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VIA HAND DELIVERY

The Honorable Victor Marrero
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: ***In re Alcon Shareholder Litigation***
Consolidated Case No. 10 CV 139

Dear Judge Marrero:

Along with our Co-Interim Class Counsel, we represent the Plaintiffs in the above-captioned action. After Defendant Novartis AG submits its reply papers in support of its Motion to Dismiss on Grounds of Forum Non Conveniens ("Forum Non Motion") to the Court later today, the Motion will be completely briefed and ready for decision. We write to respectfully request a prompt oral argument (if necessary) and decision on the Forum Non Motion. For the Court's convenience, we summarize the background of the case, including developments since we last appeared before Your Honor, which highlights the importance to Alcon's minority shareholders (over 90% of whom are located in the U.S.) of obtaining substantive relief in this Court ***prior to August 2010***.

Background and Procedural Posture of the Case

As the Court is aware, Alcon, Inc. ("Alcon" or the "Company") is a Swiss corporation with three shareholder groups. Nestle S.A. ("Nestle") owns 52% of Alcon's common stock, Novartis AG ("Novartis") owns 25% and the remaining 23% of Alcon's common stock was sold in 2002 to public investors in an IPO on the New York Stock Exchange, where Alcon's shares trade exclusively. Over 90% of the holders of Alcon's public float are U.S. citizens. At the time of the IPO and since, Alcon's annual reports filed with the SEC have specifically referenced Alcon's Organizational Regulations (the "Organizational Regulations") and have stated that, among other things, no merger

or acquisition transaction with the majority shareholder of the Company would be approved without the prior approval of a committee of independent directors. Particularly in light of the limited (or nearly non-existent) protections provided to Alcon's minority shareholders under Swiss corporate law, Alcon's public assurance that the independent directors would enjoy negotiating leverage to determine when and on what terms the majority shareholder can squeeze out the minority was and remains a critical component of the value proposition of an investment in Alcon.

Novartis acquired its 25% stake in Alcon from Nestle in April 2008. At that time, Nestle executed two agreements with Novartis, one allowing Novartis to purchase the remainder of Nestle's Alcon shares for approximately $180 per share after January 1, 2010, and another requiring Nestle to defer to Novartis on a wide range of corporate governance matters. These contracts materially changed Alcon's corporate governance framework. Shortly thereafter, the Alcon board created a formal standing committee of independent directors (the "Independent Director Committee").

On January 1, 2010, Novartis notified Nestle of its intention to exercise its option to buy the remainder of Nestle's Alcon shares for $180 per share. On January 4, 2010, Novartis announced its intention to purchase the 23% of Alcon stock traded on the NYSE and held by public shareholders in exchange for Novartis stock worth only about $132 per share (based on the price of Novartis shares as of May 7, 2010) (the "Proposed Transaction").

Since the announcement of the Proposed Transaction, the Independent Director Committee has repeatedly stated that the consideration offered to the minority shareholders is grossly inadequate and made clear that they have no intention of approving the Proposed Transaction on its current terms. However, Novartis has decided to ignore the protests of the Independent Director Committee, has refused to consider their position or negotiate to obtain their approval, and has stated that it will replace the independent directors if they dare resist Novartis' demands.

In light of Novartis' stated intentions, Alcon's shareholders have no recourse to protect themselves in the market or through a shareholder vote. Specifically, Novartis has made clear that with 77% of Alcon's voting power, Novartis will be able to impose its will through any vote on a merger, without regard to the desires of Alcon's current shareholders. In addition, the Independent Director Committee has been told that their resistance is simply futile. As such, the ***only*** remedy available to protect Alcon's minority shareholders is seeking an order from the Court to prevent Novartis from further pursuing the Proposed Transaction until and unless the Independent Director Committee process promised to Alcon's U.S. investors is honored.

Accordingly, on January 21, 2010, the Plaintiffs in this case began filing suits to challenge the Proposed Transaction, asserting that, among other things, Novartis must respect the process promised in the Organizational Regulations and Alcon's public SEC filings (i.e., the Independent Director Committee must have an opportunity to approve (or disapprove) any merger or acquisition involving Alcon's majority shareholder).

On January 29, 2010, the Court held its initial case management conference. At that time, Novartis' counsel insisted that there was no need to expedite the matter, particularly because there could be no closing until well into the second half of 2010. During a follow up conference on February 11, 2010, the Court advised Novartis that although, under the circumstances, a motion to dismiss on the basis of *forum non conveniens* appeared to have a low likelihood of success, the Court cannot stop defendants from making such a motion. In addition, the Court declined to schedule expedited discovery or substantive motions until any jurisdictional issues were first resolved.

Forum Non Conveniens

On March 29, 2010, Novartis filed its Forum Non Motion (Doc. Nos. 33-36), arguing that this Court must decline its jurisdiction over this matter, so that Alcon's minority shareholders would be required to protect their rights by litigating in Switzerland only. Novartis' motion focused almost exclusively on its assertion that claims for breach of fiduciary duty are governed by Swiss law and can only be adjudicated in Switzerland. Alcon has answered the Complaint and has not contested the case remaining in this Court.

Plaintiffs recognize that as long as the Independent Director Committee is allowed to negotiate, the Proposed Transaction will not close on its current terms, and there may be no need to ever litigate breach of fiduciary duty claims. Accordingly, in order to narrow the issues before the Court and underscore that this case belongs in a U.S. court, Plaintiffs voluntarily dismissed without prejudice all breach of fiduciary duty claims – the only claims that could colorably be claimed to arise under Swiss corporate law. In addition, Plaintiffs reached agreement with Nestle and its director nominees to dismiss them from the action, in consideration for their binding stipulation to do nothing to facilitate Novartis' scheme.

As more fully described in Plaintiffs' Memorandum of Law in Opposition to Defendant Novartis AG's Motion to Dismiss on Grounds of *Forum Non Conveniens* ("FNC Opposition Brief") and other supporting documents (Doc. Nos. 38-42), filed on April 20, 2010, this case should proceed in the United States for numerous reasons including:

(i) The overwhelming majority of the plaintiff class of Alcon minority shareholders are U.S. citizens who purchased their shares on the New York Stock Exchange;

(ii) The claims remaining in the case are dictated entirely or primarily by U.S. common law, not Swiss law;

(iii) The Swiss legal process does not provide Plaintiffs with the ability to seek a pre-closing injunction with respect to the Proposed Transaction. If this case is not heard by this Court, the Proposed Transaction will close on the unfair terms dictated by

Novartis and Plaintiffs will have lost the value created by the mandated process;

(iv) Switzerland's exclusive remedy for aggrieved shareholders in this context, an after-the-fact appraisal proceeding, would not account for the increased consideration for minority shareholders that the Independent Director Committee could obtain if the promised process was respected; and

(v) Switzerland does not provide for class action lawsuits or the payment of contingency fees, making it prohibitively costly for virtually any minority shareholder to pursue claims in Switzerland.

Status Conference Before Magistrate Judge Freeman

At the status conference conducted by Magistrate Judge Freeman on April 30, 2010, Plaintiffs were alerted to a significant change in the timing of the Proposed Transaction. There is a real possibility that the transaction could close by the end of this summer. As stated above and in the Plaintiffs' FNC Opposition Brief, this entire case effectively turns on empowering the Independent Director Committee to be able to negotiate and have the approval right that has been promised to Alcon's minority shareholders since the Company's IPO. If Plaintiffs are unable to obtain relief before the Proposed Transaction potentially closes in late July, it will be impossible for Plaintiffs to ever secure a meaningful remedy.

Plaintiffs' Requests

Plaintiffs respectfully request that the Court render a decision on the Forum Non Motion expeditiously and, to the extent that the Court requires any oral argument on this issue, that the Court schedule the oral argument as promptly as possible. Additionally, Plaintiffs respectfully request that, if Plaintiffs prevail on the Forum Non Motion, the Court: (i) grant the Plaintiffs expedited discovery, and (ii) require the parties to submit a comprehensive case management plan within one week of the forum non decision.

Respectfully submitted,

Mark Lebovitch

Mark Lebovitch

cc: Magistrate Judge Freeman (by hand delivery)
All counsel (by email)