Action, in accordance with this order, are not bound by the results in the Action or the Agreement, and shall no longer participate or have the opportunity in the future to participate in the Action or the Agreement;

l. declaring that any person[s] who are Class Members and who do not validly exclude themselves from the Action in accordance with this order, on or prior to the Opt Out Deadline, will be bound by the Agreement, will not be given any future opportunity to opt-out against the non-settling Defendants, may not initiate their own action against the Defendants with regards to matters that were or could have been advanced in the Action, and may not exclude themselves from the Action in the future without leave of the Court;

m. approving the form and content of the proposed Opt-Out Form;

n. declaring that, after the Opt-Out Deadline and prior to the hearing of the motion to approve the settlement, Class Counsel shall report to the Court and provide counsel for the Defendants with a report containing the names of each person who has validly and timely opted out of the Action, the reason for the opt-out (if known), and a summary of the information delivered by such person, and that Class Counsel shall also provide to counsel for the Defendants copies of all the Opt-Out Forms submitted by Opt-Out Parties at the same time as the report;

o. approving the form and content of the proposed Long-Form, Short-Form and Google Ads Notice of Certification and Settlement Approval Hearing (collectively, the “Notices”);

p. approving dissemination of the Notices and the Opt-Out Form in the following manner:

i. Class Counsel posting the Long-Form Notice of Certification and Settlement Approval Hearing and the Opt-Out Form on its website;

ii. Class Counsel posting a link to the Long-Form Notice of Certification and Settlement Approval Hearing on Class Counsel’s X (formerly Twitter) account and LinkedIn account;

iii. Class Counsel delivering a copy of the Long-Form Notice of Certification and Settlement Approval Hearing by email to all individuals and entities who have contacted Class Counsel about this Action and for whom Class Counsel has an email address, as well as to all individuals and entities who request it and for whom Class Counsel has an email address;

- iv. Class Counsel disseminating the Short-Form Notice of Certification and Settlement Approval Hearing once via electronic press release; and
- v. Class Counsel posting the Google Ads Notice of Certification and Settlement Approval Hearing as an advertisement on Google, with a maximum budget of CAD \$10,000;
- q. setting a date for the hearing of the representative plaintiff's motion for approval of the settlement and approval of Class Counsel's fees (the "Settlement Approval Motion");
- r. declaring that Class Members who wish to file with the Court an objection to or comment on the proposed settlement or the request for approval of Class Counsel's fees, shall complete and email to Class Counsel a statement in the approved form (the "Notice of Objection") no later than fifteen (15) days prior to the hearing of the Settlement Approval Motion (the "Objection Deadline");
- s. declaring that the method of dissemination for the Notice of Objection shall consist of publication on Class Counsel's website;
- t. declaring that Class Members who do not email a Notice of Objection to Class Counsel by the Objection Deadline may not participate in the hearing of the Settlement Approval Motion.

Morgan J.

Date: July 21, 2026