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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

MIKE XAVIER and STEVEN PRESCOTT,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BAYER HEALTHCARE LLC, a Delaware
limited liability company; BEIERSDORF,
INC., a Delaware corporation,

Defendants.

Case No. 5:20-CV-00102-NC

Case Filed: 1/3/2020

FAC Filed: 5/15/2020

*Assigned for all purposes to the Hon. Nathanael
M. Cousins*

**PLAINTIFFS' NOTICE OF AMENDED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Hearing Information

Hearing Date: August 18, 2021

Time: 1:00 p.m. (PST)

Courtroom: 5

Video/Telephone Access¹

Webinar: <https://cand-uscourts.zoomgov.com/j/1601632758?pwd=VmthNENIOWFSNGRFdEFJSzIVcVZlQT09>

Webinar ID: 160 163 2758

Password: 277082

Local telephone dial-in: 1-669-254-5252 or
1-646-828-7666

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¹ Please check Magistrate Judge Nathanael Cousins's webpage for up-to-date video and telephone access information at <https://www.cand.uscourts.gov/judges/cousins-nathanael-nc/>.

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NOTICE OF MOTION**TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on **August 18, 2021, at 1:00 p.m. (PST)**, or as soon thereafter as the matter may be heard, in Courtroom 5, before the Honorable Judge Nathanael M. Cousins, of the above-entitled Court, located at 280 South 1st Street, San Jose, California, Plaintiffs Mike Xavier and Steven Prescott (“**Plaintiffs**”), on behalf of themselves and all others similarly situated, by and through their counsel Ryan J. Clarkson, Shireen M. Clarkson, Katherine A. Bruce, and Lauren E. Anderson of Clarkson Law Firm, P.C., and Christopher D. Moon and Kevin O. Moon of Moon Law APC, shall and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23(e), for an order of preliminary approval of class action settlement.

Statement of Relief Requested

More specifically, Plaintiffs seek the entry of the proposed order granting preliminary approval of the class action settlement concurrently filed herewith, which includes, but is not necessarily limited to:

1. Preliminarily approving the settlement of this class action as set forth in the class action settlement agreement fully executed on July 12, 2021 (“**Amended Settlement Agreement**”) (*see* Mot. Prelim. App., Exhibit 1 [Settlement Agreement]);
2. Preliminarily approving, for settlement purposes only, a **Settlement Class** defined as:

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 Date² 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.

“**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,

² Notice Date is the date upon which the Claim Administrator commences with notice of the settlement pursuant to the Court’s preliminary approval order. *See* Mot. Prelim. App., Exhibit 1 [Amended Settlement Agreement] at ¶¶ 2.7 (Class Period), 2.23 (Notice Date), 2.26 (Online Notice).

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1 groups, counsels, and/or subdivisions; (iv) any judicial officer presiding
2 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.

- 3 3. Preliminarily approving Plaintiffs Mike Xavier and Steven Prescott as the class
4 representatives, and appointing Clarkson Law Firm, P.C. and Moon Law APC as class
5 counsel for the Settlement Class;
- 6 4. Directing the dissemination of notice in the form and manner set forth in the
7 Settlement Agreement (*see* Mot. Prelim. App., Exhibit 1 [Settlement Agreement] at
8 Ex. B [Notice Plan]);
- 9 5. Setting a date for a hearing on final approval of the class action settlement; and
- 10 6. All other just and proper relief as this Court deems fit.

11 **Statement of Issues**

12 Pursuant to N.D. Cal. Civil L. R. 7-4(a)(3), Plaintiffs provide the following statement of
13 issues to be decided by the Court:

- 14 1. Whether the Court should preliminarily approve the proposed class action settlement
15 pursuant to Fed. R. Civ. P. 23(e).

16 **Statement of Grounds**

17 Pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs seek preliminary approval of
18 the proposed class action settlement on the following grounds. The proposed settlement is fair,
19 reasonable, adequate, and satisfies the requirements under Rule 23(e).

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This motion is based on this notice, the concurrently filed memorandum of points and authorities, declarations and exhibits submitted in support thereof, all relevant pleadings and papers on file herein, and any other written and oral arguments and evidence that may be presented to the Court in connection herewith.

DATED: July 13, 2021

CLARKSON LAW FIRM, P.C.

/s/ Katherine A. Bruce

Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Katherine A. Bruce, Esq.
Lauren E. Anderson, Esq.

MOON LAW APC
Christopher D. Moon, Esq.
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