

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between Plaintiffs Steven Prescott and Mike Xavier (“Plaintiffs”) and Defendants Bayer HealthCare LLC and Beiersdorf, Inc. (“Defendants”).

I. RECITALS

1.1 On January 3, 2020, Plaintiffs filed a complaint against Defendants in the United States District Court for the Northern District of California, Case No. 5:20-cv-00102. Plaintiffs alleged that Defendants had marketed and sold its sunscreen products that include “mineral-based” on the label in various sizes and forms: Coppertone Water Babies Pure & Simple, Coppertone Kids Tear Free, and Coppertone Sport Face (collectively, the “Products”), despite the Products containing chemical active ingredients. Plaintiffs contended that the labeling and marketing violated the California Consumers Legal Remedies Act, California Civil Code sections 1750 *et seq.*; the California Business and Professions Code sections 17200 *et seq.*; and the California Business and Professions Code sections 17500, *et seq.* Plaintiffs also alleged breach of express warranty and unjust enrichment. Plaintiffs sought to pursue these claims on behalf of themselves and all purchasers of the Products in the United States within four years prior to the filing of the Complaint, and the present.

1.2 On May 1, 2020, Defendants filed a motion to dismiss the complaint. Defendants argued, *inter alia*, that Plaintiffs lacked standing to sue and that they had failed to plead a claim for relief. Plaintiffs opposed the motion. On July 21, 2020, the District Court issued an order denying the motion.

1.3 Defendants deny all of Plaintiffs’ allegations and all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged against them, in the Litigation. In particular, Defendants contend that the Products have been properly labeled and advertised at all times. Defendants further deny that the Litigation meets the requirements for certification as a class action, except for purposes of settlement, or that the evidence is sufficient to support a finding of liability or monetary or equitable relief to Plaintiffs or any member of the Settlement Class.

1.4 Defendants no longer use the term “mineral-based” on the Products.

1.5 Since the filing of the Litigation, the Parties have engaged in several rounds of settlement discussions. On September 25, 2020, the Parties attended an all-day settlement conference with the Honorable Virginia K. DeMarchi in the Northern District of California by videoconference. On December 11, 2020, the Parties attended a second all-day settlement conference with Judge DeMarchi by videoconference. On December 14, 2020, the Parties attended a third settlement conference with Judge DeMarchi by videoconference. The Parties continued settlement discussions thereafter. The Parties did not discuss Attorneys' Fees and Costs or any potential Incentive Award until they first agreed on the substantive terms of this settlement.

1.6 The undersigned Parties agree, subject to approval by the Court, that the Litigation between Plaintiffs, on the one hand, and Defendants, on the other hand, shall be fully and finally compromised, settled and released on the terms and conditions set forth in this Agreement.

1.7 Plaintiffs' Counsel has analyzed and evaluated the merits of all Parties' contentions and this settlement as it affects all Parties and the Settlement Class. Among the risks of continued litigation are the possibility that Plaintiffs will be unable to prove liability, damages or entitlement to injunctive relief at trial on a classwide or individual basis, and that Plaintiffs will be unable to certify the class.

1.8 Plaintiffs and Plaintiffs' Counsel, after taking into account the foregoing, along with the risks and costs of further litigation, among other things, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Litigation and the prompt provision of effective relief to the Settlement Class are in the best interests of the Settlement Class Members.

1.9 Defendants, while continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, and continuing to deny that a class can be certified, consider it desirable to resolve the Litigation on the terms stated herein, in order to avoid further expense, inconvenience, and interference with ongoing business operations, and to dispose of burdensome litigation. Therefore, Defendants have determined that settlement of this Litigation on the terms set forth

herein is in their best interests.

1.10 Defendants hereby consent, solely for the purposes of the settlement set forth herein, to the certification of the Settlement Class and appointment of Plaintiffs' Counsel as counsel for the Settlement Class and Plaintiffs as representatives of the Settlement Class; provided, however, that if this Agreement fails to receive Court approval or to be executed, or is terminated pursuant to Section 9.5 of this Agreement, then Defendants retain all rights they had immediately preceding the execution of this Agreement to object to the propriety of class certification in all other contexts and for all other purposes, and the Litigation will continue as if the Settlement Class had never been certified. The fact that Defendants conditionally consented herein to certification of the Settlement Class shall not be used against Defendants by any Party or non-party for any purpose in this Litigation or any other action, lawsuit, or proceeding of any kind whatsoever.

1.11 This Agreement is contingent upon the issuance by the Court of both Preliminary Approval and Final Approval. Should the Court not issue Preliminary Approval and Final Approval, the Parties do not waive, and instead expressly reserve, all rights to prosecute and defend this Litigation, including but not limited to moving for and opposing class certification.

1.12 This Agreement reflects a compromise between the Parties, and shall in no event be construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of any allegation or the validity, or lack thereof, of any purported claim or defense asserted in any of the pleadings or filings in the Litigation, or of any fault on the part of any Defendants, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims described below, the Parties agree to this Agreement, subject to Court approval, under the following terms and conditions:

II. DEFINITIONS

Capitalized terms in this Agreement shall be defined as follows:

2.1 “Agreement” means this Settlement Agreement, including all exhibits hereto.

2.2 “Attorneys’ Fees” means such funds as may be awarded by the Court to Plaintiffs’ Counsel for their past, present, and future work, efforts, and expenditures in connection with this Litigation and settlement, including, *inter alia*, fees, costs, and expenses of any co-counsel, local counsel, experts, consultants, or other individuals retained by, or who assisted Plaintiffs’ Counsel in connection with this Litigation and settlement, as described more particularly in Section VI of this Agreement.

2.3 “Claim Administrator” means, subject to Court approval, Digital Settlement Group (“DSG”), unless another third-party administrator is later agreed to by the Parties in writing and approved by the Court.

2.4 “Claim Filing Deadline” means twenty-eight (28) days prior to the initially scheduled hearing date on Final Approval.

2.5 “Claim Form” means a form in substantially the same form as Exhibit A hereto.

2.6 “Claim Period” means the period beginning on the Notice Date and continuing until the Claim Filing Deadline.

2.7 “Class Period” means the period up to and including the date that the Settlement Class is first notified of the Settlement pursuant to the Court’s preliminary approval order.

2.8 “Class Representatives” means Plaintiffs Mike Xavier and Steven Prescott.

2.9 “Court” means the United States District Court for the Northern District of California.

2.10 “Court of Appeal” means the United States Court of Appeal for the Ninth Circuit.

2.11 “Defendants” means Bayer HealthCare LLC and Beiersdorf, Inc.

2.12 “Effective Date” means the later of: (i) the expiration of the time to appeal the Final Approval with no appeal having been filed; or (ii) if such appeal is filed, the termination of such appeal on terms that affirm the Final Approval or dismiss the appeal with no material modification to the Final Approval, the date upon which the Court of Appeal issues its remittitur.

2.13 “Excluded Persons” are (i) Defendants, their assigns, successors, and legal representatives; (ii) any entities in which Defendants have controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (iv) any judicial officer presiding over this matter and person within the third degree of consanguinity to such judicial officer; and (v) any persons who timely exclude themselves from the Settlement Class.

2.14 “Exclusion Deadline” means twenty-eight (28) days prior to the initially scheduled hearing date on Final Approval.

2.15 “Fee Award” has the meaning assigned to such term in Section 6.1.

2.16 “Final Approval” means issuance of an order, substantially in the form of Exhibit D, granting final approval of this Agreement as binding upon the Parties; holding this Agreement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves as provided below; ordering that the settlement relief be provided as set forth in this Agreement; ordering the releases as set forth in Section VIII, of this Agreement; entering judgment in this case; and retaining continuing jurisdiction over the interpretation, implementation, and enforcement of the settlement.

2.17 “Household” means any number of natural persons occupying the same dwelling unit.

2.18 “Mineral-Based Allegations” means the allegations, claims and causes of action described in Section 1.1 of this Agreement.

2.19 “Incentive Award” means any award sought by application to and approval by the Court that is payable to the Class Representatives to compensate them for their efforts in prosecuting this Litigation and achieving the benefits of this settlement on behalf of the Settlement Class.

2.20 “Letter of Credit” means an irrevocable standby letter of credit naming the Defendants (or their designated representative) as beneficiary, which letter of credit shall:

(a) be issued by a national bank regulated by the Office of the Comptroller

of the Currency;

(b) be issued in an amount equal to 105% of the amount of the Fee Award;

(c) provide for an expiration date that is not sooner than three (3) years after the date of issuance; provided, however, that if the Effective Date has not occurred, ninety (90) days prior to the expiration date, Class Counsel shall repay the entirety of the Fee Award or secure a second letter of credit conforming to the terms of 2.21 (a) through (e);

(d) be payable at sight, conditioned only upon delivery of a certificate stating, “The amount drawn under Letter of Credit No. [_____] does not exceed (i) the amount of the “Fee Award,” as such term is defined in, and computed pursuant to, Section 6.1 of that certain Settlement Agreement, dated [____], 2021 (the “Settlement Agreement”), among Steven Prescott, Mike Xavier, Bayer HealthCare LLC and Beiersdorf, Inc., *plus* (ii) the applicable interest payable pursuant to the terms of the Settlement Agreement;”

(e) such letter of credit shall otherwise be in form and substance reasonably acceptable to the Defendants.

2.21 “Litigation” means *Prescott v. Bayer HealthCare LLC and Beiersdorf, Inc.*, N.D. Cal. Case No. 5:20-cv-00102-NC.

2.22 “Long Form Notice” means the Court-approved form of notice to Settlement Class Members in substantially the same form as Exhibit B1.

2.23 “Notice Date” means the day on which the Claim Administrator initiates the Online Notice.

2.24 “Notice Plan” means the procedure for providing notice to the class, as set forth in Exhibit B.

2.25 “Objection Deadline” means twenty-eight (28) days prior to the initially scheduled hearing date on Final Approval.

2.26 “Online Notice” means the Court-approved forms of notice to Settlement Class Members in substantially the same form as Exhibit B3.

2.27 “Parties” means Plaintiffs and Defendants, collectively.

2.28 “Party” means any one of Plaintiffs or Defendants.

2.29 “Person(s)” means any natural person or business entity.

2.30 “Plaintiffs” means Mike Xavier and Steven Prescott.

2.31 “Plaintiffs’ Counsel” or “Class Counsel” means the law firms of Clarkson Law Firm, P.C. and Moon Law APC, collectively.

2.32 “Preliminary Approval” means issuance of an order, substantially in the form of Exhibit C, granting preliminary approval to this Agreement as within the range of possible Final Approval; approving Class Notice to the Settlement Class Members as described in Section V below; and setting a hearing to consider Final Approval of the settlement and any objections thereto.

2.33 “Product(s)” means Coppertone sunscreen products that include “mineral-based” on the label in various sizes and forms: Coppertone Water Babies Pure & Simple, Coppertone Kids Tear Free, and Coppertone Sport Face.

2.34 “Proof of Purchase” means an itemized retail sales receipt or other reliable documentation that establishes, at a minimum, the purchase of a Product in the United States and the date of purchase, including, for example, loyalty/membership/rewards club printouts, non-identical original UPC codes, or pictures of non-identical UPC codes for each purchase.

2.35 “Released Claims” means any and all rights, duties, obligations, claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by statute, regulation, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated that arise out of or relate to: (a) the allegations, claims, or contentions that were or could have been asserted in the Litigation regarding the Products; (b) any advertising, labeling (including but not limited to packaging), marketing, claims, or representations of the sunscreen active ingredients in the Products; (c) all labels or packaging for the Coppertone sunscreen products that conform to the terms of the Settlement. Section 2.35(c) is intended to apply only to Settlement Class Members as of the date of Preliminary Approval and

who do not exclude themselves from the Settlement Class. For the avoidance of doubt: (i) the Released Claims in this Section 2.35 are intended to reach the full scope of claims that may be released under the identical factual predicate rule without exceeding or violating it; (ii) the Released Claims do not include claims for personal injury allegedly arising out of use of the Products.

2.36 “Released Parties” means Bayer HealthCare LLC and Beiersdorf, Inc. and each and all of their predecessors and successors in interest to the Coppertone brand or the Products, former, present and future direct and indirect subsidiaries, parents, and affiliates involved in the development, manufacturing, distribution, marketing, advertising, labeling and/or sale of the Products, and each and all of the aforementioned entities’ and individuals’ former, present, and future officers, directors, shareholders, partners, employees, agents, representatives, suppliers, resellers, retailers, wholesalers, distributors, customers, insurers, assigns, servants, and attorneys.

2.37 “Releasing Parties” means Plaintiffs, each Settlement Class Member who has not validly excluded himself or herself from the Settlement Class, and all of the aforementioned entities’ and individuals’ present and former officers, directors, shareholders, partners, employees, agents, representatives, insurers, assigns, servants, attorneys, assignees, spouses, civil union partners, heirs, executors, whether specifically named and whether or not participating in the settlement by payment or otherwise.

2.38 “Settlement Benefit” means the benefits provided to Settlement Class Members as set forth in Section 3.4 of this Agreement.

2.39 “Settlement Class” or “Settlement Class Members” means all retail consumers who purchased in the United States one or more Coppertone sunscreen products, for use and not for resale, prior to the Notice Date that included “mineral-based” on the label in various sizes and forms: Coppertone Water Babies Pure & Simple, Coppertone Kids Tear Free, and Coppertone Sport Face. The Settlement Class does not include wholesale, resale, and distribution buyers, and the other Excluded Persons.

2.40 “Settlement Fund” includes the following: (1) Settlement Class Members’

claims, (2) the costs of notice and claims administration, (3) Class Counsel's attorneys' fees and litigation expenses, and (4) incentive awards to Plaintiffs. The Settlement Fund is structured as a common fund, with no right to reversion, that shall not exceed the Total Monetary Settlement Amount. It is Defendants' sole obligation to promptly and timely pay the entirety of the Total Monetary Settlement Amount, such that the payment of Valid Claims to Settlement Class Members, payment of notice and claims administration costs to the Claims Administrator, payment of a Fee Award to Class Counsel, payment of Incentive Awards to Plaintiffs (included within Class Representatives Payment), and payment of any *cy pres* amount remaining in the Settlement Fund to Look Good Feel Better, are all promptly and timely paid to said recipients, with no reversion to Defendants, consistent with the terms of this Agreement.

2.41 "Settlement Website" means an internet website created and maintained by the Claim Administrator. The URL of the Settlement Website shall be provided in the Notice Plan.

2.42 "Termination Date" means the date that the Agreement is terminated as set forth in Section 9.5.

2.43 "Total Monetary Settlement Amount" means Two Million, Two Hundred and Fifty Thousand Dollars (\$2,250,000.00).

2.44 "Valid Claim" means a claim submitted in compliance with Section III of this Agreement and determined to be valid by the Claim Administrator, and as further described in that Section.

III. SETTLEMENT BENEFITS AND CLAIMS ADMINISTRATION

3.1 Subject to the rights and limitations set forth in this Agreement, every Settlement Class Member shall have the right to submit a claim for Settlement Benefits. A claim shall be a Valid Claim only if submitted on the Claim Form pursuant to, and in compliance with, the procedures set forth herein. Submission of a claim, regardless of whether it is determined to be a Valid Claim, shall confer no rights or obligations on any Party, any Settlement Class Member, or any other Person, except as expressly provided herein.

3.2 At the election of the Settlement Class Member, Claim Forms may be submitted

in paper via first class mail or online at the Settlement Website. Claim Forms must be postmarked by the Claim Administrator or submitted online no later than the Claim Filing Deadline. Claim Forms postmarked or submitted online after that date will not be Valid Claims. The Claims Administrator may track Claim Forms with unique security identifiers or control numbers. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload Proof of Purchase image files (e.g., .jpg, .tif, .pdf). Settlement Class Members who submit a Claim Form shall receive an email after submission confirming information entered in the Claim Form, the names of image files uploaded, and the date and time the Claim Form was received.

3.3 On the Claim Form, the Settlement Class Member, or a Person with authority to sign and bind the Settlement Class Member, must provide and certify the truth and accuracy of the following information under the penalty of perjury, including by signing the Claim Form physically or by e-signature, or the claim will not be considered a Valid Claim by the Claim Administrator:

- (a) The Settlement Class Member's name and mailing address;
- (b) The Settlement Class Member's email address;
- (c) The number of Products purchased during the Class Period and the approximate dates of purchase;
- (d) That the claimed purchases were not made for purposes of resale;
- (e) That the Settlement Class Member would not have paid the price charged and/or made the purchase(s) in the absence of the phrase "Mineral-Based."

3.4 Each Settlement Class Member who submits a Valid Claim, as determined by the Claim Administrator, shall receive a Settlement Benefit of two dollars and fifty cents (\$2.50) for each Product purchased during the Class Period. All claims submitted from the same Household shall be treated as a single claim, including for the purposes of the Proof of Purchase requirements. Settlement Class members who cannot produce a proof of purchase may submit a claim with a corresponding sworn declaration that provides the information necessary to submit a Valid Claim as set forth in Section 3.3 to receive \$2.50 per unit of Product, up to a maximum of four (4) units per Household.

3.5 The Claim Administrator shall be responsible for, among other things, providing notice as set forth in the Notice Plan, processing Claim Forms and administering the Settlement Website, exclusion process, and Settlement Benefit claims process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the Settlement Class). The Claim Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims and to pay only Valid Claims. The Claim Administrator and Parties shall have the right to audit claims, and the Claim Administrator may request additional information from Settlement Class Members who submit a Claim Form. If any fraud is detected or reasonably suspected, the Claim Administrator and Parties can require further information from the Settlement Class Member or deny claims, subject to the supervision of the Parties and ultimate oversight by the Court.

3.6 No later than fourteen (14) days prior to the hearing on Final Approval, the Claim Administrator shall provide, in addition to the certification required under Section 5.5, a declaration to the Court regarding the number and dollar amount of claims received to date.

3.7 The determination of the validity of claims shall occur within ninety (90) days of the end of the Claim Period. The Claim Administrator shall approve or deny all claims, and its decision shall be final and binding, except that Class Counsel and Defendants shall have the right to audit claims and to challenge the Claim Administrator's decision by motion to the Court. Class Counsel's or Defendants' choice not to audit the validity of any one or more Claim Forms shall not constitute or be construed as a waiver or relinquishment of any audit or other rights as to any other Claim Forms, individually or as a group, and similarly shall not be construed as a waiver or relinquishment by the Party as to any of its audit and other rights under this Agreement. No Person shall have any claim against Plaintiffs, Defendants, Class Counsel, Defendants' counsel or the Claim Administrator based on any determination of a Valid Claim, distributions or awards made in accordance with this Agreement and the Exhibits hereto. Neither Plaintiffs nor Defendants, nor their counsel, shall have any liability whatsoever for any act or omission of the Claim Administrator.

3.8 Within ninety (90) days after the Effective Date, the Claim Administrator shall notify by email or mail all Settlement Class Members whose claims are denied and the reason(s) for denial, using the email or mailing address (if any) provided by the Settlement Class Member on the Claim Form. If no email or mailing address is provided by the Settlement Class Member on the Claim Form, the Administrator shall not have an obligation to provide the Settlement Class Member any notification of the denial of the claim or the reasons for denial.

3.9 Valid Claims shall be paid by check or electronic payment to the Settlement Class Member and mailed to the address provided on the Claim Form, or paid to the account provided, within one hundred and twenty (120) days after the Effective Date.

3.10 All settlement checks shall be subject to a one hundred twenty (120) day void period, after which the checks shall no longer be negotiable. If a settlement check is not negotiated, the Settlement Class Member shall not be entitled to any further payment under this Agreement. The return or failure to cash checks shall have no effect on a Settlement Class Member's release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect. Any amounts remaining in the fund after payments are issued and cashed shall be disbursed *cy pres* to Look Good Feel Better.

3.11 No deductions for taxes will be taken from any Settlement Benefit at the time of distribution. Settlement Class Members are responsible for paying all taxes due on such Settlement Benefits. To the extent this Agreement, or any of its exhibits or related materials, is interpreted to contain or constitute advice regarding any U.S. Federal or any state tax issue, such advice is not intended or written to be used, and cannot be used, by any Person or Business for the purpose of avoiding penalties under the Internal Revenue Code or any state's tax laws.

3.12 Defendants shall be responsible for paying all costs of paying Valid Claims.

3.13 If the amount in the Settlement Fund is either less or more than the amount of the total claims submitted by Settlement Class Members, the claims of each Settlement Class Member who submitted a Valid Claim will be decreased or increased, respectively, pro rata to ensure the Settlement

Fund is exhausted, with no reversion from the Settlement Fund to Defendants. Pro rata upward adjustments shall not exceed a cap of nine (9) times the initial notional estimated value of each claim which is set at \$2.50. For avoidance of doubt, payouts will be adjusted pro rata up or down in the event of under-subscription or over-subscription, respectively. Any amounts remaining in the Settlement Fund after payments are issued and cashed shall be disbursed *cy pres* to Look Good Feel Better.

IV. CHANGED PRACTICES AND INJUNCTIVE RELIEF

4.1 If the term “mineral-based” is used on Coppertone sunscreen labels during the period from Preliminary Approval through December 31, 2023 in connection with any products that contain both mineral sunscreen active ingredients and other sunscreen active ingredients, Defendants shall include a statement on the product packaging that states that the product contains other sunscreen active ingredients, such as, for example, “contains other sunscreen active ingredients.”

4.2 Nothing in this Agreement shall be construed to require Defendants to remove, recall, or update any products that were manufactured for sale or to remove, recall, or update any products or product content that was communicated to retailers for use prior to the Preliminary Approval.

4.3 Defendants’ agreement in 4.1 is a private contractual obligation only undertaken solely to resolve the Litigation. The Court in the Litigation has not made any determinations, final or otherwise, that Defendants’ conduct violates any state or federal law. Defendants have made no admissions in connection with the Settlement, including regarding the use of the term “mineral-based.”

4.4 The sole remedy for breach of the injunctive relief shall be an action to enforce the terms of settlement agreement. Breach of the injunctive relief terms shall not be deemed to be a violation of the Court’s Final Approval order.

V. NOTICE

5.1 Prior to the Notice Date, the Claim Administrator shall establish the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format with a clickable table of contents; answers to frequently asked questions; a Contact Information page that includes the address for the Claim Administrator and addresses and telephone numbers for Plaintiffs’

Class Counsel and Defendants' Counsel; the Agreement; the signed order of Preliminary Approval; a downloadable and online version of the Claim Form; instructions regarding how Settlement Class Members may exclude themselves from the Settlement Class; and (when they become available) the motion for final approval and Plaintiffs' application(s) for Attorneys' Fees, Costs and an Incentive Award.

5.2 The Settlement Website shall remain accessible until one hundred eighty (180) days after all Settlement Benefits are distributed.

5.3 Notice shall be provided as set forth in the Notice Plan.

5.4 The Parties shall supervise the Claim Administrator in the performance of the notice functions set forth in this Section V.

5.5 CAFA Notice. Defendants shall comply with the notice requirements of 28 U.S.C. § 1715.

5.6 At least fourteen (14) days prior to the final approval hearing referenced in Section VII of this Agreement, Defendants and the Claim Administrator shall certify to the Court that they have complied with the notice requirements set forth herein.

5.7 All notice and claims administration costs incurred pursuant to the Settlement shall be paid from the Settlement Fund. No more than \$530,000, plus postage, of the Settlement Fund shall be used for notice and administration.

VI. ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVES PAYMENT

6.1 Attorneys' Fees, Costs, and Expenses. The costs of class notice and claims administration fees will be paid as invoiced by the notice and claims administrator. The attorneys' fees will be paid out of the Settlement Fund, and may be paid prior to final judgment so long as Class Counsel has obtained the Letter of Credit. For the avoidance of doubt, Class Counsel shall pay all fees or costs of the issuer of the Letter of Credit associated with issuance, amendment, extension and drawing under the Letter of Credit. No later than forty-two (42) days prior to the initially scheduled hearing on Final Approval, Class Counsel may apply to the Court for an award from Defendants of their Attorneys' Fees

no greater than thirty percent (30%) of the Settlement Fund, as approved by the Court, and may also apply to the Court for reimbursement of Class Counsel's costs and expenses. Such Class Counsel's fees, costs, and expenses, if approved by the Court (such approved amount, collectively, the "Fee Award"), shall be payable within thirty (30) days following the Court's final order approving the settlement and Fee Award. If Final Approval or the Fee Award is denied, vacated, reduced, or later reversed on appeal then, within thirty (30) days of such order, Class Counsel shall repay to Defendants the amount of the Fee Award received, plus interest. Interest shall be computed at the United States prime rate, on the date the amount is to be repaid to Defendants, from the date that the amount of the Fee Award was paid to Class Counsel until the date of repayment by Class Counsel to Defendants. If Class Counsel fails to do so, Defendants may present a draft under the Letter of Credit, if applicable, or, *ex parte*, obtain a judgment, in each case for the amount owed plus interest.

6.2 Class Representatives Payment. No later than forty-two (42) days prior to the initially scheduled hearing on Final Approval, the Class Representatives may additionally apply to the Court for an Incentive Award from Defendants of up to \$5,000 to each Plaintiff, not to exceed \$10,000 as compensation for (a) the time and effort undertaken in and risks of pursuing this Litigation, including the risk of liability for the Parties' costs of suit, and (b) the general release set forth in Section 8.2. Such incentive awards shall be deducted from the Settlement Fund, after entry of a final judgment and order approving the settlement (including the expiration of all appeals). Within seven (7) days after the Effective Date, any Court-approved Incentive Award shall be caused to be paid by the Claims Administrator from the Settlement Fund as part of the claims process.

6.3 The Attorneys' Fees and Costs awarded by the Court as set forth under Section 6.1 shall be the total obligation of Defendants to pay attorneys' fees, costs, and expenses of any kind to Class Counsel in connection with this Litigation and this settlement. In no event shall Defendants be obligated to pay to Class Counsel any amount larger than the amount specified in Section 6.1.

6.4 Any payment of an Incentive Award by the Court as set forth in Section 6.2 shall be the total obligation of Defendants to pay money to Plaintiffs, in connection with the Litigation and this

settlement, other than amounts due to any Plaintiffs for a Valid Claim submitted pursuant to Section III of this Agreement. In no event shall Defendants be obligated to pay to Plaintiffs any amount larger than the amount specified in Section 6.2, other than for a Valid Claim pursuant to Section III of this Agreement, in connection with this settlement.

6.5 Class Counsel and Plaintiffs agree that the denial, downward modification, failure to grant the request for Attorneys' Fees and Costs or an Incentive Award, or the reversal or modification on appeal of any such awards, shall not alone constitute grounds for modification or termination of the settlement.

6.6 Defendants shall be responsible for paying their own attorneys' fees and expenses.

VII. CLASS SETTLEMENT PROCEDURES

7.1 Settlement Approval. As soon as practicable after the signing of this Agreement, Plaintiffs shall move for an order granting Preliminary Approval to this Agreement as within the range of possible Final Approval; conditionally certifying the Settlement Class for purposes of this Settlement only; approving Class Notice to the Settlement Class Members as described in Section V above; and setting a hearing to consider Final Approval of the settlement and any objections thereto. Defendants shall have no obligation to make separate filings in support of the motion. Defendants shall appear at the hearing to confirm its agreement with the terms of the settlement as provided herein.

7.2 Final Approval Order and Judgment. No later than forty-two (42) days prior to the hearing on Final Approval, Plaintiffs shall move for entry of an order of Final Approval, granting Final Approval of this settlement and holding this Agreement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves as provided below, and ordering that the settlement relief be provided as set forth in this Agreement, ordering the releases as set forth in Section VIII, below, and entering judgment in this case. Defendants shall have no obligation to make separate filings in support of the motion. Defendants shall appear at the hearing to confirm its agreement with the terms of the settlement as provided herein.

7.3 Exclusions and Objections. The Long Form Notice shall advise prospective Settlement Class Members of their rights to forego the benefits of this settlement and pursue an individual claim; to object to this settlement individually or through counsel; and to appear at the final approval hearing.

7.4 If any Settlement Class Member wishes to object to the settlement, the Settlement Class Member must electronically file via the Court's ECF system, or deliver to the Clerk of the Court by mail, express mail, or personal delivery, a written notice of objection. To be timely, the objection must be *received* by the Clerk of the Court prior the Objection Deadline. Each objection must include: (i) the case name *Prescott v. Bayer HealthCare LLC and Beiersdorf, Inc.*, and the case number 5:20-cv-00102-NC; (ii) the name, address and telephone number of the objector; (iii) the name, address, and telephone number of all counsel (if any) who represent the objector, including any former or current counsel who may be entitled to compensation for any reason if the objection is successful, and all legal factual support for the right to such compensation; (iv) documents or testimony sufficient to establish membership in the Settlement Class; (v) a detailed statement of any objection asserted, including the grounds for the objection state with specificity; (vi) whether the objector is, and any reasons for, requesting the opportunity to appear and be heard at the final approval hearing; (vii) the identity of all counsel (if any) representing the objector who will appear at the final approval hearing and, if applicable, a list of all persons who will be called to testify in support of the objection; (viii) copies of any papers, briefs, or other documents upon which the objection is based; (ix) a detailed list of any other objections submitted by the Settlement Class Member, or their counsel, to any class actions submitted in any state or federal court in the United States in the previous five years (or affirmatively stating that no such prior objection has been made); (x) statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; and (xi) the objector's signature, in addition to the signature of the objector's attorney (if any)—an attorney's signature alone shall not be deemed sufficient to satisfy this requirement. Failure to include documents or testimony sufficient to establish membership in the Settlement Class shall be grounds for overruling and/or striking the objection, to the extent consistent

with applicable law, on grounds that the objector lacks standing to make the objection. Failure to include any of the information or documentation set forth in this Section also shall be grounds for overruling an objection to the extent consistent with applicable law. Failure to substantially comply with the foregoing requirements shall be grounds to overrule an objection.

7.5 If any Settlement Class Member wishes to be excluded from (in other words, opt out of) this settlement and Litigation, the Settlement Class Member may do so by submitting a signed written request to the Claim Administrator, as described in the Notice, stating that Settlement Class Member wishes to be excluded from the Settlement. Requests to exclude must be *postmarked* by the Exclusion Deadline or they shall not be valid.. Settlement Class Members who elect to exclude themselves from this settlement and Litigation shall not be permitted to object to this settlement or to intervene.

7.6 The proposed Preliminary Approval order and Long Form Notice will provide that any Settlement Class Members wishing to object or exclude themselves who fail to properly or timely file or serve any of the requested information and/or documents will be precluded from doing so.

7.7 If any objection is received by the Claim Administrator, the Claim Administrator shall forward the objection and all supporting documentation to counsel for the Parties. At least fourteen (14) days prior to the hearing on Final Approval, Class Counsel shall file all such objections and supporting documentation with the Court. The failure of the Settlement Class Member to comply with the filing requirements of Section 7.4 shall be grounds for striking and/or overruling the objection, to the extent consistent with applicable law, even if the objection is submitted to the Claim Administrator.

7.8 At least fourteen (14) days prior to the hearing on Final Approval, the Claim Administrator shall prepare a list of the names of the persons who, pursuant to the Long Form Notice, have excluded themselves from the Settlement Class in a valid and timely manner, and Class Counsel shall file that list with the Court.

7.9 If a Settlement Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion

request shall be deemed to have been sent by mistake and rejected.

7.10 A Settlement Class Member who objects to the settlement may also submit a Claim Form on or before the Claim Filing Deadline, which shall be processed in the same way as all other Claim Forms. A Settlement Class Member shall not be entitled to an extension to the Claim Filing Deadline merely because the Settlement Class Member has also submitted an objection.

7.11 Effect if Settlement Not Approved or Agreement Is Terminated. If the Court does not approve the Settlement, or if the Settlement is reversed or rendered void as a result of an appeal, any amounts paid into the Settlement Fund shall be returned to Defendants, less any notice costs and reasonable, related administrative expenses paid or incurred as of the date of such order, the Settlement and any obligations thereunder shall be rendered void, and the Parties shall revert to their pre-settlement litigation positions. In the event that the Court does not approve the Settlement, the Parties have reserved all rights regarding class certification and the merits, including but not limited to the Parties' right to engage in discovery and Defendants' right to oppose any motion for class certification on any and all factual and legal grounds in this or any other action. In the event that the Court does not approve the Settlement, the Parties agree to meet and confer on an appropriate case management schedule to be approved by the Court.

VIII. RELEASES

8.1 Upon the Effective Date, the Releasing Parties hereby fully, finally, and forever release, relinquish, and discharge all Released Claims against the Released Parties. The Released Claims shall be construed as broadly as possible, consistent with all applicable law, to effect complete finality over this Litigation involving the advertising, labeling, and marketing of the Products.

8.2 It is a further part of the consideration hereof and is the intention of the Released Parties and Plaintiffs, and each of them, in executing the above releases, that the same shall be effective as a bar to any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, commissions, obligations, debts, expenses, attorneys' fees, litigation costs, damages, judgments, orders, and liabilities related to the above releases, and Plaintiffs hereby expressly waive any and all

rights or benefits conferred by California Civil Code Section 1542 (or any analogue of or counterpart to Section 1542 under any state or federal law) and expressly consent that the releases shall have full force and effect according to their express terms and conditions, including but not limited to those relating to unknown and unsuspected claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, commissions, obligations, debts, expenses, attorneys' fees, litigation costs, damages, judgments, orders, and liabilities, if any, as well as those relating to any other claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, commissions, obligations, debts, expenses, attorneys' fees, damages, judgments, orders, and liabilities hereinabove specified. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8.3 Effectuation of Settlement. None of the above releases include releases of causes of action to enforce the terms of the settlement.

8.4 No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Defendants expressly deny the allegations of the complaints in the Litigation. Neither this Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Agreement. The Released Parties may file the Agreement and/or the Final Approval order in any action or

proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

IX. ADDITIONAL PROVISIONS

9.1 Best Efforts. Subject to the limitations expressed herein, the Parties' counsel shall use their best efforts to cause the Court to give Preliminary Approval to this Agreement and settlement as promptly as practicable, to take all steps contemplated by this Agreement to effectuate the settlement on the stated terms and conditions, to cooperate in addressing any objections, and to obtain Final Approval of this Agreement. The Parties and Counsel shall not encourage anyone directly or indirectly to opt out or object; nevertheless, action by the Class Representatives to object to approval of this Agreement shall not deprive the Class Representatives of the right to request the incentive award as set forth in Section 6.2. If the Court requires changes to the Agreement as a prerequisite to Preliminary Approval or Final Approval, the Parties shall negotiate in good faith regarding such changes.

9.2 Media. To avoid contradictory, incomplete or confusing information about the settlement during the Claim Period, the Parties agree that if they make any written press releases or statements to the media about the settlement before the conclusion of the Claim Period, such releases or statements will be approved by the Parties in advance and, where desired by the other Party, made jointly.

9.3 Non-Disparagement. Except as may be contrary to Rule 5.6 of the California Rules of Professional Conduct in the event that it impinges on the ability of Plaintiffs' Counsel to practice law and to fully and vigorously represent any present or future clients, Plaintiffs and Plaintiff's Counsel shall make no statements, including statements to the press or any other public statements, that disparage Defendants, any Released Party, or any of the Products, regarding this Settlement or Litigation or the subject matter thereof, or accuse Defendants or any Released Party of any wrongdoing regarding this Settlement or Litigation or the subject matter thereof.

9.4 Changes of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the

Court or by the written agreement of Class Counsel and Defendants' Counsel, without notice to Settlement Class Members except that the Claim Administrator shall ensure that such dates are posted on the Settlement Website.

9.5 Termination Rights. Except for changes to the time periods as set forth in the prior Section, and except as set forth in Section 6.5 of this Agreement, all other terms and limitations set forth in this Agreement and in the documents referred to or incorporated herein (including but not limited to the Long Form Notice, the Online Notice and the Claim Form) shall be deemed material to the Parties' agreement, and in the event any such other term is altered or amended by the Court (including if the Court refuses to certify the Settlement Class and/or modifies the definition of the class), or any other court, or if any federal or state authority requires modifications to the Agreement, any Party whose rights or obligations are affected by the alteration or amendment may terminate this Agreement, consistent with applicable law, upon written notice to the other Party. The contractual right to terminate this Agreement pursuant to this Section expires as of the date a Final Approval Order and Judgment is entered. Any Party that unilaterally terminates this Agreement, pursuant to this Section, shall have the sole responsibility to pay any costs incurred through the date that such termination right is exercised for the notice and claims administration.

9.6 Time for Compliance. All time periods set forth herein shall be computed in calendar days unless otherwise specified. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

9.7 Governing Law. This Agreement is intended to and shall be governed by the laws of the State of California, without regard to conflicts of law principles.

9.8 Entire Agreement. The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may

not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms as between the Parties hereto, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Agreement. Any amendment or modification of the Agreement must be in writing signed by each of the Parties and their counsel.

9.9 Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after an arm's length negotiation, with consideration by and participation of all Parties hereto and their counsel. The presumption found in California Civil Code section 1654 that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

9.10 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Parties hereto.

9.11 No Waiver. The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

9.12 Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, including by way of encrypted signature software such as DocuSign, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

9.13 Captions. Captions and section numbers herein are inserted merely for the reader's convenience, and in no way define, limit, construe, or otherwise describe the scope or intent of the provisions of this Agreement.

9.14 Extensions of Time. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

9.15 Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Agreement. All Parties hereto submit to the jurisdiction of the Court for

these purposes.

9.16 Plaintiffs to be Included in Settlement Class. Plaintiffs hereby agree not to request to exclude themselves from the Settlement Class. Any such request shall be void and of no force or effect.

9.17 Representation by Plaintiffs' Counsel. Plaintiffs' Counsel represent that, except as to the claims subject of this Agreement, they have not been retained to file a lawsuit nor agreed to serve as co-counsel in a lawsuit against Defendants based on the advertising, marketing, or sale of the Products.

9.18 Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiffs or Plaintiffs' Counsel:

Ryan J. Clarkson
Shireen M. Clarkson
Katherine A. Bruce
Lauren Anderson
CLARKSON LAW FIRM, P.C.
9255 Sunset Blvd., Suite 804
Los Angeles, California 90069
Telephone: (213)788-4050
Facsimile: (213) 788-4070
Email: rclarkson@clarksonlawfirm.com; sclarkson@clarksonlawfirm.com;
kbruce@clarksonlaw.com; landerson@clarksonlawfirm.com

and

Christopher D. Moon
Kevin O. Moon
MOON LAW APC
228 Hamilton Ave., 3rd Floor
Palo Alto, California 94301
Telephone: (619) 915-9432
Facsimile: (650) 618-0478
Email: chris@moonlawapc.com; kevin@moonlawapc.com

If to Beiersdorf Inc.'s Counsel:

Elizabeth M. Chiarello
T. Robert Scarborough
Julie M. Becker
SIDLEY AUSTIN LLP

1 South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
Email: tscarborough@sidley.com; echiareлло@sidley.com;
julie.becker@sidley.com

If to Bayer Healthcare LLC’s Counsel

Elizabeth M. Chiarello
T. Robert Scarborough
Julie M. Becker
SIDLEY AUSTIN LLP
1 South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036
Email: tscarborough@sidley.com; echiareлло@sidley.com;
Julie.becker@sidley.com

9.19 Protective Orders. All orders and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provision to certify the destruction of “Confidential” documents.


IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the last date it is executed by all of the undersigned.

APPROVED AS TO FORM:

Dated: 7/9/2021

Steven Prescott
Plaintiff Steven Prescott

Dated: 7/9/2021


Plaintiff Mike Xavier


Dated: 7/10/2021

CLARKSON LAW FIRM, P.C.

By: *Ryan Clarkson*
Ryan J. Clarkson
Plaintiffs' and Class Counsel

Dated: 7/9/2021

MOON LAW APC

By: 
Christopher D. Moon
Kevin O. Moon
Plaintiffs' and Class Counsel

Dated: _____

Bayer HealthCare LLC

By:

Its:

Dated: 12-Jul-2021 | 9:20 PM CEST

DocuSigned by:

Alvaro Alonso

Beiersdorf Inc.

By: Alvaro Alonso

Its: GM

July 12, 2021

Dated: _____



Bayer HealthCare LLC
By: William B. Dodero
Its: Vice President & Assitant General Counsel

Dated: _____

Beiersdorf, Inc.
By:
Its: