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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

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

Defendants.

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

[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: _____, 2021
Time: 1:00 p.m. (PST)
CTRM: 5, Second Floor
JUDGE: Hon. Nathanael M. Cousins

1 are set forth in the Settlement Agreement and fairly and accurately summarized, in pertinent part, in
2 the proposed Long Form and Short Form Notices to Settlement Class Members attached as Exhibit
3 B1 to the Settlement Agreement.

4 In brief, the terms of the Settlement Agreement provide for the following benefits to the
5 Settlement Class. Subject to the Settlement Agreement, if the term “mineral-based” is used on
6 Coppertone sunscreen labels, during the period from the entry of this Order through December 31,
7 2023, in connection with any products that contain both mineral sunscreen active ingredients and other
8 sunscreen active ingredients, Defendants have agreed to include a statement on the product packaging
9 that states that the product contains other sunscreen active ingredients, such as, for example, “contains
10 other sunscreen active ingredients” (hereinafter the “**Injunctive Relief Component**”). In addition,
11 Defendants have agreed to pay a total monetary benefit of \$2.25 million into a common fund, with no
12 right to reversion, that will be used to pay valid claims from Settlement Class Members, attorneys’
13 fees and litigation expenses awarded by this Court, incentive or service awards approved by this Court,
14 and the costs of notice and claims administration, with any remaining amount to be disbursed *cy pres*
15 to Look Good Feel Better (the “**Settlement Fund**”).

16 All Settlement Class Members may submit a claim for a payment of \$2.50 per unit of Product
17 for which they have proof of purchase, without limitation to the number of Products. Settlement Class
18 Members who cannot produce proof of purchase may submit a claim to receive \$2.50 per unit of
19 Product, up to a maximum of four (4) units per claimant, for a total of \$10.00 with a corresponding
20 sworn declaration confirming they purchased a Product, in the United States, during the Class Period,
21 for the purpose of use and not for resale, including the approximate dates of purchase, and number of
22 Products purchased, and state that they would not have made the purchase but for the “mineral based”
23 label. Each Settlement Class Member may submit a claim either electronically through a settlement
24 website or by mail. The claims process will include an agreed-upon verification process designed by
25 the claims administrator to reduce the risk of fraudulent claims.

26 The Claim Form process is simple and not burdensome, merely requiring Settlement Class
27 members to provide their name contact information, and chosen method for receipt of payment (by
28 check or electronic payment), and to aver facts under penalty of perjury that establishes they are

1 Settlement Class Members that would not have made the purchase(s) but for the phrase
2 “Mineral-Based.” As part of the settlement, Plaintiffs’ attorneys may apply to this Court to award them
3 up to thirty (30%) percent of the \$2.25 million Settlement Fund to pay their attorneys’ fees and
4 expenses. It also allows Plaintiffs to apply for an incentive or service award of up to \$5,000 each.
5 Such amounts must be approved by the Court, and the Court will defer any ruling on the
6 appropriateness of such awards until the final approval hearing.

7 Notice is to be provided as described in the Settlement Agreement consistent with the notice
8 plan designed by Digital Settlement Group, a well-known and experienced class action administrator.
9 The notices are attached to the Settlement Agreement as Exhibit B. Digital Settlement Group also will
10 receive and process Claim Forms and any disbursements to Settlement Class Members. Digital
11 Settlement Group will be compensated up to \$530,000.00, plus postage.

12 The Settlement Agreement utilizes a notice plan that is designed to reach at least 70% of
13 Settlement Class Members, whose identities are unknown, to advise them of their rights regarding a
14 settlement of claims related to a common household consumer good, in a cost-efficient and effective
15 manner. It largely entails digital advertising and press releases and a dedicated settlement website that
16 provides the claim form and its instructions, the long form and short form notice, important dates,
17 information responding to frequently asked questions, pertinent documents, and updates on the status
18 of the settlement. The notices provide information and instructions to Settlement Class Members who
19 wish to submit a claim, object to the settlement, or exclude themselves from the Settlement Class, and
20 an explanation of how these choices will impact their legal rights. Submission of claims and requests
21 for exclusions entail mail and/or online options. Instructions regarding the submission of objections
22 are consistent with this Court’s procedures and applicable law. Neither the methodology for
23 exclusions nor objections presents any unreasonable or burdensome requirements.

24 On March 15, 2021, Plaintiffs filed the Settlement Agreement and moved for preliminary
25 approval of the class settlement. That motion was denied, without prejudice, by this Court. April 29,
26 2021 Order Denying Without Prejudice Plaintiffs’ Motion for Preliminary Approval [D.E. 87]. The
27 Settlement Agreement, including its exhibits, have been amended by the Parties in compliance with
28 the Court’s Order. The Court has reviewed its prior Order and the amended Settlement Agreement

1 and finds that the new terms satisfy this Court’s prior Order on preliminary approval.

2 **FINDINGS AND CONCLUSIONS**

3 Having considered all matters submitted to it at the hearing on the instant motion and
4 otherwise, including the complete record of this action, and good cause appearing therefore, the Court
5 hereby finds and concludes as follows:

6 1. The capitalized terms used in this Order shall have the same meaning as defined in the
7 Settlement Agreement except as otherwise expressly provided.

8 2. The Court preliminarily approves the Settlement Agreement as within the range of
9 possible final approval, and as meriting submission to the Settlement Class for its consideration.

10 3. For purposes of the settlement only, the Court certifies the Settlement Class, which
11 consists of retail consumers who purchased in the United States one or more Coppertone sunscreen
12 products, for use and not for resale, prior to _____ that included “mineral-based” on the label in various
13 sizes and forms: Coppertone Water Babies Pure & Simple, Coppertone Kids Tear Free, and
14 Coppertone Sport Face (collectively, “**Products**” or “**Qualifying Products**”). The settlement class
15 does not include wholesale, resale, and distribution buyers, and the other **Excluded Persons**. Also
16 excluded from the Settlement Class are (i) Defendants, their assigns, successors, and legal
17 representatives; (ii) any entities in which Defendants have controlling interests; (iii) federal, state,
18 and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus,
19 boards, sections, groups, counsels, and/or subdivisions; (iv) any judicial officer presiding over this
20 matter and person within the third degree of consanguinity to such judicial officer; and (v) any persons
21 who timely exclude themselves from the Settlement Class (collectively, the “**Excluded Persons**”).

22 4. The Court preliminarily finds, solely for purposes of considering this settlement, that
23 the requirements of Rule 23 of the Federal Rules of Civil Procedure are conditionally satisfied,
24 including requirements that the Settlement Class Members are too numerous to be joined in a single
25 action; that common issues of law and fact exist and predominate; that the claims of the Class
26 Representatives are typical of the claims of the Settlement Class Members; that the Class
27 Representatives and Class Counsel can adequately and fairly protect the interests of the Settlement
28 Class Members; and that a settlement class is superior to alternative means of resolving the claims and

1 disputes at issue in this Litigation.

2 5. The Court conditionally designates Clarkson Law Firm, P.C. and Moon Law APC as
3 Class Counsel and Mike Xavier and Steven Prescott as Class Representatives of the Settlement Class
4 for purposes of this settlement. The Court designates, and approves, Digital Settlement Group to serve
5 as Claim Administrator.

6 6. A Final Approval Hearing shall be held before this Court at ____ p.m. on _____,
7 2021, in Courtroom 5, Second Floor, of the United States District Court for the Northern District of
8 California, 280 South 1st Street, San Jose, CA 95113, to address: (a) whether the proposed settlement
9 should be finally approved as fair, reasonable, and adequate, and whether the Final Approval Order
10 should be entered, and (b) whether Class Counsel's application for attorneys' fees, costs, and a
11 payment to the Class Representatives should be approved.

12 7. The Court approves, as to form and content, the Claim Form and the Notices,
13 substantially similar to the forms attached as Exhibits A and B1 through B3 to the Settlement
14 Agreement. The Claim Form and all of the notices are written in plain English, are easy to
15 comprehend, and fully comply with the requirements of the Due Process Clause of the United States
16 Constitution, Rule 23 of the Federal Rules of Civil Procedure, and applicable law. The Parties shall
17 have discretion to jointly make non-material minor revisions to the Claim Form or Notices.
18 Responsibility regarding settlement administration, including, but not limited to, notice and related
19 procedures, shall be performed by the Claim Administrator, subject to the oversight of the Parties and
20 this Court as described in the Settlement Agreement.

21 8. The Court finds that Notice Plan is reasonably calculated to provide notice to the
22 Settlement Class of the pendency of the Litigation, certification of the Settlement Class, the terms of
23 the Settlement Agreement, the Final Approval hearing, and applicable deadlines, and complies fully
24 with the requirements of the Due Process Clause of the United States Constitution, Rule 23 of the
25 Federal Rules of Civil Procedure, and applicable law. The Parties and the Claim Administrator shall
26 comply with the Notice Plan and other deadlines as set forth in the Settlement Agreement and this
27 Order.

28 9. Any member of the Settlement Class who desires to be excluded from the Settlement

1 Class, and therefore not be bound by the terms of the Settlement Agreement, must submit a timely
2 request for exclusion to the Claim Administrator, pursuant to the instructions set forth in the Long
3 Form Notice. The request must be postmarked no later than _____, 2021 [28 days before Final
4 Approval Hearing]. No one shall be permitted to exercise any exclusion rights on behalf of any other
5 person, whether as an agent or representatives of another or otherwise, except upon proof of a legal
6 power of attorney, conservatorship, trusteeship, or other legal authorization, and no one may exclude
7 other persons within the Settlement Class as a group, class, or in the aggregate.

8 10. No later than _____, 2021 [14 days before Final Approval Hearing], the Claim
9 Administrator shall prepare a list of the names of the persons who, pursuant to the Class Notice
10 described herein, have excluded themselves from the Settlement Class in a valid and timely manner,
11 and Class Counsel shall file that list with the Court. The Court retains jurisdiction to resolve any
12 disputed exclusion requests.

13 11. Any member of the Settlement Class who elects to be excluded shall not receive any
14 benefits of the settlement, shall not be bound by the terms of the Settlement Agreement, and shall have
15 no standing to object to the settlement or intervene in the Litigation.

16 12. Any Settlement Class Member who does not submit a valid and timely request for
17 exclusion may submit an objection to the Settlement Agreement (“Objection”). The Objection must
18 satisfy the requirements set forth in the Long Form Notice and must be filed with the Clerk of the
19 Court (not postmarked) no later than _____, 2021 [28 days before Final Approval Hearing], or it
20 will be rejected, absent a showing of good cause that supports its consideration.

21 13. As set forth in the Long Form Notice, any objection must substantially comply with
22 the following requirements: (i) include the case name and number *Prescott v. Bayer HealthCare LLC*,
23 N.D. Cal. Case No. 5:20-cv-00102-NC; (ii) the objector’s name, address, and telephone number; (iii)
24 the name and address of the lawyer(s), if any, who are representing the objector in making the
25 objection or who may be entitled to compensation in connection with the objection; (iv) documents or
26 testimony sufficient to establish that the objector is a member of the Settlement Class; (v) a detailed
27 statement of the objection(s), including the grounds for those objection(s); (vi) a statement as to
28 whether the objector is requesting the opportunity to appear and be heard at the final approval hearing;

1 (vii) the identity of all counsel (if any) who will appear on the objector's behalf at the final approval
2 hearing and all persons (if any) who will be called to testify in support of the objection; (viii) copies
3 of any papers, briefs, or other documents upon which the objection is based; (ix) a detailed list of any
4 other objections the objector or objector's counsel have submitted to any class action in any state or
5 federal court in the United States in the previous five years (or affirmatively stating that no such prior
6 objection has been made); (x) statement of whether the objection applies only to the objector, to a
7 specific subset of the class, or to the entire class ; and (xi) the objector's signature as objector, in
8 addition to the signature of the objector's attorney, if an attorney is representing the objector with the
9 objection. Failure to include this information and documentation may be grounds for overruling and
10 rejecting the objection. All the information listed above must be electronically filed via the Court's
11 ECF system, or delivered to the Clerk of the Court by mail, express mail, or personal delivery such
12 that the objection is *received* by the Clerk of the Court (not just postmarked or sent) on or before
13 _____ [28 days before initially scheduled Final Approval Hearing]. By filing an objection,
14 the objector consents to the jurisdiction of the Court, including to any order of the Court to produce
15 documents or provide testimony prior to the Final Fairness Hearing.

16 14. Any Settlement Class Member shall have the right to appear and be heard at the Final
17 Approval hearing, either personally or through an attorney retained at the Settlement Class Member's
18 own expense. However, if the Settlement Class Member wishes to object to the Settlement at the Final
19 Approval Hearing (either personally or through counsel), the Settlement Class Member must submit
20 a timely written objection in compliance with the requirements referenced in the prior paragraph of
21 this Order or demonstrate good cause excusing the objector from compliance.

22 15. Plaintiffs shall file motions for Final Approval and for any award of attorneys' fees,
23 costs and payments to class representatives no later than _____, 2021 [42 days before Final
24 Approval Hearing]. Any opposition shall be filed no later than _____[14 days after the filing
25 of the motion]. Any reply in support of that motion and responses to any objections and requests to
26 intervene shall be filed no later than _____, 2021 [14 days before Final Approval Hearing].
27 Those motions and all supporting documentation shall be posted to the Settlement Website within one
28 day of filing.

1 16. No later than _____, 2021 [14 days before Final Approval Hearing], the Claim
2 Administrator shall provide a declaration to the Court regarding the number and dollar amount of
3 claims received.

4 17. In the event that the proposed settlement is not finally approved by the Court, or in the
5 event that the Settlement Agreement becomes null and void or terminates pursuant to its terms, this
6 Preliminary Approval Order and all orders entered in connection herewith (including any order
7 amending the complaint) shall become null and void, shall be of no further force and effect, and shall
8 not be used or referred to for any purposes whatsoever in this Litigation or in any other case or
9 controversy; in such event the Settlement Agreement and all negotiations and proceedings directly
10 related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who
11 shall be restored to their respective positions as of the date and time immediately preceding the
12 execution of the Settlement Agreement. In the event that the Court does not approve the Settlement,
13 the Parties have reserved all rights regarding class certification and the merits, including but not limited
14 to the Parties' right to engage in discovery and bring or oppose any motion for class certification on
15 any and all factual and legal grounds in this or any other action.

16 18. This Order shall not be construed as an admission or concession by Defendants of the
17 truth of any allegations made by the Plaintiffs or of liability or fault of any kind.

18 19. The Court may, for good cause, extend any of the deadlines set forth in this Order
19 without further notice to the Settlement Class Members, though such extensions shall be posted to the
20 Settlement Website. The Final Approval Hearing may, from time to time and without further notice
21 to the Settlement Class Members beyond updates to the Court's docket and the Settlement Website,
22 be continued by Order of the Court.

23 20. If the Court grants Final Approval to the Settlement Agreement, then Settlement Class
24 Members who have not timely requested to be excluded, including persons who objected to the
25 Settlement Agreement or submitted a Valid Claim, shall be deemed to have released their claims as
26 set forth therein.

27 21. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in
28 connection with the administration of the Settlement that are not materially inconsistent with either

1 this Order or the terms of the Settlement Agreement.

2 22. All further proceedings and deadlines in this action are hereby stayed except for those
3 required to effectuate the Settlement Agreement and this Order.

4 **IT IS SO ORDERED** this ____ th day of _____, 2021.

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7 HON. NATHANAEL M. COUSINS
8 UNITED STATES DISTRICT JUDGE
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