

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

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

Plaintiff,

V.

BAYER AG, et al.

Defendants.

Case No. 00CV6193
Division No. 8
Chapter 60

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement dated as of April 21, 2015 (the “Settlement Agreement”), is made and entered into by and among the following Settling Parties to the above-entitled litigation (the “Action”): (i) Rebecca Sandhaus (“Class Plaintiff”) on behalf of herself and the Class, by and through her counsel of record in the Action; and (ii) Bayer Corporation (“Bayer”), by and through their counsel of record in the Action. The Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

I. THE LITIGATION

On October 2, 2000, Plaintiff Rebecca Sandhaus on behalf of herself and all others similarly situated, initiated the Action challenging an alleged “pay for delay” agreement entered into by Defendants Bayer, Barr Laboratories, Inc. (“Barr”) and Barr’s partners, the Rugby Group, Inc. (“Rugby”), Hoechst Marion Roussel, Inc. (“HMR”, but now known as Aventis Pharmaceuticals, Inc.), and Watson Pharmaceuticals, Inc. (“Watson”).

On January 4, 2001, the Action was removed to Federal Court.

On October 31, 2001, the Action was remanded to State Court.

On February 8, 2002, Plaintiff filed an Amended Class Action Petition.

On March 5, 2002, Watson filed a Motion to Dismiss the Action.

On March 11, 2002, Barr, Rugby, HMR, and Bayer filed a Motion to Dismiss the Action.

On March 6, 2003, the Action was informally stayed.

On September 30, 2003, the Action was placed on active status.

On April 22, 2004, Judge McClain denied The Motion to Dismiss regarding The Kansas Restraint of Trade Act K.S.A §50-101, et seq. and for a common law claim of unjust enrichment.

On April 25, 2006, the Action was stayed pending the outcome of companion cases filed in federal court.

On May 7, 2009, the Action was administratively terminated, but could be reopened at any time.

On October 7, 2013, the Action was reopened by Judge Droege.

On December 15, 2014, after full briefing, argument was held regarding class certification. No decision has been rendered as of the date hereof.

II. CLAIMS OF THE PLAINTIFF AND BENEFITS OF SETTLEMENT

Class Plaintiff believes that the claims asserted in the Action have merit. However, Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Bayer through trial and through appeals. Class Counsel also has taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Class Counsel also are mindful of the inherent problems of proof and possible defenses to the claims asserted in the Action. Class Counsel believe that the Settlement set forth in this Settlement Agreement confers substantial benefits upon the Class. Based on their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class.

III. BAYER'S DENIAL OF WRONGDOING AND LIABILITY

Bayer has denied and continues to deny each and all of the claims and contentions alleged by Class Plaintiff in the Action. Nonetheless, Bayer has concluded that further litigation could be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Bayer also has

taken into account the burden, risk, distraction, and expense of further litigation. Bayer has, therefore, determined that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Class Plaintiff (for herself and the Class), and Bayer, by and through their attorneys of record subject to the approval of the Court, that the Action and the Released Claims shall be finally and fully compromised, settled and released, and the Action shall be dismissed on the merits and with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Settlement Agreement, as follows.

Definitions

As used in the Settlement Agreement the following terms have the meanings specified below:

- 1.1 “Class” means 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 “Class”) during the period from January 8, 1997 through October 31, 2004 (the “Class Period”). Excluded from the 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 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. Class Plaintiff shall seek, and Bayer shall not object to, certification of the Class for

settlement purposes only, pursuant to K.S.A. § 60-223(b)(3). The parties acknowledge that the operative petition in this Action alleges the following class: 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. Excluded from the 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. Upon preliminary approval of the Settlement by the Court, Plaintiff will seek leave to file an amended petition conforming the definition of the Class to the definition set forth herein.

- 1.2 “Class Counsel” means Cafferty Clobes Meriwether & Sprengel, LLP, Hoffman & Edelson, LLC, Milberg, LLP, Labaton Sucharow, LLP and Dysart Taylor Cotter McMonigle & Montemore, P.C.
- 1.3 “Class Member,” “Member of the Class,” or “Members of the Class” mean a person or entity who falls within the definition of the Class 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.
- 1.4 “Class Plaintiff” means Rebecca Sandhaus.
- 1.5 “Defendants” means Bayer, Barr, HMR and Watson.
- 1.6 “Effective Date” means the first date by which all of the events and conditions specified in VII of the Settlement Agreement have been met and have occurred.

- 1.7 “Escrow Account” is the account established to maintain the Settlement Fund established pursuant to the terms and conditions set forth in an escrow agreement to be entered into with Escrow Agent, subject to the approval of Class Counsel and Bayer.
- 1.8 “Escrow Agent” means the third party responsible for managing and administering the Escrow Account in accordance with this Agreement, any agreement establishing the Escrow Account and any order by the Court.
- 1.9 “Judgment” means the judgment to be rendered by the Court.
- 1.10 “Released Claims” means 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 the Releasers, 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, arising from or related to any conduct, events or transactions, prior to the date hereof, alleged in the Action or which could have been alleged in the Action based on the same nucleus of operative facts asserted in the Action, relating to Ciprofloxacin (branded Cipro® and/or its generic equivalents). In addition, each member of the Class and each other Releaser 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 an Unknown Claim, suspected or unsuspected, contingent or non-contingent, concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

- 1.11 “Released Defendant’s Claims” means any claims of abuse of process, malicious prosecution, or any other claims, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by Bayer or its successors and assigns, against Class Plaintiff, other Class members, or their attorneys, which arise out of relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement).
- 1.12 “Released Parties” means 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), including, but not limited to Bayer World Investments B.V. and Bayer AG.
- 1.13 “Releasors” means Class Plaintiff and any member or members of the Class.
- 1.14 “Settling Parties” means, collectively, Bayer and the Plaintiff, on behalf of herself and the members of the Settlement Class.
- 1.15 “Unknown Claims” means any and all Released Claims which Class Plaintiff or any other Class Member does not know or suspect to exist in his, her or its favor as

of the Effective Date, and any and all Released Defendant's Claims which Bayer or any other Released Party does not know or suspect to exist in his, her or its favor as of the Effective Date, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Released Defendant's Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Class Plaintiff and Bayer shall expressly waive, and each Class Member and Released Party shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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;

Class Plaintiff and Bayer acknowledge, and all Class Members and Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendant's Claims was separately bargained for and was a key element of the Settlement.

V. MOTION FOR CERTIFICATION OF CLASS, FOR SETTLEMENT PURPOSES ONLY, PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT AND DISSEMINATION OF NOTICE

No more than 30 days from the execution date of this Settlement Agreement (or such other date as may be required by the Court), Class Plaintiff shall file with the Court, promptly after the

execution of this Settlement Agreement, motions for preliminary approval of the Settlement Agreement in a form agreeable to Bayer, which will contain a proposed preliminary approval order and asking the Court to approve the settlement and authorize dissemination of notice to the Class concerning the terms of this Settlement and a proposed plan of allocation of the Settlement proceeds. The motion shall:

(a) provide the definition of the Class to be certified by the Court pursuant to this Settlement Agreement;

(b) request preliminary approval of the Settlement as fair, reasonable and adequate within the meaning of K.S.A. § 60-223(e);

(c) seek appointment of the law firms Cafferty Clobes Meriwether & Sprengel, LLP, Hoffman & Edelson, LLC, Milberg, LLP, Labaton Sucharow, LLP and Dysart Taylor Cotter McMonigle & Montemore, P.C. as Class Counsel pursuant to K.S.A. § 60-223(g);

(d) request a stay of all proceedings as to Bayer except those proceedings provided for or required by the Settlement Agreement;

(e) request the approval of the Escrow Agent as Escrow Agent and approval of an escrow agreement;

(f) request the designation of Rust Consulting, Inc. (“Rust”) as Notice Administrator and Claims Administrator; and

(g) seek approval of notice in a form and content agreeable to Bayer, which must include the release specified in Section XV(b) herein, by means of (i) direct mail notice, (ii) publication in media channel reasonably likely to be used by Class members, and/or (iii) posting the notice on a website dedicated to the Settlement. Class Counsel will effectuate the notice to the Class by any other means ordered by the Court. Bayer shall not have any liability with respect to

giving notice of this Settlement Agreement to members of the Class, including, but not limited to, the expense and cost of such notice (except as provided in § XIII below).

VI. MOTION FOR FINAL APPROVAL OF SETTLEMENT AND ENTRY OF FINAL JUDGMENT

If the Court preliminarily approves the Settlement Agreement, Class Plaintiff, through Class Counsel, after provision of Settlement Notice, shall submit in a form agreeable to Bayer, a motion for final approval of the Settlement Agreement by the Court, and shall seek entry of an order and final judgment between Class Plaintiff and Bayer. The final approval motion shall be submitted to the Court within thirty (30) days of the Court-ordered deadline by which members of the Class may exclude themselves from the Class, and shall seek entry of an order and final judgment as to Bayer:

- (a) finding the Settlement Agreement and its terms to be fair, reasonable and adequate within the meaning of K.S.A. §60-223(e) 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) appointing each of the firms listed as Class Counsel in Section IV ¶1.2 above as counsel for the Class;
- (d) providing for payment of reasonable attorneys' fees and reimbursement of expenses from the Settlement Fund;
- (e) setting forth the method for allocating the Settlement Fund;
- (f) directing that the Action 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 members and permanently barring and enjoining all Class members from asserting any Released Claims (as defined in Section IV ¶1.10 herein);

(h) reserving exclusive and continuing jurisdiction over the Settlement Agreement, including the Settlement Fund 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 Action.

VII. EFFECTIVE DATE OF SETTLEMENT

The Settlement Agreement shall become final and effective upon the occurrence of all of the following (“Effective Date”):

- a) Neither Class Plaintiff nor Bayer have availed themselves of any right to terminate the Settlement Agreement pursuant to Section VIII or XVIII herein;
- b) the Court certifies the Class defined in Section IV ¶1.1 herein;
- c) the Court grants final approval of the Settlement Agreement as required by K.S.A. §60-223;
- d) entry, as provided for in Section VI herein, is made of the order and final judgment, with prejudice, with respect to Released Claims against Bayer; and
- e) the time for appeal from the Court’s approval of the Settlement Agreement as described in subparagraph (c) hereof and entry of an order and final judgment as described in subparagraph (d) 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 Class Plaintiff 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.

VIII. SETTLEMENT CONSIDERATION: CASH

- a) Subject to the provisions hereof, and in full, complete, and final settlement of the Action, Bayer shall pay four million five hundred thousand dollars (\$4,500,000.00) (“Settlement Amount”), thirty (30) calendar days of Bayer’s receipt of the Court’s order preliminarily approving the Settlement Agreement, and a properly completed W-9 form from the Escrow Agent identified in writing by Class Counsel, 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 claims for compensatory damages.
- b) Bayer shall have discretion to rescind the Settlement Agreement if a certain percentage of potential Class Members opt out, as set forth in a separate letter agreement

between Class Counsel and Bayer (“Letter Agreement”) that will be provided to the Court in camera, with the Court’s permission, along with Plaintiff’s motion for preliminary approval of the Settlement Agreement.

- c) Bayer, Bayer World Investment B.V., Bayer AG, and any other Released Party 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 including without limitation funds to satisfy claims by Class Plaintiff, Class members attorneys’ fees and costs, any Court-approved incentive award payment to Class Plaintiff, and payment of any and all administrative and notice expenses associated with the Action 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, 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), and payment of any and all administrative and notice expenses associated with the Action or Settlement. Bayer and any Released Party 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, Bayer World Investment B.V., Bayer AG or any Released Party, 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, 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 §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 Bayer's written request to the administrator of the Settlement Fund.
- f) If a case is commenced in respect of Bayer (or any insurer contributing funds to the Settlement Amount on behalf of Bayer) under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction

determining the transfer of money to the Settlement Amount or any portion thereof by or on behalf of Bayer to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Class Counsel, the Settling Parties shall jointly move the Court to vacate and set aside the releases given and judgment entered in favor of Bayer pursuant to this Settlement, which releases and judgment shall be null and void, and the parties shall be restored to their respective positions in the Action immediately prior to the execution of this Settlement Agreement and any cash amounts in the Settlement Fund shall be returned as provided in Section XVIII below. To the extent any Class members fail to return the Settlement Fund, this Release shall continue to operate in full force as to those Class members.

IX. SETTLEMENT CONSIDERATION: COOPERATION

As additional consideration for the Settlement Agreement, Bayer and any Released Party, agree to fully cooperate with the Class Plaintiff 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 Plaintiff 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 Plaintiff.

c) Notwithstanding the foregoing Section IX ¶¶ (a) and (b), neither Class Plaintiff nor Class Counsel shall seek to depose and/or call at a trial or hearing any witness that is a current or former employee of Bayer or of a Released Party for any purpose other than those described in Section IX ¶¶ (a) and (b) above.

X. SETTLEMENT WITH NON-SETTLING DEFENDANTS

a) The Settling Parties agree that the Class, Class Plaintiff, and all Class members remain free to settle the Action with any or all of Barr, HMR and Watson (the "Non-Settling Defendant(s)").

b) The Class, Class Plaintiff, and all Class members agree that any agreement with one or more Non-Settling Defendant(s) to settle the Action 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 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 Action 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.

XI. FULL SATISFACTION, LIMITATION OF INTEREST AND LIABILITY

Class Plaintiff, Class Counsel and members of the Class shall look solely to the Settlement Fund for settlement and satisfaction against Bayer, Bayer World Investment B.V., Bayer AG, and any other Released Party, of all claims that are released herein. Class Plaintiff, Class Counsel and members of the Class shall not under any circumstances be entitled to any further compensation from Bayer, Bayer World Investment B.V., Bayer AG, or any Released Party, with respect to any claims released herein. In the event that the Settlement Agreement becomes final and effective pursuant to Section VII herein, the Settlement Fund will fully satisfy any and all Released Claims. Except as provided by order of the Court, neither Class Plaintiff, Class Counsel, nor any other Class member shall have any interest in the Settlement Fund or any portion thereof.

XII. REIMBURSEMENT OF COSTS, FEES AND EXPENSES

Class Plaintiff and her 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, shall not be liable for any costs, fees or expenses of any Class members, Class Plaintiff, or of any Class members' or Class Plaintiff's 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.

XIII. DISBURSEMENT OF SETTLEMENT FUND

The Settlement Fund shall be disbursed as follows or as otherwise ordered by the Court. Bayer, Bayer World Investment B.V., Bayer AG, and any other Released Party, shall, as set forth in Section VIII ¶(c) above, have no liability with respect to disbursement or distribution from the Settlement Fund.

- a) Prior to the Effective Date of this Settlement Agreement.
 - i. Any distribution must be made with the consent of Bayer, which shall not be unreasonably withheld, and with Court approval.
 - ii. 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;
 - 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. An amount of cash shall be made available out of the Settlement Fund for purposes of paying the actual cost of Settlement Notice; and this amount shall be no higher than \$500,000.
 - v. Class Counsel may withdraw from the Settlement Fund and allocate 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 Class 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 interest at the same net rate as is earned by the Settlement Fund through the date of such refund.

- b) After the Effective Date of this Settlement Agreement.
 - i. Bayer shall have no responsibility or liability for distributions, and is not entitled to receive notice of the same.
 - 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 Class Counsel; and
 - iv. The balance of the Settlement Fund after the payment of attorneys' fees, costs, and expenses, taxes, 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 October 31, 2004. 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 Settling 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 Plaintiff shall move the Court for an order disposing of all such funds, including additional possible re-distributions to Authorized Claimants and/or contribution of the remainder to an appropriate organization (or organizations) as approved by the Court.

XIV. 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 Action. Class Plaintiff and members of the Class shall look solely to the Settlement Fund for the satisfaction against Bayer and any Released Party, of any distribution to Plaintiff’s Counsel, including for attorneys’ fees, reimbursement of reasonable costs and expenses incurred in the prosecution of the Action.

XV. RELEASES

- a) As used throughout this Settlement Agreement and specifically in this paragraph XV, references to the “Class,” “members of the Class,” or “Class members” refer to members of the Class as defined in Section IV ¶ 1.3 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 Effective Date, the Releasers shall release and forever discharge each and every Released Claim against the Released Parties, and shall forever be enjoined from prosecuting any Settled Claims against any of the Released Parties. 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, including all known and Unknown 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) Upon the Effective Date, Bayer, individually and on behalf of the other Released Parties, shall release and forever discharge each and every Released Defendant's Claim against Class Plaintiff, other Class members, and their attorneys, and shall forever be enjoined from prosecuting any Released Defendant's Claims against any of the Plaintiff, other Class members, and their attorneys.

d) The releases set forth above shall not release any claims arising in the ordinary course of business among Plaintiff, 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 Action), and/or personal or bodily injury, and/or any claims for costs of providing medical care for individuals allegedly injured by Cipro® products.

XVI. 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 Plaintiff or any of them may have to seek damages or other relief in the Action or elsewhere from any person or entity other than Bayer and any Released Party, to the fullest extent allowed by law. This Agreement does not settle or compromise any claim by Class Plaintiff asserted in the Action against any Defendant or alleged co-conspirator other than Bayer and any Released Party. Bayer's sales to the Class Plaintiff shall not be removed from the Action for purposes of Class Plaintiff asserting joint liability or any derivative liability against Defendants other than Bayer and any Released Party.

XVII. 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 Section VI 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 incentive award payment to Class Plaintiff, or any determination by the Court to award less than the amount requested in attorneys' fees or costs 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.

XVIII. TERMINATION

In the event that the Settlement Agreement is terminated pursuant to Section XVIII herein or for any other reason does not become effective in accordance with the terms of Section VII or VIII herein, then (a) this Settlement Agreement shall be of no force or effect, except for payment of taxes by the Settlement Fund and 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 amounts paid or owed by the Settlement Fund in taxes and amounts incurred in giving notice to the Class and administering the Settlement Fund during the interim period, and (c) any release pursuant to Section XV herein shall be of no force or effect.

XIX. PRESERVATION OF RIGHTS

The Settling Parties agree that this Settlement Agreement, whether or not it shall become effective pursuant to Section VII 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, or any other Defendant, or any amount of damages alleged to have been suffered by Class Plaintiff or members of the Class, or of the truth of any of the claims or allegations contained in the petitions in the Action 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.

XX. 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 and all members of the Class.

XXI. 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 Settling 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.

XXII. 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.

XXIII. NO PARTY IS THE DRAFTER

Counsel to the Settling Parties have materially participated in the drafting of this Settlement Agreement. None of the Settling Parties 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.

XXIV. CHOICE OF LAW

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

XXV. 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, Class Plaintiff, and/or each member of the Class, exclusively in this Court. Bayer, Class Plaintiff, 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.

XXVI. 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 Section XV ¶ (a)–(c) 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 any 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.

XXVII. 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.

XXVIII. 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 Plaintiff, 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.

XXIX. 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.

XXX. FAILURE TO FOLLOW PROCEDURE 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.

XXXI. 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 Settling Parties through their fully authorized representatives have agreed to this Settlement Agreement on the date first herein above written.

Dated: _____

Respectfully submitted,

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

Dated: 4/21/15



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

Dated: _____


Respectfully submitted,

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

Dated: _____

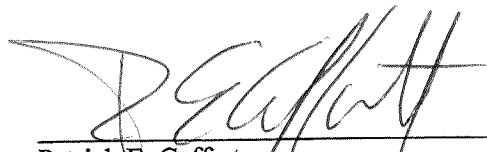
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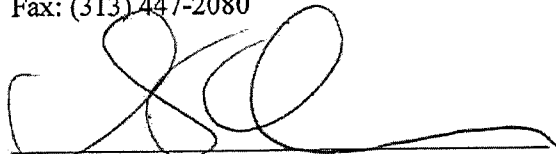
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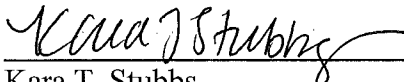
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