

# SUPREME COURT OF VICTORIA



## NOTICE OF PROPOSED SETTLEMENT

### MAYNE PHARMA CLASS ACTION

*HILLMAN V MAYNE PHARMA GROUP LTD (ACN 115 832 963)*  
(S ECI 2020 03351)

**THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF VICTORIA**

#### PLEASE READ CAREFULLY

The Notice is sent to you because you may be a member of the class in the Mayne Pharma Class Action.

This is an important legal document which contains information about the proposed settlement of the Mayne Pharma Class Action.

You should read this Notice carefully as the matters set out in the Notice may affect your legal rights.

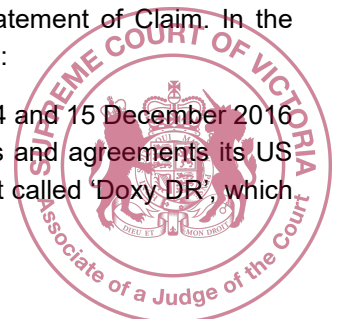


## 1 PURPOSE OF THE NOTICE

- 1.1 In summary, this Notice is to inform you that a conditional settlement of AUD\$38 million (**Settlement Sum**), inclusive of legal fees, expenses, disbursements, any funding commission and interest, to resolve the claims of all Group Members has been reached in the Mayne Pharma Class Action (**Proposed Settlement**). The Proposed Settlement is without admission of liability by Mayne Pharma Group Ltd (**Mayne Pharma**).
- 1.2 This Notice provides information about the Proposed Settlement and explains the rights that Group Members have regarding the Proposed Settlement.
- 1.3 The Proposed Settlement requires Court approval to be effective and for monies to be distributed to eligible Group Members. Before the Court will approve the Proposed Settlement, it must be satisfied that the Proposed Settlement is fair and reasonable, and in the interests of all Group Members. At 10:30am AEDT on 8 November 2024, the Court will hear the application to approve the Proposed Settlement and the proposed distribution of the Settlement Sum under the Settlement Distribution Scheme (**Settlement Approval Hearing**). You are entitled to attend the hearing if you wish to.
- 1.4 You have been sent this Notice because you have been identified as someone who may be a Group Member in the Mayne Pharma Class Action.
- 1.5 You are a **Group Member** in the Mayne Pharma Class Action if:
- (a) you acquired an interest in fully paid ordinary shares in Mayne Pharma during the period between 24 November 2014 and 15 December 2016 (inclusive) (**Claim Period**);
  - (b) you have suffered loss or damage by reason of the conduct of Mayne Pharma pleaded in the General Indorsement and the Amended Statement of Claim;
  - (c) you are not:
    - (i) a related party, a related body corporate, an associated entity, or an officer or associate of Mayne Pharma; or
    - (ii) a Justice or the Chief Justice of the Supreme Court of Victoria, or a Justice or the Chief Justice of the High Court of Australia; and
  - (d) you have not opted out of the proceeding by providing an opt out notice to Phi Finney McDonald and/or the Supreme Court of Victoria.
- 1.6 If you are unsure whether or not you are a Group Member, you should contact Phi Finney McDonald at [maynepharma@phifinneymcdonald.com](mailto:maynepharma@phifinneymcdonald.com) or (03) 9134 7100 or seek your own legal advice without delay.
- 1.7 Any questions you have concerning the matters contained in this Notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek independent legal advice or contact Phi Finney McDonald (for contact details see paragraph 7.1 of this Notice, below).

## 2 ABOUT THE MAYNE PHARMA CLASS ACTION

- 2.1 On 21 August 2020, Benjumin Hillman (**Plaintiff**) commenced a class action against Mayne Pharma in the Supreme Court of Victoria on behalf of all persons who acquired an interest in fully paid ordinary shares in Mayne Pharma in the Claim Period (**Mayne Pharma Class Action**).
- 2.2 The Plaintiff, Benjumin Hillman, is bringing the Mayne Pharma Class Action with funding from Vannin Capital Operations Limited (**Vannin**). The Plaintiff's lawyers are Phi Finney McDonald.
- 2.3 The details of the allegations in the class action are set out in the Amended Statement of Claim. In the Amended Statement of Claim, the Plaintiff alleges (in summary) that Mayne Pharma:
- (a) contravened its continuous disclosure obligations between 24 November 2014 and 15 December 2016 (inclusive) by failing to properly inform the market about alleged discussions and agreements its US subsidiary had with Heritage Pharmaceuticals in relation to sales of a product called 'Doxy DR', which



were or could be regarded as anti-competitive and contrary to US law, and that subpoenas had been issued by US regulators; and

- (b) engaged in misleading or deceptive conduct between 24 November 2014 and 15 December 2016 (inclusive) by maintaining public representations that Mayne Pharma was compliant with competition law, had appropriate systems for ensuring compliance, and was not exposed to the risk of reputational, financial, or other impacts in the US for non-compliance with competition law.

2.4 The class action alleges that investors who acquired Mayne Pharma shares during the Claim Period are entitled to compensation for loss and damage as they paid more for those shares than they would have paid as a consequence of Mayne Pharma's conduct. The class action also alleges that some Group Members would not have purchased Mayne Pharma shares if Mayne Pharma had complied with its obligations.

2.5 The allegations are denied by Mayne Pharma. Mayne Pharma defended the class action and the Proposed Settlement acknowledges that Mayne Pharma makes no admissions as to liability.

2.6 You can obtain further information about the Mayne Pharma Class Action (and obtain copies of relevant documents, including the Amended Statement of Claim filed by the Plaintiff and the Amended Defence filed by Mayne Pharma) by visiting:

- (a) the Supreme Court website –

<https://www.supremecourt.vic.gov.au/areas/group-proceedings/mayne-pharma>

or

- (b) the Mayne Pharma Class Action Website –

<https://phifinney-mcdonald.com/action/mayne-class-action/>

### 3 INFORMATION ABOUT THE PROPOSED SETTLEMENT

#### Key Terms of the Proposed Settlement

3.1 On 1 July 2024, the parties exchanged an executed Deed of Settlement reflecting the parties' Proposed Settlement of the Mayne Pharma Class Action. A copy of the Deed of Settlement is available to all Group Members if they undertake to keep the Deed confidential. You may request to view a copy of the Deed of Settlement on this basis by contacting Phi Finney McDonald.

3.2 The key terms of the Proposed Settlement are:

- (a) Mayne Pharma will pay a sum of AUD\$38 million (**Settlement Sum**), inclusive of all legal and funding costs and interest, to fully and finally settle all of the Plaintiff's and Group Members' claims made against Mayne Pharma in the Mayne Pharma Class Action.
- (b) All Group Members will be bound by the terms of the Proposed Settlement, if approved by the Court, and will not be permitted to take any other legal action against Mayne Pharma for the same, similar or related circumstances that are the subject of the Mayne Pharma Class Action.
- (c) The Proposed Settlement will only take effect if it is approved by the Court. If the Proposed Settlement is not approved by the Court, the Mayne Pharma Class Action will continue and there will be no distribution of payments to Group Members unless and until the Plaintiff is successful in the proceeding, or a further settlement is reached and approved by the Court.

3.3 If the Proposed Settlement is approved at the Settlement Approval Hearing, the Settlement Sum will become available for distribution among Registered Group Members (defined in paragraph 3.5 below) in accordance with an approved Settlement Distribution Scheme which will establish how Registered Group Members' entitlements are to be calculated, and the process to distribute the Settlement Sum as efficiently as possible.

#### Eligibility to Participate in the Proposed Settlement

3.4 Not all Group Members are eligible to participate in the Proposed Settlement.



- 3.5 The Court has made orders that only those Group Members who registered their claim with Phi Finney McDonald by 4:00pm AEST on 28 June 2023 (**Registered Group Members**) are eligible to participate in the settlement.
- 3.6 Unregistered Group Members are those group members who have not registered their claim in accordance with paragraph 3.5 above.
- 3.7 Under the Proposed Settlement:
- (a) Registered Group Members who have suffered a loss will be entitled to share in monetary compensation from the Settlement Sum;
  - (b) Unregistered Group Members are not entitled to receive monetary compensation; and
  - (c) all claims by the Plaintiff and all Group Members (regardless of whether you are a Registered or Unregistered Group Member) made against Mayne Pharma in the Mayne Pharma Class Action are finally determined by the terms of the Deed of Settlement and the Settlement Distribution Scheme.
- 3.8 Unregistered Group Members will not receive any further correspondence regarding the Mayne Pharma Class Action beyond this Notice.

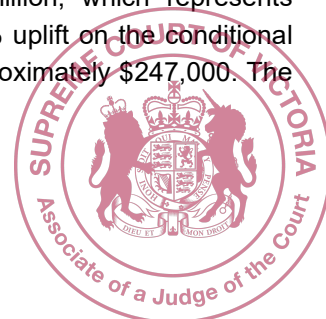
#### **4 THE SETTLEMENT DISTRIBUTION SCHEME**

- 4.1 The purpose of the proposed Settlement Distribution Scheme is:
- (a) to govern the distribution of the Settlement Sum, including between the Registered Group Members; and
  - (b) to determine how the monetary compensation payable to each Registered Group Member is calculated (using a confidential "**Loss Assessment Formula**").
- 4.2 The proposed Settlement Distribution Scheme and the Loss Assessment Formula are subject to Court approval.
- 4.3 The amount of compensation to be paid to each Registered Group Member under the Settlement Distribution Scheme will depend on a number of factors, such as the number of shares purchased by that Registered Group Member, the date of purchase, whether any of those shares were sold, the overall losses of all Registered Group Members sharing in the Proposed Settlement, the total amount of the deductions from the Settlement Sum which are approved by the Court and any interest earned on the Settlement Sum prior to final distributions.
- 4.4 Under the proposed Settlement Distribution Scheme, the amounts outlined under the below headings (subject to Court approval) will be deducted from the Settlement Sum before the balance is distributed to and shared on a pro rata basis by all Registered Group Members in accordance with the proposed Settlement Distribution Scheme. If all the deductions outlined below are approved by the Court, approximately 56% of the total Settlement Sum will be paid to Registered Group Members.

##### Legal Costs

- 4.5 The Court will be asked to approve the reasonable legal costs and disbursements incurred by the Plaintiff in conducting the proceedings on behalf of the class be deducted from the Settlement Sum.
- 4.6 The Plaintiff will seek Court approval of legal costs in an amount to be determined as fair and reasonable by the Court, having regard to the opinion of an independent expert costs referee appointed by the Court. Phi Finney McDonald estimates that these costs will total approximately \$5.82 million, which represents approximately 15% of the Settlement Sum. This amount includes a permitted 25% uplift on the conditional component of Phi Finney McDonald's legal fees, which, if approved, would be approximately \$247,000. The Court may approve an amount for legal costs which is different to this estimate.

##### Funding Costs



- 4.7 The Court will be asked to approve that an estimated total of \$10,605,046.62 be deducted from the Settlement Sum in respect of litigation funding charges and a funding commission (**Funding Costs**). This amount, which represents approximately 27.9% of the Settlement Sum is to compensate the litigation funder (**Vannin**) for providing funding and other financial support prior to the commencement of and during the proceeding.
- 4.8 The terms of Vannin's funding and other financial support are contained in the Litigation Funding Agreement (**LFA**). Prior to and during the proceedings, and in accordance with the LFA, Vannin:
- (a) paid a significant proportion of Phi Finney McDonald's legal costs and all disbursements (amounting to \$4,582,687.60);
  - (b) provided the Plaintiff with an indemnity (unlimited in amount) in respect of all and any adverse costs that may be ordered against the representative Plaintiff in the proceeding (ie, were the claim to fail) and met requests by the defendant for security for its costs of the proceeding;
  - (c) as against the Plaintiff and Funded Group Members, is entitled to be paid 25% of any payment received by them in any settlement as commission for funding the Mayne Pharma Class Action, being presently estimated to be approximately \$8,479,000 (which represents approximately 22.3% of the Settlement Sum). In addition, Vannin is entitled to recover its incurred due diligence costs and expenses and costs of funding the proceeding (being a total amount of \$125,750) as well as an amount of \$2 million which is equivalent to 40% of the total insurance coverage amount the Funder obtained in order to provide the Plaintiff the adverse costs indemnity referred to at (b) above. **Funded Group Members** are those group members who are party to an LFA with Vannin in respect of this proceeding.
- 4.9 Under the proposed Settlement Distribution Scheme, the settlement distribution entitlements of Funded Group Members and other Registered Group Members will be calculated so that a Funded Group Member and a Registered Group Member who is not a Funded Group Member, who are otherwise in the same position, will receive the same settlement distribution amount. This is proposed to be achieved by all Registered Group Members (including those who are not Funded Group Members) sharing the liability for payment all costs and expenses sought to be deducted from the Settlement Sum on a pro rata basis.

#### Reimbursement Payments

- 4.10 The Court will also be asked to approve that an estimated amount of \$3,075.00 be deducted from the Settlement Sum as a reimbursement payment to the Plaintiff, to compensate the Plaintiff for the time he has spent representing Group Members in the proceeding.

#### Settlement Administration Costs

- 4.11 If the Court approves the Proposed Settlement, an Administrator will be appointed in order to distribute the Settlement Sum to Registered Group Members and administer the settlement in accordance with the Settlement Distribution Scheme under directions of the Court.
- 4.12 The Court will be asked to appoint Phi Finney McDonald as the Administrator of the Settlement Distribution Scheme. If the Court appoints Phi Finney McDonald as the Administrator, the Court will be asked to approve that settlement administration costs, estimated at \$180,000 and subject to Court oversight, be deducted from the Settlement Sum for the expected costs of administering the Settlement Distribution Scheme.

### **5 PROCESS FOR SETTLEMENT APPROVAL**

- 5.1 The Proposed Settlement will only take effect if it is approved by the Court. In deciding whether to approve the Proposed Settlement, the Court will consider whether the Proposed Settlement is fair and reasonable and in the interests of the Group Members as a whole.
- 5.2 The Court will have a hearing at **10:30am AEDT on 8 November 2024** to determine whether to approve the Proposed Settlement (**Settlement Approval Hearing**).
- 5.3 If you would like to review the Deed of Settlement or the proposed Settlement Distribution Scheme (including the Loss Assessment Formula) you may make a request to Phi Finney McDonald by email to: [maynepharma@phifinneycdonald.com](mailto:maynepharma@phifinneycdonald.com)



The request will only be granted if you first sign a confidentiality undertaking provided by Phi Finney McDonald.

## **6 WHAT STEPS CAN GROUP MEMBERS NOW TAKE?**

### OPTION 1 – DO NOTHING

- 6.1 If you are a Registered Group Member and you are in favour of the proposed settlement, there is nothing you need to do in response to this Notice. If the Proposed Settlement is approved, the Administrator of the Settlement Distribution Scheme will contact you with further information about the settlement distribution process and any actions you may be required to take to receive a distribution under the Settlement Distribution Scheme. You are encouraged to refrain from contacting Phi Finney McDonald unnecessarily in order to keep costs to a minimum.

### OPTION 2 – OBJECT TO THE PROPOSED SETTLEMENT

- 6.2 All Group Members are entitled to object to the Proposed Settlement. If you are a Registered Group Member, doing so will not affect your eligibility to participate in the Proposed Settlement in the event it is approved.
- 6.3 If you wish to object to the Proposed Settlement, then by **4.00pm AEDT on 11 October 2024** you must complete a Notice of Objection and send it along with evidence (by way of affidavit) in support of the objection and any written submissions (of no more than 2 pages in length) to the Supreme Court of Victoria ([maynepharmaclassaction@supcourt.vic.gov.au](mailto:maynepharmaclassaction@supcourt.vic.gov.au))
- 6.4 A copy of the Notice of Objection is attached as **Schedule 1** to this document.
- 6.5 If you lodge a Notice of Objection, you may also address the Court (either by yourself or by your lawyer) at the Settlement Approval Hearing.

### OPTION 3 – UNREGISTERED GROUP MEMBERS ONLY

- 6.6 If you are an Unregistered Group Member and you wish to seek permission from the Court to participate in the Proposed Settlement, then by **4:00pm AEDT on 11 October 2024** you must identify the basis on which you think you should be granted permission and provide evidence (by way of affidavit) in support of your application for permission and any written submissions (of no more than 2 pages in length) by email to Phi Finney McDonald at [maynepharma@phifinney-mcdonald.com](mailto:maynepharma@phifinney-mcdonald.com). The Court has ordered that Phi Finney McDonald collect all applications for permission to participate in the Proposed Settlement and provide them to the Court.

## **7 FURTHER QUESTIONS ABOUT THE MAYNE PHARMA CLASS ACTION**

- 7.1 If there is anything of which you are unsure, or you have any questions about the Notice, your status as a Group Member, or the Proposed Settlement, in the first instance you should contact Phi Finney McDonald by emailing [maynepharma@phifinney-mcdonald.com](mailto:maynepharma@phifinney-mcdonald.com) or, alternatively, by telephone on (03) 9134 7100. You may also seek your own legal advice.



Schedule 1

**SUPREME COURT OF VICTORIA**



**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

**MAYNE PHARMA CLASS ACTION**

***HILLMAN V MAYNE PHARMA GROUP LTD (ACN 115 832 963)***  
**(S ECI 2020 03351)**

DO NOT FILL OUT AND RETURN THIS FORM UNLESS YOU WANT TO OBJECT TO THE SETTLEMENT OF THE MAYNE PHARMA CLASS ACTION

The Supreme Court of Victoria will consider all Notices of Objection returned by 4:00PM AEDT on 11 October 2024.

You can object to the proposed settlement even if you also wish to participate in the settlement.

You are unable to object to the proposed settlement if you have opted out of the Mayne Pharma Class Action.



To:

The Supreme Court of Victoria ([maynepharmaclassaction@supcourt.vic.gov.au](mailto:maynepharmaclassaction@supcourt.vic.gov.au))

The person identified below is a Group Member in the above proceeding and gives notice that they object to the proposed settlement of the Mayne Pharma Class Action:

**A. Details of Objector**

<b>Name of Group Member:</b>	
<b>Address of Group Member:</b>	
<b>Email address of Group Member:</b>	
<b>Telephone number of Group Member:</b>	

**B. Ground(s) of Objection**

The ground(s) for my objection to the proposed settlement are as follows (set out in the space below any submissions you wish to make – you may attach additional pages if necessary):

**C. Evidence or submissions (please tick the below options that apply to you)**

- I attach evidence (by way of affidavit) in support of my objection.
- I attach submissions in support of my objection (limited to 2 pages).
- I do not attach any evidence or submissions in support of my objection but wish for my objection to be considered based on my submission set out above.

**D. Attendance at hearing at 10:30am AEDT on 8 November 2024 (please tick one of the below three options)**

- I intend to appear at the settlement approval hearing, and I will appear on my own behalf.
- I intend to appear at the settlement approval hearing, and I will be represented by a lawyer.
- I do not intend to appear at the settlement approval hearing but wish for my submission to be considered in my absence.

**E. Signing of Notice**

\_\_\_\_\_  
Please sign here

Date:

