



GRANTED

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Case No. 8672-VCG



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NICHOLAS PONZIO AND WOLCOT CAPITAL,
INC. V. JOHN MICHAEL PRESTON, ET AL.

C.A. NO. 8672-VCG

[AMENDED] [PROPOSED] SCHEDULING ORDER

WHEREAS, Plaintiffs, on behalf of themselves and the other members of the Class (defined below), and Defendants have determined to settle all claims asserted against Defendants in the above-captioned action (the “Action”) with prejudice on the terms and conditions set forth in the Stipulation and Settlement Agreement dated February 17, 2015 (the “Stipulation”), which provides for, among other things, the full and final resolution, dismissal, discharge and settlement with prejudice of each and every one of the Released Claims against each and every one of the Released Parties; and

WHEREAS, the Stipulation and the exhibits thereto have been filed with the Court and the Parties have made an application, pursuant to Court of Chancery Rule 23, for entry of this Scheduling Order that, among other things, preliminarily certifies the Class solely for purposes of the Settlement, sets the method for providing notice of the Settlement to the Class, preliminarily enjoins any member of the Class from commencing or prosecuting any action or other proceeding asserting any Released Claims pending the final determination as to whether the Settlement should be approved, and sets a time and date for a hearing to determine,

among other things, whether a final judgment should be entered dismissing the Action and releasing the Released Claims with prejudice; and

WHEREAS, all Parties have consented to the entry of this Scheduling Order; and

WHEREAS, this Order hereby incorporates by reference the definitions in the Stipulation, and unless otherwise indicated herein, the capitalized words and terms used herein shall have the same meaning as they have in the Stipulation (certain of which are repeated herein for ease of reference only),

IT IS HEREBY ORDERED this ___ day of _____, 2015, that:

1. **Class Certification for Settlement Purposes** – For purposes of the Settlement only, the Action is provisionally certified as a class action pursuant to Court of Chancery Rules 23(a) and 23(b)(1) and (b)(2) on behalf of the following class (the “Class”): all record holders and beneficial owners of common stock of Velcera who held such stock between December 1, 2009 through and including April 1, 2013 (the “Class Period”), and any and all of their successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them.

The Class shall exclude:

(a) Defendants and Perrigo and each of their affiliates, immediate

families, legal representatives, heirs, successors or assigns and any entity in which Defendants or Perrigo have a controlling interest;

(b) any Velcera shareholder who received repurchase rights in connection with the 2010 Financing; and

(c) any Persons who properly exercise their right to exclude themselves from the Class for damage claims only.

2. For the purposes of the Settlement only, and preliminarily for purposes of this Order, the Court appoints Plaintiffs Nicholas Ponzio and Wolcot Capital Inc. as representatives of the Class (the “Class Representatives”) and Lifshitz Law Firm as Plaintiffs’ Lead Counsel.

3. If the Settlement is not consummated for any reason or final approval of the Settlement is not granted by the Court, the preliminary certification of the Action as a class action (as well as the appointment of Class Representatives and Plaintiffs’ Lead Counsel) shall be automatically vacated.

4. **Fairness Hearing** – A hearing (the “Fairness Hearing”) shall be held on June 22, 2015, at 1:00 p.m. before Vice Chancellor Sam Glasscock, III, at the Court of Chancery Courthouse, 34 The Circle, Georgetown, Delaware 19947, for the following purposes: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, adequate, and in the best interests of the Class and should be approved by the Court; (b) to

determine whether the preliminary class certification described in this Order should be made final; (c) to determine whether the Court should enter a Final Order and Judgment (“Judgment”) substantially in the form attached as Exhibit B to the Stipulation; (d) to hear the application by Plaintiffs for an award of attorneys’ fees and of expenses; and (e) to consider and rule on any such other matters as the Court may deem appropriate.

5. The Court reserves the right: (a) to adjourn the Fairness Hearing without further notice of any kind to the Class other than by oral announcement at the Fairness Hearing; and (b) to approve the Settlement at or after the Fairness Hearing with such modification(s) as may be consented to by the Parties and without further notice to the Class.

6. **Retention of Claims Administrator and Manner of Notice** – Plaintiffs’ Lead Counsel is hereby authorized to retain the firm of Garden City Group LLC (“Claims Administrator”) to oversee administration and distribution of the Settlement Fund subject to the supervision, direction and approval of the Court.

7. Notice of the Settlement and the Fairness Hearing shall be given as follows:

a. The Claims Administrator shall make reasonable efforts to identify all Persons who are members of the Class, including beneficial owners whose shares of Velcera’s common stock were held by banks, brokerage firms, or

other nominees and those shareholders who received the merger consideration in connection with the Merger. Within ten (10) business days after entry of this Order, Defendants shall supply the Claims Administrator with a list of the names and addresses of the Persons who were record holders of the common stock of Velcera during the Class Period and a list of those record holders who received merger consideration in connection with the Merger (the “Stockholder Lists”). Defendants shall use their best efforts in compiling the Stockholder Lists.

b. Within twenty-one (21) days after receiving the Stockholder Lists (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice and the Claim Form, substantially in the form attached hereto as Exhibits 1 and 2, respectively (the “Notice Packet”), to be mailed by first-class mail to potential Class Members at the addresses set forth in the records of Velcera and/or their transfer agent(s), or who otherwise may be identified through further reasonable effort;

c. No later than ten (10) business days after the Notice Date (the “Publication Notice Date”), the Claims Administrator shall cause the Summary Notice, substantially in the form attached hereto as Exhibit 3, to be published once over the *BusinessWire* or *PR Newswire*;

d. No later than ten (10) business days after the entry of this Order, the Claims Administrator shall post a copy of the Notice and the Claim

Form on the Claims Administrator's website established for the Settlement; and

e. No later than five (5) calendar days prior to the date of the Fairness Hearing, Plaintiffs' Liaison Counsel shall file with the Court and serve upon Defendants by affidavit or declaration, proof of compliance with the notice procedures directed herein.

8. **Approval of Form and Content of Notice** – The Court: (a) approves, as to form and content, the Notice, the Claim Form and the Summary Notice attached hereto as Exhibits 1, 2 and 3, respectively; and (b) finds that the mailing and distribution of the Notice and the publication of the Summary Notice in the manner set forth in Paragraph 6 of this Order: (i) is the best notice reasonably practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases contained therein), and of their rights to object to the proposed Settlement and appear at the Fairness Hearing; (iii) constitutes due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable laws and rules. The date and time of the Fairness Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively.

9. **Nominee Procedures** – Each recipient of the Notice who held the common stock of Velcera as nominee for another Person shall, within five (5) days after the nominee receives the Notice, either (a) send the Notice by first class mail to the Person for whom it held the common stock of Velcera as nominee, or (b) send the name and address of the Person for whom it held the common stock of Velcera as nominee to the Claims Administrator by first class mail. In the latter event, the Claims Administrator shall send the Notice by first class mail to the Person identified by the nominee. In all other instances in which the Claims Administrator becomes aware of the identity of a beneficial owner who may be a member of the Class, the Claims Administrator shall send the Notice by first class mail to that beneficial owner.

10. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Defendants shall pay, or cause the Participating Insurers to pay, the properly documented reasonable expenses incurred by nominees in compliance with the terms of the Order. Plaintiffs and the Class shall not have any obligation or liability in connection with costs incurred by nominees.

11. **Participation in the Settlement** – Class Members who wish to

participate in the Settlement and to be eligible to receive a distribution from the proceeds of the Settlement must complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later than no later than ninety (90) calendar days after the Notice Date. Notwithstanding the foregoing, Plaintiffs' Lead Counsel may, at their discretion, accept for processing late Claims, provided such acceptance does not delay the distribution of the Net Settlement Fund to the Class. By submitting a Claim Form, a Person shall be deemed to have submitted to the jurisdiction of the Court with respect to its/her/his Claim and the subject matter of the Settlement.

12. Each Claim Form submitted must satisfy the following conditions: (a) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the Notice; (b) it must be accompanied by adequate supporting documentation in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the information found in a broker confirmation slip, or such other documentation as is deemed adequate by Plaintiffs' Lead Counsel or the Claims Administrator; (c) if the Person executing the Claim Form is acting in a representative capacity, a certification of its/her/his current authority to act on behalf of the Class Member must be included in the Claim Form to the satisfaction of Lead Counsel or the

Claims Administrator; and (d) the Claim Form must be completed and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

13. Any Class Member that does not timely and validly submit a Claim Form, or whose Claim is rejected or otherwise not approved by the Court, regardless of whether such Person, (a) actually submits a Claim Form, (b) seeks or obtains a distribution from the Net Settlement Fund, or (c) is entitled to receive such a distribution under the Plan of Allocation approved by the Court) shall be: (i) deemed to have waived its/her/his right to share in the Settlement Fund; (ii) forever barred from participating in distributions from the Net Settlement Fund; (iii) bound by all of the terms and provisions of the Stipulation and the Settlement and all proceedings, determinations, judgments and orders in the Action relating thereto, including without limitation the terms of the Judgment to be entered in the Action and the releases provided for therein; and (iv) permanently barred and enjoined from commencing, maintaining, prosecuting or bringing any of the Released Claims against any of the Released Parties.

14. **Exclusion from the Class.** Any Class Member who wishes to be excluded from the Settlement Class shall mail the request in written form, by first-class mail and postmarked no later than thirty (30) days prior to the Fairness Hearing to the address specified in the Notice. The request for exclusion must be

signed by such person or his, her, or its authorized representative and shall include:

- (a) the name, address, and telephone number of the Person requesting exclusion;
- (b) the number of shares of Velcera common stock the Person purchased or acquired during the Class Period along with the dates and prices of such purchase(s) or acquisition(s), and the number of shares the Person sold during the Class Period along with the dates and prices of such sales; and (c) a statement that the Person wishes to be excluded from the Settlement Class. A request for exclusion shall not be effective unless it provides all the required information and is received within the time stated above, or is otherwise accepted by the Court.

Any Class member who fails to timely or properly opt-out, or whose request to opt out is not otherwise accepted by the Court, shall be deemed a Class Member, and shall be deemed by operation of law to have released all Released Claims against the Released Parties.

15. Any Person who or which timely and validly requests exclusion in compliance with the terms stated in this Order and is thereby excluded from the Class shall not be a Class Member, shall not be bound by the terms of the Settlement or any other orders or judgments in the Action, and shall have no right to receive any payment from the Net Settlement Fund.

16. **Supporting Papers and Objections** – Plaintiffs’ Lead Counsel shall file and serve papers in support of final approval of the proposed Settlement, the

proposed Plan of Allocation, and their application for attorneys' fees plus reimbursement of litigation expenses no later than twenty-one (21) calendar days prior to the Fairness Hearing. Any objections to the Settlement, Plan of Allocation and/or the fee and litigation expense application shall be filed and served no later than ten (10) calendar days prior to the Fairness Hearing. If reply papers are necessary, they are to be filed and served no later than five (5) calendar days prior to the Fairness Hearing.

17. Any Class Member may enter an appearance in the Action, at its/her/his own expense, individually or through counsel of its/her/his own choice, by filing with the Register in Chancery and delivering a notice of appearance to Plaintiffs' Lead Counsel and Defendants' Counsel listed in the Notice such that it is received no later than ten (10) calendar days prior to the Fairness Hearing, or as the Court may otherwise direct. Any Class Member who does not enter an appearance will be represented by Plaintiffs' Lead Counsel, and shall have and be deemed to have waived and forfeited any and all rights it/she/he may otherwise have to appear separately at the Fairness Hearing.

18. Any Class Member may file a written objection to the proposed Settlement, the proposed Plan of Allocation and/or the application by Plaintiffs' Lead Counsel for an award of attorneys' fees plus reimbursement of litigation expenses, and appear and show cause, if it/she/he has any cause, why the proposed

Settlement, the proposed Plan of Allocation and/or the fee and litigation expense application should not be approved; provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the proposed Plan of Allocation and/or the fee and expense application unless that Person has filed a written objection with the Register in Chancery, Court of Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, DE 19801 and served copies of such objection in the manner provided in the Notice such that it is received no later than ten (10) calendar days prior to the Fairness Hearing on each of the following counsel: Joshua M. Lifshitz, Esq., Lifshitz Law Firm, 821 Franklin Ave, Suite 209, Garden City, NY 11530, Tariq Mundiya, Esq. and Sameer Advani, Esq., Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, and Bradley J. Andreozzi, Esq., Drinker Biddle & Reath LLP, 191 N. Wacker Drive, Suite 3700, Chicago, IL 60606.

19. Any objections, filings and other submissions by the objecting Class Member must (a) state the name, address and telephone number of the Person objecting and, if represented, its/her/his counsel, and must be signed by the objector; (b) contain a written detailed statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention; and

(c) demonstrate that the objector is a member of the Class by including documents sufficient to prove that the objector held shares of Velcera common stock during the Class Period.

20. Any Class Member who fails to comply with any of the above provisions, shall: (a) have and be deemed to have waived and forfeited any and all rights it/she/he may otherwise have to object to the Settlement, the Plan of Allocation and/or any award of attorneys' fees and reimbursement of litigation expenses to Plaintiffs' Counsel; (b) forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Judgment to be entered approving the Settlement, the fairness and reasonableness of the Plan of Allocation, and the attorneys' fees and litigation expenses requested and/or awarded, in this or any other proceeding; (c) be bound by all the terms of the Stipulation and by all proceedings, orders and judgments entered by the Court in the Action, including the Judgment; and (d) have and be deemed to have waived its/her/his right to, and otherwise be forever barred from, being heard with respect to any matters concerning the Settlement.

21. None of the Defendants shall have any responsibility whatsoever for the Plan of Allocation nor for any application for attorneys' fees or reimbursement of litigation expenses submitted by Plaintiffs' Lead Counsel. Both such matters will be considered separately from the fairness, reasonableness and adequacy of

the Settlement.

22. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in identifying and notifying Class Members as well as in administering the Settlement shall be paid as set forth in the Stipulation.

23. **Taxes** – Plaintiffs’ Lead Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation. Defendants shall have no responsibility whatsoever for, nor any liability whatsoever to any Person in connection with (a) paying any Taxes due; (b) filing elections or other required statements or tax returns (or paying or withholding the costs associated therewith) with respect to any Taxes; and/or (c) any tax liability that a Class Member may incur as a result of the Settlement.

24. **Settlement Fund** – The contents of the Settlement Fund held by Garden City Group LLC (which the Court approves as the Escrow Agent), shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Stipulation and/or further order of the Court.

25. **Termination of Settlement** – In the event that the Settlement is terminated pursuant to the terms of the Stipulation or does not become effective for any reason: (a) the Settlement and the Stipulation shall be null and void and without prejudice to, or force and effect to or upon, the rights of the parties and none of their terms shall be effective or enforceable except as provided in the Stipulation); (b) the fact and terms of the Settlement shall not be admissible in any trial of the Action; (c) the participants to the agreement shall be deemed to have reverted to their respective litigation positions in the Action as of July 24, 2014; and (d) except as otherwise expressly provided, the participants to the Stipulation shall proceed in all respects as if the Stipulation and this Scheduling Order had not been entered.

26. **Stay of Litigation** – All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination by the Court of whether the Settlement should be approved, Plaintiffs and all other members of the Class, or any of them, are barred and enjoined from commencing, prosecuting, maintaining, instigating or in any way participating in the commencement or prosecution of any action asserting any of the Released Claims against any of the Released Parties.

27. **Use of This Order** – Whether or not the Stipulation is terminated, the

Stipulation and the Settlement contained herein and any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) may not be deemed and shall not be used, offered, or received against Defendants or the Released Parties, or each or any of them, as an admission, concession, or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, or of any alleged wrongdoing, liability, negligence, or fault of Defendants and/or the Released Parties, or any of them; and (ii) may not be deemed, or shall not be used, offered, or received against Defendants or the Released Parties, or each or any of them, as an admission, concession, or evidence of, any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendants and/or Released Parties.

28. The Court retains jurisdiction over this action to consider all further applications arising out of or connected with the Settlement.

THE HONORABLE SAM GLASSCOCK, III

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

Court: DE Court of Chancery Civil Action

Judge: Sam Glasscock

File & Serve

Transaction ID: 56895104

Current Date: Mar 10, 2015

Case Number: 8672-VCG

Case Name: Ponzio, Nicholas et al vs John Michael Preston et al

Court Authorizer: Glasscock, Sam

/s/ Judge Glasscock, Sam