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Court: CA Superior Court County of San Diego

Judge: Ronald L Styn

File & Serve

Transaction ID: 54569292

Current Date: Nov 18, 2013

Case Number: JCCP4154 & 4220

Case Name: In re: Cipro Cases I & II (JCCP)

Court Authorizer

Comments:

Order signed by the Court.

/s/ **Judge Styn, Ronald L**



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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Coordination Proceeding Special Title (Rule 1550(b)): CIPRO CASES I and II	Judicial Council Coordination Proceeding Nos. 4154 and 4220 CLASS ACTION
This Document Relates To: ALL ACTIONS	The Honorable Ronald L. Styn <u>[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT</u>

This matter is before the Court on the motion for final approval of a class action settlement (the “Settlement”) between individual and representative Plaintiffs Karyn McGaughey, Barbara Cohen, Deborah Patane, Donna Moore, IUOE Stationary Engineers Local 39 Health and Welfare Plan, and Sheet Metal Workers Health and Welfare Plan of Southern California, Arizona, and Nevada (“Plaintiffs”) and Bayer Corporation and Bayer AG (“Bayer”) (collectively the “Settling Parties”), as set forth in the Settlement Agreement attached hereto as **Exhibit A**.

By the Order Granting Preliminary Approval of Class Action Settlement with Defendants Bayer Corporation and Bayer AG, Approving Form and Manner of Notice, and Scheduling Final Approval Hearing (“Preliminary Approval Order”), the Court: (a) granted preliminary approval to

1 the Settlement; (b) ordered that notice of the Settlement be disseminated to members of the Class,
2 as directed therein; and (c) scheduled a final approval and fairness hearing (“Fairness Hearing”)
3 for November 15, 2013. On November 15, 2013, the Settling Parties appeared before the Court
4 for the Fairness Hearing, and an opportunity to be heard was given to all persons requesting to be
5 heard. The Court has reviewed and considered all of the pleadings filed in connection therewith,
6 and all of the arguments and evidence presented at the Fairness Hearing concerning the
7 Settlement.

8 The entire matter of the proposed Settlement having been duly noticed, and having been
9 fully considered by the Court, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED:**

10 1. This Court has jurisdiction over the above-captioned Actions (and all actions and
11 proceedings consolidated in the Actions), Plaintiffs, Class members, Defendants, and any party to
12 any agreement that is part of or related to the Settlement Agreement.

13 2. Capitalized terms used in this Order have the meanings and/or definitions ascribed
14 to them in the Settlement Agreement.

15 3. The Court finds that the applicable requirements of the Code of Civil Procedure
16 section 382 and California Rules of Court, rules 3.769 and 3.7709 have been satisfied with
17 respect to Class members and the Settlement.

18 4. The certified Class is defined as follows in the Court’s October 12, 2004 Order
19 Modifying November 23, 2003 Class Certification Order:

20 All natural persons, sole proprietorships, partnerships, limited
21 partnerships, corporations and other entities, in the State of
22 California who indirectly purchased, paid and/or reimbursed for
23 Cipro intended for consumption by themselves, their families, or
24 their members, participants, employees or insureds (the “Class”)
25 during the period from January 8, 1997 through such time in the
26 future as the effects of Defendants’ illegal conduct, as alleged
27 herein, have ceased (the “Class Period”). Excluded from the Class
28 are: all persons who obtained Cipro through the MediCal
Prescription Drug Program; governmental entities; the Defendants,
their co-conspirators, along with all of their respective parents,
subsidiaries, and/or affiliates; all persons or entities that purchased
Cipro for purposes of resale; any purchaser of Cipro who paid a flat
co-payment and who would have paid the same co-payment for a
generic substitute under the terms of their health insurance
coverage; and any and all judges and justices assigned to hear any
aspect of this litigation.

1 5. The Court finds and determines that, for settlement purposes, the Class Period
2 encompasses sales of Cipro from January 8, 1997 through October 31, 2004, as specified in the
3 Court-approved Settlement Notice and Plan of Allocation, and as agreed upon by the Settling
4 Parties.

5 6. The notice mechanisms implemented pursuant to the Settlement Agreement and as
6 approved by the Court in the Preliminary Approval Order, were reasonably calculated under the
7 circumstances to apprise Class members of the pendency of the Actions and all material elements
8 of the proposed Settlement, and of their opportunity to object to or comment on the Settlement,
9 and to appear at the Fairness Hearing. The notice was reasonable: it provided due, adequate, and
10 sufficient notice to all Class members, and complied fully with the laws of the State of California,
11 the Code of Civil Procedure, the California Rules of Court, due process, and any other applicable
12 statutes or rules. A full and fair opportunity has been afforded to the members of the Class to
13 participate in the Fairness Hearing, and all Class members and other persons wishing to be heard
14 have been heard.

15 7. Accordingly, the Court determines that all members of the Class are bound by this
16 Judgment, Final Order, and Decree. The persons and entities identified in **Exhibit B** attached
17 hereto, however, timely requested exclusion from the Class. Each of these persons or entities is
18 excluded from the Class, meaning they shall not be bound by the terms of the present Settlement
19 Agreement or by entry of this Judgment.

20 8. No Class members asserted Objections to the Settlement.

21 9. The Court hereby grants final approval to the Settlement and finds that it is fair,
22 reasonable, and adequate, and in the best interests of the Class.

23 10. The Settlement is entitled to a presumption of reasonableness, as it was negotiated
24 at arms' length by experienced and well-prepared Class Counsel, and there have not been any
25 Objections to the Settlement. (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2001)
26 85 Cal.App.4th 1135, 1151.)

27 11. Even apart from this presumption, the Court has determined that the Settlement is
28 fair, reasonable, and adequate as measured by the relevant criteria. (See *Dunk v. Ford Motor Co.*

1 (1996) 48 Cal.App.4th 1794, 1801 [listing and applying factors].) Prior to entering into the
2 proposed Settlement, Class Counsel, who have extensive experience in class action and antitrust
3 litigation, were well-informed about the potential risks and rewards of continued
4 litigation—having conducted extensive discovery and investigation; having consulted at length
5 with experts concerning Bayer’s potential liability and Class members’ damages; having
6 overcome pleading challenges, obtained class certification, and defended it on appeal; and having
7 heavily litigated the case as part of complex summary judgment proceedings, including intensive
8 appellate work.

9 12. The Court of Appeal affirmed this Court’s grant of summary judgment to the
10 defendants. The California Supreme Court subsequently granted the plaintiffs’ petition for
11 review, and the parties filed merits briefs in that court. The outcome of this pending appeal
12 cannot be predicted. As such, continued litigation presents significant risks for Class members as
13 well as further risks in any post-trial appeal.

14 13. The Court finds that the \$74 million in cash consideration is fair, reasonable, and
15 adequate given the claims and defenses, the substantial litigation risks, and the history of these
16 Actions.

17 14. In addition, the reaction of Class members strongly favors approval of the
18 Settlement. While the Class contains thousands of consumers and third-party payors, no Class
19 members have objected to the Settlement.

20 15. The Plan of Allocation, as approved in the Preliminary Approval Order and
21 described in the notice disseminated to Class members, is hereby approved as fair, reasonable,
22 and adequate. Pursuant to the Plan of Allocation, funds are to disbursed from the Settlement
23 Fund as follows:

24 a. The attorneys’ fees and costs approved by the Court may be distributed to
25 Class Counsel from the Settlement Fund within ten (10) days of the Effective Date of this
26 Settlement Agreement;

1 b. All remaining reasonable fees and expenses incurred in connection with the
2 administration of the escrow account and the Settlement Fund shall be paid from the Settlement
3 Fund by the Escrow Agent;

4 c. Disbursements for the payment of any taxes (including any estimated taxes,
5 interest, or penalties) due as a result of income earned by the Settlement Fund shall be made
6 promptly by the Escrow Agent;

7 d. The service awards approved by the Court for services rendered to the
8 Class by Plaintiffs shall be distributed to Plaintiffs from the Settlement Fund after the Effective
9 Date of the Settlement; and

10 e. The balance of the Settlement Fund after the payment of attorneys' fees,
11 reimbursement of litigation costs and expenses, taxes, service awards, costs of notice and
12 administration of the Settlement and Settlement Fund, and pursuant to the procedures set forth in
13 the Plan of Allocation, shall be distributed to Class members who submit timely claims that are
14 accepted by the Claims Administrator ("Authorized Claimants") in accordance with the Plan of
15 Allocation approved by the Court.

16 f. In the event monies remain as residue in the Settlement Fund following all
17 distribution efforts approved by the Court, Class Plaintiffs shall move the Court for an order
18 disposing of all such funds, including through possible additional distributions to approved Class
19 claimants and/or *cy pres* distribution as approved by the Court.

20 g. Other disbursements, such as for fees and expenses incurred in
21 administering the Settlement Fund and for the cost of notice, may be disbursed, as set forth in the
22 Settlement Agreement, prior to the Effective Date of the Settlement.

23 h. In no event shall a residue in the Settlement Fund revert to Bayer.

24 16. Based on the foregoing findings, the Settlement Agreement is finally approved and
25 made a part of this Judgment as if fully set forth herein, and shall have the full force and effect of
26 an order of this Court. The Settling Parties shall consummate the Settlement Agreement
27 according to its terms.

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1 17. The Court therefore hereby orders and declares (i) the Settlement Agreement is
2 binding upon all Settling Parties and Class members; (ii) the Settlement Agreement shall be
3 preclusive in all pending and future lawsuits or other proceedings against Bayer arising from the
4 facts alleged in these Actions; and (iii) the Settlement Agreement and this Order shall have *res*
5 *judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained
6 against Bayer by or on behalf of the Class Representatives or any other Class member, as well as
7 each of their heirs, executors, administrators, successors and assigns. Upon the Effective Date,
8 the Settlement Agreement shall be the exclusive remedy against Bayer for satisfaction of any and
9 all Released Claims of Class members who did not properly and timely exclude themselves from
10 the Class.

11 18. The Court hereby incorporates the release in the Settlement Agreement. Thus, the
12 Released Parties are and shall be released and forever discharged from all manner of claims,
13 demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature
14 whatsoever (whether such claims, demands, actions, suits, causes of action, damages or liabilities
15 arise or are incurred before, during or after the date hereof), including costs, expenses, penalties,
16 and attorneys' fees known or unknown, suspected or unsuspected, in law or equity, that Plaintiffs
17 or any member or members of the Class or Class Counsel, whether or not they object to the
18 Settlement and whether or not they make a claim upon or participate in the Settlement Fund, ever
19 had, now has, or hereafter can, shall or may have, directly, indirectly, representatively,
20 derivatively or in any other capacity (the "Releasor(s)"), arising from or related to any conduct,
21 events or transactions, prior to the date hereof, alleged or which could have been alleged in the
22 Actions, relating to Ciprofloxacin (branded Cipro® and/or its generic equivalents) (the "Released
23 Claims"). Except for enforcing this Settlement Agreement, each member of the Class hereby
24 covenants and agrees that he, she or it shall not, hereafter, seek to establish liability against any
25 Released Party based, in whole or in part, on any of the Released Claims. Should any member of
26 the Class breach this covenant not to sue, the Released Parties may seek equitable and legal
27 remedies, including the recovery of attorneys' fees incurred in responding to such breach.
28 Without in any way limiting the definition of Released Parties, the following specific entities are

1 Released Parties: Bayer Corporation, Bayer World Investments B.V., and Bayer AG. Released
2 Parties shall not include any Non-Settling Defendant that is acquired or becomes a parent,
3 subsidiary, division, or affiliate of Bayer or any of its past, present and future parents,
4 subsidiaries, divisions, or affiliates, including, but not limited to Bayer Corporation, Bayer World
5 Investments B.V., and Bayer AG.

6 19. In addition, each Releasor hereby expressly waives and releases, upon this
7 Settlement Agreement becoming final, any and all provisions, rights, benefits conferred by
8 section 1542 of the Civil Code, and any law of any state or territory of the United States, or
9 principle of common law, which is similar, comparable or equivalent to section 1542 of the Civil
10 Code.¹ Each member of the Class and each other Releasor may hereafter discover facts other
11 than or different from those which he, she or it knows or believes to be true with respect to the
12 Released Claims. Nevertheless, each member of the Class and each other Releasor hereby
13 expressly waives and fully, finally and forever settles and releases, upon this Settlement
14 Agreement becoming final, the Released Claims, whether any Released Claim is known or
15 unknown, suspected or unsuspected, contingent or non-contingent, concealed or hidden, without
16 regard to the subsequent discovery or existence of such different or additional facts.

17 20. Nothing in this Order shall be construed to expand the obligations of Bayer
18 under the Settlement Agreement or to impose obligations on Bayer other than those
19 contained in the Settlement Agreement.

20 21. Without affecting the finality of this Judgment and Final Order, the Settling Parties
21 have submitted to the exclusive and continuing jurisdiction of this Court, and this Court reserves
22 exclusive and continuing jurisdiction over the Settlement, including the administration,
23 consummation, and interpretation of the Settlement Agreement. Pursuant to California Rules of
24 Court, rule 3.769(h), the Court retains exclusive and continuing jurisdiction over the Parties to
25 enforce the terms of this Judgment.

26
27 ¹ Civil Code section 1542 provides: "A general release does not extend to claims which the creditor does not know or
28 suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have
materially affected his or her settlement with the debtor."

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22. Pursuant to Code of Civil Procedure sections 578, 579, and 664.6, the Court, in the interests of justice, there being no just reason for delay, directs the Clerk of the Court to enter this Final Approval Order and Judgment, and hereby decrees that upon entry it shall be deemed a Final Judgment with respect to all claims asserted by Class members against Bayer.

Dated: _____, 2013

Judge of the Superior Court of California
County of San Diego

EXHIBIT A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Settlement Agreement" or "Settlement") is made and entered into on June 7, 2013, by and between (a) Bayer Corporation and Bayer AG (collectively, "Bayer"); and (b) Karyn McGaughey, Barbara Cohen, Deborah Patane, Donna Moore, IUOE Stationary Engineers Local 39 Health and Welfare Plan, and Sheet Metal Workers Health and Welfare Plan of Southern California, Arizona, and Nevada, individually and as representatives of a certified Class (the "Class," as further defined below) (collectively "Plaintiffs" or "Class Plaintiffs"); in the Cipro Cases I & II, California Judicial Council Coordination Proceeding Nos. 4154 and 4220 (the "Actions") in the Superior Court of the State of California for the County of San Diego (the "Court"). Bayer and the Class Plaintiffs are collectively referred to hereafter as the "Settling Parties."

WHEREAS, Ciprofloxacin, a second-generation fluoroquinolone antibiotic, was first patented in 1983, approved by the US Food and Drug Administration (FDA) in 1987, and subsequently marketed and sold by Bayer in the United States of America under the brand name Cipro®;

WHEREAS, Bayer enjoyed patent protection for Cipro® until the end of 2003;

WHEREAS, Plaintiffs are prosecuting the Actions as class actions against Bayer and additional named defendants Barr Laboratories Inc., Hoechst Marion Roussel Inc., The Rugby Group Inc., and Watson Pharmaceuticals Inc. (the "Non-Settling Defendants" who, together with Bayer are the "Defendants");

WHEREAS, Plaintiffs filed their consolidated complaint in the Actions against Defendants on August 5, 2002, alleging that Defendants' joint settlement of litigation concerning the patent covering Cipro® violated California's antitrust and consumer protection laws in connection with the sale in California of Cipro®; that Defendants thereby have been unjustly enriched in connection with Class Plaintiffs' purchases of Cipro®; and that these joint settlements caused Class Plaintiffs injury and calculable damages;

WHEREAS, on November 23, 2003, this Court entered its Class Certification Order certifying the Class, which order was modified on October 12, 2004, by San Diego Superior Court Judge Richard E.L. Strauss's Order Modifying November 23, 2003 Class Certification Order;

WHEREAS, on July 21, 2004, the California Court of Appeal, Fourth District, affirmed the Court's class certification order;

WHEREAS, in accordance with due process, notice to the Class Plaintiffs of their membership in the certified Class has been given, and the date for opting out of the Class has passed;

WHEREAS, on August 21, 2009, the Court granted Defendants' motions for summary judgment and denied the motions to dismiss as moot, and on September 24, 2009, entered final judgment;

WHEREAS, on October 31, 2011, the California Court of Appeal, Fourth Appellate District affirmed the grant of summary judgment to Defendants;

WHEREAS, the Supreme Court of California granted Class Plaintiffs' petition for review, which matter presently is pending as Case No. S198616 (the "Appeal");

WHEREAS, the Settling Parties have engaged in substantial arm's length negotiations in an effort to resolve all claims that have been, or could have been, asserted between them in the Actions, including conducting numerous meetings and telephone conferences where the terms of the agreements detailed herein were extensively debated and negotiated, and therefore believe the Settlement Agreement to be executed in good faith;

WHEREAS, Bayer has denied and continues to deny that it engaged in any wrongdoing of any kind; or that it violated or breached any law, regulation, or duty owed to the Class Plaintiffs; or that it has liability as a result of any and all allegations contained in the Actions, and is entering into the Settlement Agreement to eliminate the burdens, distractions, expense, and uncertainty of further litigation;

WHEREAS, Plaintiffs and their counsel have concluded, after extensive discovery, investigation, trial court motion practice and litigation, and appellate practice, and after carefully considering all of the circumstances of the Actions, and despite their belief in the validity of Class Plaintiffs' claims against Bayer, that it is in the best interests of Class Plaintiffs to enter into this Settlement Agreement with Bayer in order to avoid the uncertainties of, and risks and delays associated with, the outcome of the pending appeal and/or a trial and any subsequent appeals, and the delays and other uncertainties related to the litigation of the Actions, and to assure a benefit to Class Plaintiffs and further, that Plaintiffs and Class Counsel consider the Settlement to be fair, reasonable, and adequate and in the best interests of Plaintiffs and the Class;

WHEREAS, Bayer has concluded, despite its belief that it is not liable for the claims asserted in the Actions and that it has good defenses thereto, that it would be in its best interests to enter into this Settlement Agreement to avoid further expense, inconvenience, uncertainties of, and risks and delays associated with, the outcome of the pending appeal and/or a trial and any subsequent appeals, and the distraction of burdensome and protracted litigation and thereby to resolve this controversy; and

WHEREAS, the Settling Parties wish and intend for this Settlement Agreement to resolve and terminate all disputes between Bayer and Class Plaintiffs, the Class, and Class Counsel, as hereinafter defined;

NOW, THEREFORE, in consideration of the promises and agreements, covenants, representations, and warranties set forth herein, intending to be legally bound, the Settling Parties, through their respective authorized representatives who have signed below, agree that the Actions and all claims made or that could have been made against Bayer by the individual and representative Plaintiffs

and the Class be settled, compromised, and dismissed on the merits and with prejudice and, except as hereinafter provided, without costs as to the individual and representative Plaintiffs, the Class or Bayer, subject to the approval of the Court, on the following terms and conditions:

1. The Class. The Class is defined as follows in the Court's October 12, 2004 Order Modifying November 23, 2003 Class Certification Order:

All natural persons, sole proprietorships, partnerships, limited partnerships, corporations, and other entities, in the State of California who indirectly purchased, paid and/or reimbursed for Cipro intended for consumption by themselves, their families, or their members, participants, employees or insureds (the "Class") during the period from January 8, 1997 through such time in the future as the effects of Defendants' illegal conduct, as alleged herein, have ceased (the "Class Period"). Excluded from the class are all persons who obtained Cipro through the MediCal Prescription Drug Program; governmental entities; the Defendants, their co-conspirators, along with all of their respective parents, subsidiaries, and/or affiliates; all persons or entities that purchased Cipro for purposes of resale; any purchaser of Cipro who paid a flat co-payment and who would have paid the same co-payment for a generic substitute under the terms of their health insurance coverage; and any and all judges and justices assigned to hear any aspect of this litigation.

2. Best Efforts to Effectuate This Settlement. The Settling Parties and their undersigned Counsel agree to recommend this Settlement Agreement for approval by the Court and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court, the California Court of Appeal, the Supreme Court of California, or otherwise, to effectuate the terms of this Settlement Agreement, including but not limited to providing appropriate affidavits and seeking appropriate relief and/or remand so that the approval orders, referenced in paragraphs 3 and 4, may be entered by the Court.

3. Motion for Preliminary Approval and Good Faith Determination. Class Plaintiffs, by and through their counsel Joseph R. Saveri and the Joseph Saveri Law Firm, Eric B. Fastiff and the law firm Lief Cabraser Heimann & Bernstein LLP, and Dan Drachler and the law firm Zwerling, Schachter & Zwerling, LLP ("Class Counsel" or "Plaintiffs' Counsel"), shall file with the Court, promptly after the execution of this Settlement Agreement, motions for preliminary approval of the Settlement Agreement, which will contain a proposed preliminary approval order in a form agreed upon by Class Counsel and Bayer, or if the parties cannot agree, as determined by the Court, and an application for determination of good faith settlement pursuant to Cal. Code Civ. Proc. § 877.6(2), including affidavits and a proposed order in a form agreed upon by Class Counsel and Bayer. In the event that the Court preliminarily approves the Settlement Agreement, Class Counsel shall, in accordance with Rule 3.769 of the California

Rules of Court, direct the Claims Administrator, to be selected by the Settling Parties and approved by the Court, to provide the Class with notice ("Settlement Notice"), as ordered by the Court, of the Settlement Agreement and its potential rights to recover from the Settlement Fund pursuant to the Plan of Allocation upon submission of a properly documented proof of claim. All costs of Settlement Notice shall be paid exclusively from the Settlement Fund (as defined in paragraph 6.a herein) as provided in this Settlement Agreement, without recourse to the Class Plaintiffs or Bayer.

4. Motion for Final Approval of Settlement and Entry of Final Judgment. If the Court preliminarily approves the Settlement Agreement, Plaintiffs, through Class Counsel, after provision of Settlement Notice, shall submit a motion for final approval of the Settlement Agreement by the Court, and shall seek entry of an order and final judgment between Class Plaintiffs and Bayer:

- a. finding the Settlement Agreement and its terms to be fair, reasonable and adequate within the meaning of Rule 3.769 of the California Rules of Court and directing its consummation pursuant to its terms;
- b. finding that the notice given constitutes due, adequate and sufficient notice, and meets the requirements of due process and any applicable state laws;
- c. providing for incentive payments from the Settlement Fund (as defined in paragraph 6.a herein) to the Plaintiffs in addition to whatever monies each will receive from the Settlement Fund pursuant to the Court-approved Plan of Allocation;
- d. providing for payment of reasonable attorneys' fees and reimbursement of expenses from the Settlement Fund (as defined in paragraph 6.a herein);
- e. setting forth the method for allocating the Settlement Fund (as defined in paragraph 6.a herein);
- f. directing that the Actions and the Appeal be dismissed with prejudice as against Bayer and, except as provided for herein, without costs to the Settling Parties;
- g. approving the release of claims specified herein as binding and effective as to all Class Plaintiffs and permanently barring and enjoining Plaintiffs and Class members from asserting any Released Claims (as defined in paragraph 13.b herein);
- h. reserving exclusive and continuing jurisdiction over the Settlement Agreement, including the Settlement Fund (as defined in paragraph 6.a herein) and the administration, consummation and interpretation of this Settlement Agreement; and
- i. directing that order and final judgment of dismissal be entered as between the Settling Parties in the Actions.

5. Effective Date of the Settlement. The Settlement Agreement shall become final and effective upon the occurrence of all of the following ("Effective Date"):

- a. Neither Class Plaintiffs nor Bayer have availed themselves of any right to terminate the Settlement Agreement pursuant to paragraphs 6.b or 15 herein;
- b. the Settlement Agreement is approved by the Court as required by Rule 3.769 of the California Rules of Court;
- c. entry, as provided for in paragraph 4 herein, is made of the order and final judgment, with prejudice, with respect to Class Plaintiffs' Released Claims against Bayer; and
- d. the time for appeal from the Court's approval of the Settlement Agreement as described in subparagraph (b) hereof and entry of an order and final judgment as described in subparagraph (c) hereof has expired; or, if an appeal has been filed, either all such appeals shall have been dismissed prior to resolution by the appellate court, or approval of this Settlement Agreement and final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, by certiorari or otherwise, provided, however, a modification or reversal on appeal of any amount of the fees and expenses awarded by the Court from the Settlement Fund, the amount of payments to the Plaintiffs or the Plan of Allocation shall not by itself prevent this Settlement Agreement from becoming final and effective if all other aspects of the final judgment have been affirmed. An appeal from approval of this Settlement Agreement and final judgment is deemed no longer subject to further appeal or review by certiorari within the meaning of this paragraph on the day that is 90 days after resolution by the appellate court of last resort to which such appeal has been taken, or 90 days after the entry of the order denying discretionary review.

6. Settlement Consideration: Cash.

a. Subject to the provisions hereof, and in full, complete, and final settlement of the Actions, Bayer shall pay seventy-four million dollars (\$74,000,000.00) ("Settlement Amount"), by the later of either (a) twenty (20) calendar days of Bayer's receipt of the Court's order preliminarily approving the Settlement Agreement, a properly completed W-9 form from the Escrow Agent identified in writing by Class Counsel, or (b) June 28, 2013, into an escrow account (the "Settlement Fund"), held and administered by an escrow agent to be selected by Class Counsel with consent of Bayer and approval of the Court. The Settling Parties agree, notwithstanding and without affecting Bayer's continued denial of liability, that this Settlement Amount is considered to be compensatory, not punitive, in purpose and effect, and should be allocated entirely to Plaintiffs' claims for compensatory damages.

b. The Settling Parties agree, as indicated in the recitals to this Settlement Agreement, that the date for opting out of the Class has passed. Nonetheless, the Settling Parties agree that Bayer shall have the right, at its sole discretion, to rescind this Settlement Agreement if Class members that have opted out or are permitted to opt out have one hundred million dollars (\$100,000,000) or more in Cipro purchases during the Class Period. Cipro purchases by parties that previously opted out

of the Actions and whose claims were dismissed as part of the action entitled In re Ciprofloxacin Hydrochloride Antitrust Litigation, MDL-1383, shall not be included in any computation for purposes of this paragraph.

c. Bayer and any Released Party, as that term is defined in paragraph 13.b, shall have no liability, obligation or responsibility with respect to the investment, disbursement, or other administration or oversight of the Settlement Fund. The Settlement Fund is the total amount that Bayer will pay under this Settlement Agreement in exchange for the Released Claims (as defined in paragraph 13.b herein), including without limitation funds to satisfy claims by Class Plaintiffs, Class members attorneys' fees and costs, any Court-approved payments to Plaintiffs, and payment of any and all administrative and notice expenses associated with the Actions or this Settlement Agreement.

d. It is intended that the escrow account shall be at all times a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1, and that the "administrator" of the Settlement Fund, within the meaning of Treas. Reg. § 1.468B-2(k), shall comply with all applicable requirements, which shall include, without limitation, (a) preparing a "Regulation Section 1.468B-3 Statement" pursuant to Treas. Reg. § 1.468B-3(e) on behalf of Bayer and providing copies to Bayer's counsel for review and approval; and (b) preparing and timely filing on behalf of the Settlement Fund (i) such income tax and other returns and statements as are required to comply with Treas. Reg. § 1.468B-2 and the other applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) all necessary state, local and foreign tax returns. Any taxes due as a result of income earned by the Settlement Fund will be imposed upon and paid from the Settlement Fund. Interest earned by the Settlement Fund (less any tax imposed upon such interest) shall be for the benefit of the Class, less reasonable attorneys' fees and expenses approved by the Court (and any interest awarded thereon), any Court-approved award to Plaintiffs and payment of any and all administrative and notice expenses associated with the Actions or Settlement. Bayer and any Released Party, as that term is defined in paragraph 13.b, shall have no liability, obligation or responsibility for any such taxes, costs, expenses, or for any reporting requirements relating thereto.

e. Bayer's transfer of the Settlement Amount to the escrow account described above shall constitute full and complete satisfaction of its obligations under this paragraph. In no circumstances shall this Settlement Agreement be construed to require Bayer or any Released Party, as that term is defined in paragraph 13.b, to pay more than the Settlement Amount. Following Bayer's transfer of the Settlement Amount to the escrow account as described above, Bayer and any Released Party, as that term is defined in paragraph 13.b, shall not have any liabilities, obligations or responsibilities with respect to the payment, disbursement, disposition or distribution of the Settlement Fund. Notwithstanding any effort, or failure, of the administrator of the Settlement Fund and the parties to treat the Settlement Fund

as a “qualified settlement fund” within the meaning of Section 1.468B-1 of the Treasury Regulations effective as of the date hereof, any tax liability, interest or penalties incurred by Bayer resulting from income earned by the Settlement Fund (or the receipt of any payment under this paragraph) shall be reimbursed from the Settlement Fund in the amount of such tax liability, interest or penalties upon Defendant’s written request to the administrator of the Settlement Fund.

7. Settlement Consideration: Cooperation. As additional consideration for the Settlement Agreement, Bayer and any Released Party, as that term is defined in paragraph 13.b, agrees to fully cooperate with the settling Class Plaintiffs by:

a. Making available appropriate employees at Jones Day’s offices in Washington, DC or San Francisco, California, as reasonably practicable, or by such other means as the Settling Parties may agree, for such affidavits and depositions as are reasonably required by Class Plaintiffs for the purpose of establishing any requisite foundation/admissibility issues with respect to any of Bayer’s or the Released Party’s records to be used at trial against any remaining Defendants (to the extent not stipulated by Non-Settling Defendants); and

b. Producing at trial in person, by deposition, or affidavit, whichever is legally necessary and reasonably possible, a representative to testify for the purpose of establishing any requisite foundation/admissibility issues with respect to any of Bayer’s or the Released Party’s documents to be used at trial against any remaining Defendants as reasonably required by Class Plaintiffs.

c. Notwithstanding the foregoing paragraphs 7.a and 7.b, neither Class Plaintiffs nor Class Counsel shall seek to depose and/or call at a trial or hearing in Plaintiffs’ case any witness that is a current or former employee of Bayer or of a Released Party for any purpose other than those described in paragraphs 7.a and 7.b above.

8. Settlement with Non-Settling Defendants.

a. The Settling Parties agree that the Class, Plaintiffs, and all Class members remain free to settle the Actions and/or Appeal with any or all Non-Settling Defendant(s).

b. The Class, Plaintiffs, and all Class members agree that any agreement with one or more Non-Settling Defendant(s) to settle the Actions and/or Appeal shall (i) be in writing (ii) specify the amount of any monetary consideration and the nature and terms of any non-monetary consideration to be provided by the Non-Settling Defendant(s) to the Class, Plaintiffs, or any Class member, and (iii) contain a provision, consistent with Cal. Code Civ. Proc. §§ 875(d) and 877(b), providing that the Non-Settling Defendant(s) may not seek contribution, indemnity, or any other form of monetary judgment against Bayer relating to such settlement. Bayer agrees that if any agreement with one or more Non-Settling Defendant(s) to settle the Actions and Appeal for consideration less than the Settlement Amount

is entered into, Bayer will not seek contribution, indemnity, or any other form of monetary judgment against the Non-Settling Defendant relating to any such settlement.

c. Bayer agrees that if Plaintiffs settle the Actions with any or all Non-Settling Defendants for an amount that, together with the Settlement Amount, equals or exceeds two hundred twenty-seven million dollars (\$227,000,000), upon execution of a settlement agreement with such Non-Settling Defendant(s) ("Subsequent Settlement Agreement"), Bayer shall pay the sum of eight million dollars (\$8,000,000) ("Subsequent Settlement Amount") to Plaintiffs subject to the terms of subparagraphs 8.d through 8.e.

d. The Subsequent Settlement Amount shall be deposited into the escrow account established pursuant to the Subsequent Settlement Agreement no later than twenty (20) days after receipt of a copy of the executed Subsequent Settlement Agreement by Counsel for Bayer. The Subsequent Settlement Amount shall be held and governed according to the same terms and conditions as the settlement amount paid by the Non-Settling Defendant(s), except that Bayer will be entitled to the return of the Subsequent Settlement Amount in full in the event that the Subsequent Settlement Agreement is terminated pursuant to its terms.

e. In the event that a fully executed Subsequent Settlement Agreement is not delivered to Counsel for Bayer by 11:59 p.m. PST on December 31, 2014, the provisions of subparagraphs 8.c through 8.e shall expire and Bayer shall have no obligation to pay the Subsequent Settlement Amount.

9. Full Satisfaction, Limitation of Interest and Liability. Plaintiffs and members of the Class shall look solely to the Settlement Fund for settlement and satisfaction against Bayer and any Released Party, as that term is defined in paragraph 13.b, of all claims that are released herein. Plaintiffs and members of the Class shall not under any circumstances be entitled to any further compensation from Bayer or any Released Party, as that term is defined in Paragraph 13.b, with respect to any claims released herein. In the event that the Settlement Agreement becomes final and effective pursuant to paragraph 5 herein, the Settlement Fund will fully satisfy any and all Released Claims as defined in paragraph 13.b herein. Except as provided by order of the Court, no Plaintiff or Class member shall have any interest in the Settlement Fund or any portion thereof.

10. Reimbursement of Costs, Fees and Expenses. Plaintiffs and their Counsel will be reimbursed and indemnified solely out of the Settlement Fund for all costs, fees and expenses under this Settlement Agreement including, but not limited to, the costs of Settlement Notice and administration of the Settlement Fund. Bayer and any Released Party, as that term is defined in paragraph 13.b, shall not be liable for any costs, fees or expenses of any Class members, Plaintiffs, or of any Class members' or Plaintiffs' attorneys, experts, consultants, advisors, agents and representatives. Any such costs, fees and

expenses, to the extent approved and awarded by the Court, shall be paid out of the Settlement Fund, and be deducted from the Settlement Fund prior to the distribution of the Settlement Fund to the members of the Class following entry of an order by the Court approving any fees and expenses to Class Counsel.

11. Disbursement of the Settlement Fund. If the Settlement Agreement becomes final and effective pursuant to the provisions of paragraph 5 herein, the Settlement Fund shall be disbursed as follows or as otherwise ordered by the Court. Bayer and any Released Party, as that term is defined in paragraph 13.b, shall, as set forth in paragraph 6 above, have no liability or responsibility with respect to disbursement or distribution from the Settlement Fund.

a. Prior to the Effective Date of this Settlement Agreement.

i. Any fees and expenses incurred in administering the escrow account and the Settlement Fund shall be paid from the Settlement Fund. The costs of Settlement Notice and administration of the Settlement Agreement and Settlement Fund shall be paid by the Escrow Agent to the Claims Administrator with notice of such payments provided to counsel for the Settling Parties;

ii. Disbursements for the payment of any taxes (including any estimated taxes, interest or penalties) due, as a result of income earned by the Settlement Fund, shall be made promptly by the Escrow Agent with notice of such disbursements provided to counsel for the Settling Parties;

iii. An amount of cash, not to exceed \$500,000, shall be made available to Class Counsel out of the Settlement Fund for purposes of defraying the actual cost of Settlement Notice; and

iv. Class Counsel may withdraw from the Settlement Fund and allocate amongst Plaintiffs' Counsel any fees and expenses so awarded to them by the Court; provided, however, that in the event that the order(s) approving the fee and expense award is reversed or modified on appeal, and in the event that Plaintiffs' Counsel (or any of them) has received payment, such counsel shall, within five (5) business days of the date which the fee and expense award is modified or reversed, refund to the Settlement Fund the fees and expenses previously received by them in full (less costs of notice) or in any amount consistent with such reversal or modification, plus the interest earned thereon through the date of such refund.

b. After the Effective Date of this Settlement Agreement.

i. The attorneys' fees and costs approved by the Court may be distributed to Class Counsel from the Settlement Fund within ten (10) days of the Effective Date of this Settlement Agreement;

ii. The remaining fees or expenses incurred in connection with the administration of the escrow account and the Settlement Fund shall be paid, and to the extent, if any, the

reasonable remaining fees and expenses incurred as part of notice and claims administration, shall be paid from the Settlement Fund by the Escrow Agent with notice of such disbursements provided to Class Counsel;

iii. Disbursements for the payment of any taxes (including any estimated taxes, interest or penalties) due as a result of income earned by the Settlement Fund shall be made promptly by the Escrow Agent with notice of such disbursements provided to counsel for the Settling Parties;

iv. Any incentive awards determined by the Court for services rendered to the Class by Plaintiffs as set forth in the proposed notice forms ordered by the Court, shall be distributed to Plaintiffs from the Settlement Fund after the Effective Date of the Settlement; and

v. The balance of the Settlement Fund after the payment of attorneys' fees, costs, and expenses, taxes, incentive awards, costs of notice and administration of the Settlement and Settlement Fund, and pursuant to the procedures set forth in a plan of allocation ("Plan of Allocation"), shall be distributed to Class members who submit timely claims that are accepted by the Claims Administrator and approved by the Court ("Authorized Claimants") in accordance with the applicable procedures as approved by the Court. The Plan of Allocation shall provide for redress of all claims filed by Class members for purchases of Cipro® between January 8, 1997 and the date the effects of the conduct alleged in the Complaint ceased. No funds will be disbursed to any Authorized Claimant until the claims of all Authorized Claimants have been submitted and verified by the Claims Administrator. The Claims Administrator shall make periodic reports to the Parties describing the status of the claims administration process, the number and amount of claims received, and any amounts disbursed.

c. In the event monies remain as residue in the Settlement Fund following all distribution efforts approved by the Court, Class Plaintiffs shall move the Court for an order disposing of all such funds, including additional possible distributions to approved Class claimants and/or cy pres distribution as approved by the Court.

12. Attorneys' Fees, Expenses and Costs. Class Counsel intend to seek for distribution to Class Counsel, attorneys' fees and reimbursement of reasonable costs and expenses incurred in the prosecution of the Actions. Class Counsel may further seek payment of reasonable incentive awards for Plaintiffs, as noted in paragraph 4.c above. Plaintiffs and members of the Class shall look solely to the Settlement Fund for the satisfaction against Bayer and any Released Party, as that term is defined in paragraph 13.b, of any distribution to Plaintiffs' Counsel, including for attorneys' fees, reimbursement of reasonable costs and expenses incurred in the prosecution of the Actions, and payment of incentive awards for Plaintiffs. Bayer shall not oppose any of the applications made pursuant to this paragraph 12.

13. Releases.

a. As used throughout this Settlement Agreement and specifically in this paragraph 13, references to the “Class,” “members of the Class,” or “Class members” refer to members of the Class as defined in paragraph 1 and include any of their past, present or future officers, directors, stockholders, attorneys, employees, legal representatives, trustees, agents, parents, subsidiaries, general and limited partners, heirs, executors, administrators, purchasers, predecessors, successors and assigns, acting in their capacity as such.

b. Upon the Settlement Agreement becoming effective in accordance with paragraph 5 herein, Bayer and its past, present and future parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, insurers, general or limited partners, employees, agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing) (the “Released Party” or “Released Parties”) are and shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever (whether such claims, demands, actions, suits, causes of action, damages or liabilities arise or are incurred before, during or after the date hereof), including costs, expenses, penalties, and attorneys’ fees known or unknown, suspected or unsuspected, in law or equity, that Plaintiffs or any member or members of the Class or Class Counsel, whether or not they object to the Settlement and whether or not they make a claim upon or participate in the Settlement Fund, ever had, now has, or hereafter can, shall or may have, directly, indirectly, representatively, derivatively or in any other capacity (the “Releasor(s)”), arising from or related to any conduct, events or transactions, prior to the date hereof, alleged or which could have been alleged in the Actions, relating to Ciprofloxacin (branded Cipro® and/or its generic equivalents) (the “Released Claims”). Except for enforcing this Settlement Agreement, each member of the Class hereby covenants and agrees that he, she or it shall not, hereafter, seek to establish liability against any Released Party based, in whole or in part, on any of the Released Claims. Should any member of the Class breach this covenant not to sue, the Released Parties may seek equitable and legal remedies, including the recovery of attorney’s fees incurred in responding to such breach. Without in any way limiting the definition of Released Parties, the following specific entities are Released Parties: Bayer Corporation, Bayer World Investments B.V., and Bayer AG. Released Parties shall not include any Non-Settling Defendant that is acquired or becomes a parent, subsidiary, division, or affiliate of Bayer or any of its past, present and future parents, subsidiaries, divisions, or affiliates, including, but not limited to Bayer Corporation, Bayer World Investments B.V., and Bayer AG.

c. In addition, each Releasor hereby expressly waives and releases, upon this Settlement Agreement becoming final, any and all provisions, rights, benefits conferred by section 1542 of the California Civil Code, which provides:

General Release—Claims Extinguished.

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

and any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to section 1542 of the California Civil Code. Each member of the Class and each other Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the Released Claims. Nevertheless, each member of the Class and each other Releasor hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement Agreement becoming final, the Released Claims, whether any Released Claim is known or unknown, suspected or unsuspected, contingent or non-contingent, concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Nevertheless, each member of the Class and each other Releasor hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim arising from or related to the subject matter of the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

d. Plaintiffs' Counsel and the Claims Administrator will ensure that each claim form contains a copy of the release set forth in paragraph 13.b through 13.c hereof, which shall be signed by each member of the Settlement Class or its authorized representative as a precondition to receiving any portion of the Settlement Fund.

e. The releases set forth above shall not release any claims arising in the ordinary course of business among Plaintiffs, Class members and the Released Parties concerning product liability, breach of warranty or contract (other than breach of warranty or contract based in whole or in part on any conduct challenged in the Actions), and/or personal or bodily injury, and/or any claims for costs of providing medical care for individuals allegedly injured by Cipro® products.

14. No Effect on Claims, Damages or Rights as Against Non-Settling Defendants. Nothing in this Settlement Agreement is intended to limit, reduce or affect whatever rights Class Plaintiffs or any of them may have to seek damages or other relief in the Actions or elsewhere from any person or entity other than Bayer and any Released Party, as that term is defined in paragraph 13.b, to the fullest extent allowed by law. This Agreement does not settle or compromise any claim by Class Plaintiffs asserted in the Actions against any Defendant or alleged co-conspirator other than Bayer and any Released Party, as that term is defined in paragraph 13.b. Bayer's sales to the Class Plaintiffs shall not be removed from any

of the Actions for purposes of Class Plaintiffs asserting joint liability or any derivative liability against Defendants other than Bayer and any Released Party, as that term is defined in paragraph 13.b.

15. Effect of Disapproval. If the Court declines to finally approve the Settlement Agreement, or if such approval is reversed, vacated, or otherwise modified on appeal, or if the Court does not enter the final judgment in substantially the form provided for in paragraph 4, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is reversed, vacated or modified, then this Settlement Agreement shall be terminated upon the election of either (a) Class Counsel, or (b) Bayer; provided however that any reversal, vacating, or modification on appeal of any amount of the fees and expenses awarded by the Court from the Settlement Fund, or any amount of payments to any Plaintiff, or any determination by the Court to award less than the amount requested in attorneys' fees or costs or awards to Plaintiffs, or any determination by the Court to modify the Plan of Allocation of the Settlement Fund, shall not give rise to any right of termination or otherwise serve as a basis for termination of this Settlement Agreement.

16. Termination. In the event that the Settlement Agreement is terminated pursuant to paragraphs 6.b or 15 herein, or for any other reason does not become effective in accordance with the terms of paragraph 5 herein, then (a) this Settlement Agreement shall be of no force or effect, except for payment of notice and settlement administration costs from the Settlement Fund, (b) the Settlement Fund, including any and all interest earned thereon, shall be returned to Bayer less only the amount—up to a maximum of \$1,000,000—validly disbursed for the costs incurred in giving notice to the Class and administering the Settlement Fund during the interim period, and (c) any release pursuant to paragraph 13.b herein shall be of no force or effect.

17. Preservation of Rights. The Settling Parties agree that this Settlement Agreement, whether or not it shall become effective pursuant to paragraph 5 herein, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Bayer, any Released Party, as that term is defined in paragraph 13.b, or any other Defendant, or any amount of damages alleged to have been suffered by Plaintiffs, or of the truth of any of the claims or allegations contained in the complaints in the Actions or any other pleading or document, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in this case or any other action or proceeding. The Settling Parties expressly reserve all of their rights and defenses if the Settlement Agreement does not become final and effective in accordance with the terms of this Settlement Agreement.

18. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties and to the Released Parties. Without limiting

the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their Counsel shall be binding upon all members of the Class.

19. Integrated Agreement. This Settlement Agreement contains the entire, complete, and integrated statement of each and every term and provision of the Settlement Agreement agreed to by and among the Parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by the undersigned in the representative capacities specified, or others who are authorized to act in such representative capacities.

20. Headings. The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

21. No Party is the Drafter. All counsel to all Parties hereto have materially participated in the drafting of this Settlement Agreement. None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

22. Choice of Law. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles.

23. Consent to Jurisdiction and Choice of Exclusive Forum. Any and all disputes arising from or related to the Settlement, the Settlement Agreement, or claims administration, including attorneys' fees, must be brought by Bayer, any Released Party, Plaintiffs, and/or each member of the Class, exclusively in this Court. Bayer, Plaintiffs and each member of the Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability or interpretation of this Settlement Agreement, including, without limitation any suit, action, proceeding or dispute relating to the release provisions herein, except that this paragraph shall not prohibit (a) any Released Party from asserting in the forum in which a claim is brought that the release herein is a defense, in whole or in part, to such claim, or (b) in the event that such a defense is asserted in that forum and this Court determines that it cannot bar the claim, the determination of the merits of the defense in that forum.

24. Enforcement of Settlement. Nothing in this Settlement Agreement prevents Bayer or any Released Party from enforcing or asserting any release herein, subject to the provisions of paragraph 14 and 15 herein. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement and the releases contained herein may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted by Plaintiffs and each

member of the Class with respect to any Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

25. Authorization to Act on Behalf of Plaintiffs and Class. Undersigned Plaintiffs' Counsel represent that they have been and are fully authorized to conduct settlement negotiations with Bayer's counsel on behalf of Plaintiffs and the Class and to enter into, and execute, this Settlement Agreement on behalf of Plaintiffs and the Class, subject to Court approval pursuant to Rule 3.769 of the California Rules of Court.

26. Severability. In the event any one or more of the provisions of this Settlement Agreement shall for any reason be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision.

27. No Admission. Nothing in this Settlement Agreement shall be construed as an admission in any action or proceeding, of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, by Bayer, any Released Party, Class Plaintiffs, or any of them, including without limitation that Bayer or any Released Party has engaged in any conduct or practices that violate any state or federal antitrust statute or other law.

28. Execution in Counterparts. This Settlement Agreement may be executed in counterparts. Facsimile or PDF signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.

29. Failure to Follow Procedures and Requirements. The agreed-upon procedures and requirements regarding Class members' rights and options, including filing objections in connection with and/or appearing at the final approval hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class members' objections to the Settlement Agreement, in accordance with such Class member's due process rights. The preliminary approval order will further provide that objectors that fail to properly or timely file their objections, along with the required information and documentation set forth above, or to serve them as provided above shall not be heard during the final approval hearing, nor shall their objections be considered by the Court.

30. Appeals. The proposed order and final judgment shall provide that any Class member that wishes to appeal the order and final judgment, which appeal will delay the distribution under the Settlement Agreement to the Class, shall post a bond with this Court in an amount to be determined by the Court as a condition of prosecuting such appeal.

IN WITNESS WHEREOF, the Parties hereto through their fully authorized representatives have agreed to this Settlement Agreement on the date first herein above written.

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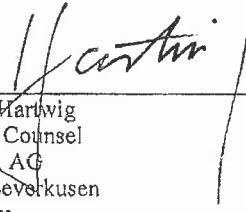
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On behalf of Defendant Bayer Corporation

By:  _____
Roland Hartwig
General Counsel
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51368 Leverkusen
Germany

On behalf of Defendant Bayer AG

By: 

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On behalf of Defendant Bayer Corporation

By: _____
Roland Hartwig
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Germany

On behalf of Defendant Bayer AG

EXHIBIT B

**IN RE CIPRO CASES I AND II,
JUDICIAL COUNCIL COORDINATION PROCEEDINGS NUMBERS 4154 AND 4220**

	OPT-OUT	CONTACT INFORMATION
1.	Arkansas Carpenters Health and Welfare Fund	Jay Youngdahl The Youngdahl Law Firm P.C. 1414 S. Friendswood Drive Friendswood, TX 77546 (281) 996-0750
2.	John Deere Community Credit Union	Kalola Roby P.O. Box 6000 1827 Ansborough Ave. Waterloo, IA 50704-6000 (319) 236-5695
3.	Local 1199 National Benefit Fund for Health and Human Services Employees	Joseph Lipofsky Jeff Stein Zwerling, Schachter & Zwerling, LLP 41 Madison Avenue New York, NY 10010 (212) 223-3900
4.	RaceTrac Petroleum Inc.	Julie Lamy Legal Department P.O. Box 105035 Atlanta, GA 30348-5035 (770) 431-7600
5.	United Food & Commercial Workers of Arizona Health and Welfare Fund	Joseph Lipofsky Frank Verdaramo Zwerling, Schachter & Zwerling, LLP 41 Madison Avenue New York, NY 10010 (212) 223-3900
6.	UFCW Tri-State Health & Welfare Fund	Nicole M. Acchione Trujillo, Rodriguez & Richards, LLC 8 Kings Highway West Haddonfield, NJ 08033 (856)795-9002
7.	Vista Healthplan, Inc.	Kevin B. Love Hanzman & Criden, P.A. Commercebank Center, Suite 400 220 Alhambra Circle Coral Gables, FL 33134 (305) 357-9000