

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (CINCINNATI)

DINO RIKOS, TRACEY BURNS, and LEO	:	CASE NO. 1:11-cv-226
JARZEMBROSKI, on Behalf of	:	(Judge Timothy S. Black)
Themselves, all Others Similarly Situated and	:	
the General Public,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE PROCTER & GAMBLE COMPANY,	:	DECLARATION OF
	:	<u>ROBERT B. GOLDMAN</u>
Defendant.	:	

I, Robert B. Goldman, declare:

1. I am employed as a Vice President of Charles River Associates ("CRA").

I have been employed with CRA since August 2000. I have personal knowledge of the facts set forth below, and if called and sworn as a witness, I could and would competently testify to them. I submit this declaration in support of Defendant The Procter & Gamble Company's Motion for Final Approval of Class Action Settlement.

2. Founded in 1965, CRA is an economics, finance, and business consulting firm that works with businesses, law firms, and governments in providing a wide range of services. CRA's intellectual property ("IP") practice provides business and valuation consulting services related to all types of IP and intangible assets in a broad range of industries. CRA has performed independent valuations of IP in the context of IP litigation, licensing, acquisitions, intercompany transfer pricing and tax-related transactions.

3. In 2017, The Procter & Gamble Company ("P&G") engaged CRA to provide an independent assessment of the value of certain intellectual property related to

probiotics ("Subject IP") that, in connection with its Settlement of Rikos et al. v. The Procter & Gamble Company, Case No. 1:11-cv-00226-TSB (S.D. Ohio), P&G agreed to transfer to a non-profit research institute or university (the "Recipient"). I led the CRA team assigned to this project.

4. CRA provided the requested value assessment of the Subject IP as of October 1, 2017, using generally accepted approaches for valuing IP. CRA also quantified the value of technology transfer assistance that P&G agreed to provide to the Recipient.

5. The Subject IP consisted of the following patents:

- a. Methods of Determining Efficacy of Treatments of Inflammatory Diseases of the Bowel, U.S. Patent No. 7,932,000;
- b. Methods of Determining Efficacy of Treatments of Diseases of the Bowel, U.S. Patent No. 8,216,563;
- c. The following foreign counterparts to U.S. Patent Nos. 7,932,000 and 8,216,563:
 - i. Germany Patent No. DE602004043192.3;
 - ii. Spain Patent No. EP1608965;
 - iii. France Patent No. EP1608965;
 - iv. UK Patent No. EP1608965;
 - v. Ireland Patent No. EP1608965;
 - vi. Italy Patent No. EP1608965; and

- vii. Poland Patent No. EP1608965

- d. Compositions Having an Inner Core and At Least Three Surrounding Layers, U.S. Patent No. 8,168,170, and its foreign counterparts listed below:
 - i. Australia Patent No. AU2003277102;
 - ii. Canada Patent No. CA2500390;
 - iii. Germany Patent No. DE60336671.6
 - iv. France Patent No. EP1558223; and
 - v. Ireland Patent No. EP1558223

- e. Stabilised Compositions Comprising Probiotics, U.S. Patent Application No. 12/033,288, and its foreign counterparts¹ listed below:
 - i. Australia Patent No. AU2004290037;
 - ii. Canada Patent No. Appl. CA2545148;
 - iii. Germany Patent No. DE602004040486.1;
 - iv. France Patent No. EP1680501;

¹ CRA was informed of the fact that the '288 application is still in prosecution at the U.S. Patent and Trademark Office, and that the granted European patents corresponding to the '288 application are the subject of an opposition proceeding. CRA's valuation of the Subject IP factored in the uncertainty associated with the status of these patents and applications as a result.

- v. UK Patent No. EP1680501;
- vi. Ireland Patent No. EP1680501; and
- vii. Mexico Patent No. MX294225.

6. In addition to the patents listed above, the Subject IP also included non-patent proprietary trade secret information and general know-how associated with, or relating to, the Subject IP.

7. The information reviewed and relied upon by CRA in performing the valuation was generally as follows:

- a. Relevant documents and information provided by P&G related to the Subject IP;
- b. Publicly available patent publications, file histories and international filings for the patents included in the Subject IP;
- c. Research into third party sources for additional economic data on markets, industries, and transactions relevant to the valuation; and
- d. Discussions and/or correspondence with numerous P&G personnel.

8. The appropriate premise of value for the Subject IP is the risk-adjusted present value of licensing revenue the Recipient may generate from licensing the Subject IP to third parties. The valuation methodology utilized by CRA to assess the Subject IP included the Market Approach and the Income Approach. In general, the Market Approach values

assets based on comparable transactions involving similar IP rights. The Income Approach generally determines value based upon the amount of income that can be reasonably attributed to the Subject IP as distinguished from other elements that contribute to sales and profit. Because the value being determined for the Subject IP is the present value of Recipient's expected licensing revenue, the Income Approach was used as the primary valuation approach. The Market Approach was used, in part, to determine the appropriate royalty rates used in the Income Approach to value the Subject IP.

9. In calculating the present value of the expected licensing revenue of the Subject IP, CRA accounted for the varying geographical coverage, as well as the different expiration dates of each of the patents. To account for risk, CRA used a discount rate commensurate with the risk associated with realizing the forecasted license revenues (i.e., CRA used a risk-adjusted hurdle rate).

10. CRA also applied a number of assumptions to the valuation. For example, since qualified Recipients are assumed to be non-profit, the Recipient tax rate was assumed to be 0%. Additionally, since it is unlikely that a university Recipient would seek to obtain licensing revenue from another university or research institute that is performing research into the treatment of IBS using probiotics, CRA discounted the non-profit portion of the market completely, assuming there would be no licensing revenue from granting rights to practice the technology for non-profit research use.

11. CRA calculated the total indicated value (i.e., the present value of expected licensing revenue) of the Subject IP to be approximately \$11.8 million.

12. In addition to determining the present value of the expected licensing revenue for the Subject IP, CRA calculated the value of the technology transfer assistance (i.e., related know-how) that P&G will provide to the Recipient on an hourly-rate basis.

13. Two Principal P&G Scientists will each provide 40 hours of technology transfer assistance (i.e., know-how) to the Recipient valued at rates of \$130 and \$144 per hour, respectively.

14. CRA valued the total technology transfer assistance that P&G has agreed to provide to Recipient at no cost to the recipient at approximately \$11,000.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22nd day of February, 2018, in Chicago, Illinois.



ROBERT B. GOLDMAN