

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 21/05/2018 10:57:13 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID1375/2017
File Title:	PAWEL KUTERBA v SIRTEX MEDICAL LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Dated: 21/05/2018 11:12:48 AM AEST

Registrar

A handwritten signature in blue ink, reading "Warwick Soden".

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Further Amended Originating application starting a representative proceeding**  
**under Part IVA of the Federal Court of Australia Act 1976**

Amended pursuant to leave granted by the Honourable Justice Murphy on 30 April 2018

No.VID1375 of 2017

Federal Court of Australia  
District Registry: Victoria  
Division: General

**PAWEL KUTERBA and another named in the schedule**

Applicants

**SIRTEX MEDICAL LIMITED (ACN 78 166 122)**

Respondent

To the Respondent

The Applicants apply ~~ies~~ for the relief set out in this further amended application.

The Court will hear this further amended application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia  
305 William Street  
Melbourne VIC 3000

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of:	The First and Second Applicant		
Prepared by:	Miranda Nagy		
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Address for service:	Level 32, 201 Elizabeth Street, Sydney NSW 2000		



### Details of claim

Terms defined in the Further Amended Statement of Claim carry the same meaning when used in this Further Amended Originating Application.

On the grounds stated in the Further Amended Statement of Claim, the Applicants' claims on their ~~his~~ own behalf (and, to the extent applicable, following an initial trial of the Applicant's' claims and particularisation of any claim by Group Members, on behalf of the Group Members):

1. a declaration that the Respondent contravened Listing Rule 3.1 and section 674(2) of the Corporations Act by reason of the matters pleaded in each of paragraphs 46 to 55 (inclusive) of the Further Amended Statement of Claim;
2. an order pursuant to section 1317HA of the Corporations Act that the Respondent pay compensation to the Applicants and the Group Members for the loss and damage caused by its contravention of section 674 of the Corporations Act;
3. a declaration that the Respondent contravened section 1041H(1) of the Corporations Act, section 12DA(1) of the ASIC Act and/or section 18 of the Australian Consumer Law by reason of the matters pleaded in each of paragraphs 56 to 88 (inclusive) of the Further Amended Statement of Claim;
4. a declaration that each of the contraventions were continuing contraventions that continued until such time as the undisclosed information was disclosed to the Affected Market;
5. an order pursuant to:
  - (a) section 1041I(1) of the Corporations Act that the Respondent pay compensation to the Applicants and Group Members for damages caused by the conduct of the Respondent in contravention of section 1041H of the Corporations Act referred to in paragraph 3 above; or
  - (b) section 12GF(1) of the ASIC Act that the Respondent pay compensation to the Applicants and Group Members for damages caused by the conduct of the Respondent in contravention of section 12DA(1) of the ASIC Act referred to in paragraph 3 above; or
  - (c) section 236 of the Australian Consumer Law that the Respondent pay compensation to the Applicants and Group Members for damages caused by the conduct of the Respondent in contravention of section 18 of the ACL referred to in paragraph 3 above;



6. interest;
7. costs; and
8. such further order as the Court determines is appropriate.

**Questions common to claims of group members**

9. The questions of law or fact common between the claims of the Applicants and the Group Members are:
  - (a) on what date did the Respondent become aware of the matters referred to in paragraphs 46 to 48 (inclusive) of the Further Amended Statement of Claim, within the meaning of rule 19.12 of the Listing Rules;
  - (b) whether the Respondent contravened section 674 of the Corporations Act in relation to any, and if so which of the matters referred to in paragraphs 46 to 48 (inclusive) of the Further Amended Statement of Claim;
  - (c) whether the Respondent contravened section 1041H of the Corporations Act, section 12DA(1) of the ASIC Act and/or section 18 of the Australian Consumer Law in relation to making what is defined in the Further Amended Statement of Claim as the:
    - (i) FY2017 Expected Dose Sales Representation;
    - (ii) FY2017 Expected Dose Sales Statements;
    - (iii) Year to Date Dose Sales Representation;
    - (iv) No Adverse Competition Effects Representation;
    - (v) CEO Share Trade Representation;
    - (vi) Listing Rule Compliance Representations;
    - (vii) Risk Management Representation; and/or
    - (viii) Risk Management Statement;
  - (d) whether the First to Fifth Disclosure Contraventions, the FY2017 Expected Dose Sales Representation, the Year to Date Dose Sales Representation, the No Adverse Competition Effects Representation, the CEO Share Trade



Representation, the Listing Rule Compliance Representations and the Risk Management Representation or any of them continued from and after the date they commenced during the Relevant Period;

- (e) whether any and if so what conduct by the Respondent in contravention of statutory norms had the effect that prices for its securities were higher than those prices would otherwise have been and, if so, to what extent; and
- (f) if the Respondent's contravening conduct had that effect, whether compensation is recoverable on that basis.

### Representative action

10. The Applicants brings this further amended application as a representative parties y under Part IVA of the *Federal Court of Australia Act 1976* (Cth).
11. The Group Members to whom this claim relates are those persons referred to in paragraph 4(c) 1B of the Further Amended Statement of Claim, being persons ~~other than the lead applicant in Federal Court proceeding number VID91/2017 (*Todd Hayward v Sirtex Medical Limited*)~~ who or which:
  - (a) acquired an interest in SRX Securities during the period from 24 August 2016 to 6.09 pm on 16 December 2016 (**Relevant Period**) by the purchase of those securities on the financial market operated by the ASX;
  - (b) have suffered loss or damage by reason of the conduct of the Respondent (**SRX**) pleaded in the Further Amended Statement of Claim; and
  - (c) are not any of the following as at the date of commencement of this proceeding:
    - (i) a related party (as defined by section 228 of the Corporations Act) of SRX;
    - (ii) a related body corporate (as defined by section 50 of the Corporations Act) of SRX;
    - (iii) an associated entity (as defined by section 50AAA of the Corporations Act) of SRX; or
    - (iv) an officer or a close associate (as defined by section 9 of the Corporations Act) of SRX.

**Applicant's' address**

The Applicant's' address for service is

Maurice Blackburn Pty Limited  
Level 32, 201 Elizabeth Street  
SYDNEY NSW 2000

**Service on the Respondent**

It is intended to serve this further amended application on the Respondent.

Date: 21 May 2018

A handwritten signature in blue ink, which appears to read "Miranda Nagy", is written above a horizontal line.

Signed by Miranda Nagy  
Solicitor for the Applicants



**Schedule**

**No. VID1375 of 2017**

**Federal Court of Australia**

**District Registry: Victoria**

**Division: General**

**Applicants**

**Second Applicant: Todd Hayward**

**Date: 21 May 2018**