

**IN THE TENTH JUDICIAL DISTRICT
THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL DEPARTMENT**

**REBECCA SANDHAUS, on her own behalf,
and on behalf of all others similarly situated
within the State of Kansas**

Plaintiff,

v.

**BAYER AG, BAYER CORPORATION, BARR
LABORATORIES, INC., THE RUGBY
GROUP, INC., WATSON
PHARMACEUTICALS, INC. and HOECHST
MARION ROUSSEL, INC.,**

Defendants.

Case No. 00 CV 6193

Div. 8

The Hon. J. Charles Droege

K.S.A. Chapter 60

**ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING CLASS FOR
PURPOSES OF SETTLEMENT, APPOINTING CLASS COUNSEL, APPROVING
FORM AND MANNER OF NOTICE, AND SCHEDULING A FAIRNESS HEARING**

WHEREAS, this matter has come before the Court pursuant to Plaintiff's Motion for Preliminary Approval of Class Action Settlement with Generic Defendants, filed December 4, 2015; and

WHEREAS, the Court has considered the Motion and the related affidavits and exhibits, including the Settlement Agreement entered on November 30, 2015 between Plaintiff and Defendants Barr Laboratories, Inc. ("Barr"), Hoechst Marion Roussel, Inc. ("HMR"), the Rugby Group, Inc. ("Rugby"), and Watson Pharmaceuticals, Inc. ("Watson") (Barr, HMR, Ruby, and Watson are collective referred to as the "Generic Defendants" or "Settling Defendants"); and

WHEREAS, for good cause shown, IT IS HEREBY ORDERED as follows:

*Clerk of the District Court, Johnson County Kansas
12/07/15 03:58pm DL*

1. Unless otherwise defined herein, all terms that are capitalized shall have the meanings ascribed to those terms in the November 30, 2015 Settlement Agreement, a copy of which is attached hereto as **Exhibit 1**.

2. The Court has jurisdiction over this action, Plaintiff, Settlement Class members, Settling Defendants, the Released Parties, and any party to any agreement that is part of or related to the Settlement Agreement.

CERTIFICATION OF THE CLASS FOR PURPOSES OF SETTLEMENT

3. The Court makes the following determinations as required by K.S.A. 60-223 solely in connection with the proposed Settlement:

(a) Pursuant to K.S.A. 60-223(c)(1)(B), the Settlement Class is defined as follows:

All persons or entities residing in the State of Kansas who purchased, paid and/or reimbursed for Cipro intended for consumption by themselves, their families, or their members, participants, employees or insureds (the "Settlement Class") during the period from January 8, 1997 through October 31, 2004 (the "Class Period"). Excluded from the Settlement Class are all Defendants and their respective subsidiaries and affiliates, all governmental entities, and all persons or entities that purchased Cipro: (i) for purposes of resale, or (ii) directly from any of the Defendants. Also excluded from the Settlement Class are consumers who, under terms of their health insurance coverage, would have paid the same amount for a generic substitute as they paid for Cipro.

(b) Pursuant to K.S.A. 60-223(a)(1) the Court determines that the Settlement Class (which is made up of hundreds of third party payors and consumers) is so numerous that joinder of all members of the Settlement Class is impracticable.

(c) The Court determines that, solely for purposes of a settlement class, K.S.A. 60-223(c)(1)(B) is satisfied because there are issues relating to claims and defenses that present common, class-wide questions.

(d) The Court determines that, solely for purposes of a settlement class, K.S.A. 60-223(a)(2) is satisfied because there are questions of law or fact common to the Settlement Class .

(e) Plaintiff Rebecca Sandhaus is hereby appointed as representative of the Settlement Class, for the following reasons:

(i) Plaintiff alleges for the Settlement Class the same manner of injury from the same course of conduct that she complains of herself, and asserts on her own behalf the same legal theory that she asserts for the Settlement Class. The Court therefore determines that, for purposes of a settlement class, Plaintiff's claims are typical of the claims of the proposed Settlement Class within the meaning of K.S.A. 60-223(a)(3).

(ii) Pursuant to K.S.A. 60-223(a)(4), the Court determines that, solely for purposes of a settlement class, Plaintiff will fairly and adequately protect the interests of the Settlement Class, because, among other things, (1) Plaintiff's interests do not conflict with the interests of members of the Settlement Class; (2) all members of the Settlement Class share a common interest in proving Defendants' alleged anticompetitive conduct; and (3) all Settlement Class members share a common interest in recovering the overcharge damages sought in the Complaint. Moreover, any Settlement Class member that wishes to opt out will be given an opportunity to do so. Furthermore, Plaintiff is well-qualified to represent the Settlement Class in this case, given her pursuit of this case since it was filed on October 2, 2000.

(f) Pursuant to K.S.A. 60-223(b)(3), the Court determines that, in connection with and solely for purposes of a settlement class, common questions of law and fact predominate over questions affecting only individual members. In light of the class-wide claims, issues, and defenses set forth above, and for purposes of a settlement class only, the issues in this

action that are subject to generalized proof, and thus applicable to the Settlement Class as a whole, predominate over those issues that are subject only to individualized proof.

(g) Also pursuant to K.S.A. 60-223(b)(3), the Court determines that, in connection with and solely for purposes of a settlement class, a class action is superior to other available methods for the fair and efficient adjudication of this action. The Court finds it is desirable, for purposes of judicial and litigation efficiency, to concentrate the claims of the Settlement Class in a single action. The Court also finds that, for purposes of a settlement class only, there are few manageability problems presented by a case such as this, particularly in light of the settlement preliminarily approved by this Order which, if finally approved, will not require a trial relative to the Settling Defendants.

(h) Pursuant K.S.A. 60-223(c)(1)(B) and (g), the Court having considered the factors provided in K.S.A. 60-223(0)(1)(A), the following counsel are hereby appointed as counsel for the Settlement Class (“Class Counsel”):

Don R. Lolli
Matthew W. Geary
Dysart Taylor Cotter McMonigle
& Montemore, P.C.
4420 Madison Ave., Suite 200
Kansas City, MO 64111

Patrick E. Cafferty
Ellen Meriwether
Cafferty Clobes Meriwether
& Sprengel LLP
101 North Main Street, Suite 565
Ann Arbor, MI 48104
1101 North Market Street, Suite 2650
Philadelphia, PA 19107

Paul F. Novak
Milberg LLP
777 Woodward Ave., Suite 890
Detroit, MI 48226

Gregory S. Asciolla
Labaton Sucharow LLP
140 Broadway
New York, NY 10005

Marc H. Edelson
Edelson & Associates, LLC
45 West Court Street
Doylestown, PA 18901

Class Counsel possess extensive experience in antitrust and class action litigation, and have vigorously prosecuted the class claims. Class Counsel and are directed to ensure that any work in this litigation is performed efficiently and without duplication of effort.

4. On October 9, 2015, Plaintiff filed a Second Amended Petition with a class definition that conforms to the definition certified by the Court. The Defendants' answers and affirmative defenses filed in response to the Amended Petition shall be deemed responsive to the Second Amended Petition and need not be refiled.

PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT

5. The Court finds that the proposed settlement between Plaintiff and Settling Defendants set forth in the Settlement Agreement is within the range of possible final approval, and sufficiently fair, reasonable and adequate, as required by K.S.A. 60-223(e)(2), that it is hereby preliminarily approved. The Court further finds that notice of the Settlement Agreement shall be provided to the Settlement Class, and a Fairness Hearing shall be held as set forth below. The Court also finds that the Settlement Agreement appears to be the product of arm's length, informed, non-collusive negotiations between experienced and knowledgeable counsel who have actively prosecuted and contested this litigation for several years. In accordance with the schedule outlined in paragraph 25 below, Class Counsel shall seek entry of a Final Judgment as to the Settling Defendants.

6. Additionally, the Court finds that the proposed Plan of Allocation, attached hereto as **Exhibit 2**, is sufficiently fair, reasonable, and adequate such that it is hereby preliminarily approved, subject to further consideration at the Fairness Hearing to be held as set forth below.

APPROVAL OF THE PLAN OF NOTICE TO THE SETTLEMENT CLASS

7. The Court hereby approves the Notice of Proposed Settlement of Class Action (the “Settlement Notice”), attached hereto as **Exhibit 3**, and finds that the dissemination of the Settlement Notice substantially in the manner described in the Notice Plan described in the Declarations of Rebecca A. Blake and Alicia Gehring complies fully with the requirements of Kansas law.

8. The notice procedures described in the Declarations of Rebecca A. Blake and Alicia Gehring are hereby found to be the best practicable means of providing notice of the Settlement Agreement under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the applicable requirements of K.S.A. 60-223 and due process.

9. No later than thirty (30) days from the date of this Order preliminarily approving the Settlement Agreement, Class Counsel shall cause the Settlement Notice to be mailed by first-class mail, postage prepaid, to potential Settlement Class members pursuant to the procedures described in the Notice Plan, and to any potential Settlement Class member who requests one; shall cause to be published the summary Settlement Notice as stated in the proposed Notice Plan; and, in conjunction with the Claims Administrator, shall cause a case-specific website to become operational with case information, settlement court documents, the Notices, and electronic claim filing capability. All Notices by publication shall be completed at least forty-five (45) days prior to the Fairness Hearing. At least thirty days prior to the Fairness Hearing, Class Counsel shall file with the Court and serve on Settling Defendants an Affidavit of Compliance with Notice Requirements.

10. All costs incurred in disseminating and otherwise in connection with the Settlement Notice shall be paid from the Settlement Fund pursuant to the Settlement Agreement.

11. The Proof of Claim forms connected with the Notice Plan satisfy the requirements of due process and of the K.S.A. 60-223 and, accordingly, are approved for dissemination to the Settlement Class.

12. Settlement Class members will have until thirty (30) days prior to the Fairness Hearing to object to the Settlement Agreement.

13. Settlement Class members will have until thirty (30) days prior to the Fairness Hearing to exclude themselves from (i.e., opt-out of) the Settlement Class. All Settlement Class members who elect to exclude themselves from the Settlement Class will not be eligible to receive any benefits under the Settlement Agreement and will not be bound by any further orders or judgments entered for or against the Settlement Class.

14. All Settlement Class members who do not properly and timely request exclusion from the Settlement Class shall, upon entry of the Final Approval Order and Judgment, be bound by all the terms and provisions of the Settlement Agreement and will release their claims, whether or not such Settlement Class member objected to the Settlement and whether or not such Settlement Class member applied for or received consideration under the Settlement Agreement.

15. A hearing on the Settlement Agreement (the “Fairness Hearing”) shall be held before the Court at _____, on _____, 201__ in Courtroom _____ Johnson County Courthouse, 100 N. Kansas Ave. Olathe, KS 66061.

16. At the Fairness Hearing, the Court will consider (a) the fairness, reasonableness, and adequacy of the Settlement Agreement and whether the Settlement Agreement should be granted final approval by the Court; (b) approval of the proposed Plan of Allocation; and (c)

entry of a Final Approval Order and Judgment including the Settlement Release. Class Counsel's application for an award of attorneys' fees and costs shall also be heard at the Fairness Hearing.

17. The date and time of the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class, other than that which may be posted by the Court. Should the Court adjourn the date for the Fairness Hearing, such adjournment shall not alter the deadlines for mailing and publication of the Notice, nor the deadlines for submissions of settlement objections, claims, or notices of intention to appear at the Fairness Hearing unless those dates are explicitly changed by subsequent Order.

18. Any person or entity who did not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his, her, or its own attorney. Class Counsel will continue to represent Settlement Class members who do not timely object and do not have an attorney enter an appearance on their behalf.

19. Any person or entity who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to (a) the Settlement Agreement, (b) entry of a Final Approval Order and Judgment approving the Settlement Agreement, and/or (c) Class Counsel's application for fees and expenses, by mailing a written comment or objection to the addresses provided by the Claims Administrator in the long-form Notice.

20. Any Settlement Class member making an objection (an "Objector") must sign the objection personally, even if represented by counsel, and provide the Settlement Class member's name and full residence or business address and a statement signed under penalty of perjury that the Settlement Class member (if a consumer) purchased Cipro in Kansas during the Class Period or was reimbursed for Cipro purchases in Kansas during the Class Period (if a third-party payor).

An objection must state why the Objector objects to the Settlement Agreement and provide a basis in support, together with any documents such person wishes to be considered in support of the objection. If an Objector intends to appear at the hearing, personally or through counsel, the Objector must include with the objection a notice of the Objector's intent to appear at the hearing. The objection must also contain a detailed list of any other objections by the Objector, as well as by the Objector's attorney, to any class action settlements submitted to any court in the United States in the previous five years.

21. Objections, along with any notices of intent to appear, must be postmarked no later than thirty (30) days prior to the Fairness Hearing, and mailed to the addresses provided by the Claims Administrator in the notice. If counsel is appearing on behalf of more than one Settlement Class member, counsel must identify each such Settlement Class member and each Settlement Class member must have complied with this Order.

22. Only Settlement Class members who have filed and served valid and timely objections accompanied by notices of intent to appear shall be entitled to be heard at the Fairness Hearing. Any Settlement Class member who does not timely file and serve an objection in writing in accordance with the procedure set forth in the Notice and mandated in this Order shall be deemed to have waived any objection to (a) the Settlement Agreement; (b) the Release; (c) entry of a Final Approval Order and Judgment; and (d) Class Counsel's application for attorneys' fees and reimbursement of expenses, whether by appeal, collateral attack, or otherwise.

23. Settlement Class members need not appear at the hearing or take any other action to indicate their approval.

24. Upon entry of the Final Approval Order and Judgment, all Settlement Class members who have not personally and timely requested to be excluded from the Settlement Class

will be enjoined from proceeding against Settling Defendants and all other Released Parties with respect to all of the Released Claims, consistent with the Settlement Release.

25. The schedule by which the events referenced above shall occur is as follows:

Event	Deadline
Notice of Class Action Settlement and Claim Forms Posted on Internet and Mailed to TPPs	Within 30 days of the date of this Order
Notice of Class Action Settlement to be Mailed and Published in Accordance with the Notice Plan	To be completed 45 days prior to Fairness Hearing
Affidavit of Compliance with Notice Requirements	30 days prior to Fairness Hearing
Postmark Deadline for Requests for Exclusion and Objections	30 days prior to Fairness Hearing
Postmark Deadline for Filing Claims	60 days after Final Approval Order
Deadline for Motion for Final Approval, Attorneys' Fees, and Reimbursement of Expenses	45 days prior to Fairness Hearing
Fairness Hearing	At least 24 weeks after preliminary approval

26. The Court hereby appoints Rust Consulting, Inc. as Claims Administrator.

Responsibilities of the Claims Administrator shall include: (a) establishing a post office box for purposes of communicating with Settlement Class members, including receiving any objections; (b) disseminating the Notice to the Settlement Class; (c) developing and launching a website to enable Settlement Class members to access relevant documents; (d) receiving and maintaining documents sent from Settlement Class members relating to claims administration; (e) in connection with Class Counsel, establishing protocols and procedures for processing Proof of Claim forms; and (f) distributing settlement checks to Settlement Class members. Pursuant to the Settlement Agreement, the costs of the Claims Administrator's services and all other reasonable

costs of Settlement administration shall be paid out of the Settlement Fund, subject to Court review and approval.

27. The Court appoints The Huntington National Bank to serve as Escrow Agent for purposes of administering the escrow account holding the Settlement Fund, which must be administered in accordance with the provisions of Settlement Agreement § VIII. The Court approves the establishment of the escrow account under the Settlement Agreement as a qualified settlement fund (“QSF”) pursuant to Internal Revenue Code Section 1.468B-I and the Treasury Regulations promulgated thereunder, and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of this QSF. In accordance with the Settlement Agreement, Class Counsel are authorized to expend funds from the QSF for payment of taxes, notice costs, and related expenses without further Order of this Court. The Court approves the Escrow Agreement executed by the Escrow Agent, the Claims Administrator and counsel for the settling parties, which is annexed as Exhibit 3 to the Declaration of Paul F. Novak.

28. All further proceedings as to Settling Defendants are hereby stayed, except for any actions required to effectuate or enforce the Settlement Agreement, or matters related to the Settlement Fund, including applications for attorneys’ fees, and reimbursement of expenses.

29. In the event the Settlement Agreement and the proposed settlement are terminated pursuant to the applicable provisions of the Settlement Agreement, the Settlement Agreement and all related proceedings shall, except as expressly provided in the Settlement Agreement, become void and shall have no further force or effect, and Plaintiff and the Settlement Class shall retain all of their current rights against Settling Defendants and any other Released Party, and Settling Defendants and any other Released Parties shall retain any and all of their current

defenses and arguments thereto. These Actions shall thereupon revert forthwith to their respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement had not been executed.

30. Neither this Order nor the Settlement Agreement, nor any other settlement-related document nor anything contained or contemplated therein, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession by the Settling Defendants as to the validity of any claim that has been or could have been asserted against it or as to any liability by it as to any matter encompassed by the Settlement Agreement, or as to whether any class, in this case or others, may be certified for purposes of litigation and trial.

IT IS SO ORDERED.

Dated: _____

/s/ CHARLES DROEGE
Dated: 12/07/15

J. Charles Droege
Judge of the District Court
Division 8