

**LEVAQUIN  
CLASS ACTION NATIONAL SETTLEMENT AGREEMENT**

**Made as of September 30, 2022**

**Between**

**LLOYD ACHTYMICHUK  
(the "Plaintiff")**

**and**

**JANSSEN INC., JANSSEN PHARMACEUTICALS, INC., and  
JANSSEN RESEARCH & DEVELOPMENT, LLC  
(the "Janssen Defendants")**

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**PREAMBLE & RECITALS**

- A. WHEREAS, unless otherwise indicated or required by context, capitalized terms in these recitals have the meanings assigned to them in Section 1 of this Settlement Agreement below;
- B. WHEREAS, the Proceeding alleges that the Janssen Defendants failed to warn of the risks of developing certain side effects and injuries, including Peripheral Neuropathy, that the Defendants were negligent in the design, development, testing, marketing, promotion, labelling, distribution, and sale of Levaquin, that the Janssen Defendants made negligent and fraudulent misrepresentations regarding Levaquin, that the Janssen Defendants breached applicable consumer protection legislation, and that Levaquin should not have been marketed in Canada, which allegations the Janssen Defendants deny;
- C. WHEREAS, the Parties intend by this Settlement Agreement to resolve all claims for damages alleged to be in any way related to the use of Levaquin (excluding only claims for Tendon Injuries) by (a) all persons resident in Canada (excluding residents of Quebec) who have been prescribed and/or ingested Levaquin at any time on or before the date of the Certification and Hearing Notice Order; (b) all persons resident in Canada who by virtue of a personal relationship to one or more of such persons described in (a) have claims for common law or statutory damages; and (c) all Provincial Health Insurers' claims with respect to Class Members;
- D. WHEREAS, counsel to the Parties have conducted settlement negotiations in good faith and at arms-length to come to the within resolution;
- E. WHEREAS, the Janssen Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful or otherwise actionable conduct alleged in the Proceeding or otherwise, and in fact deny any and all such allegations;
- F. WHEREAS, the Plaintiff, Class Counsel, and the Janssen Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Released Parties or evidence of the truth of any of the Plaintiff's allegations against the Released Parties, which allegations are expressly denied by the Janssen Defendants;

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G. WHEREAS, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of Class Members based on an analysis of the facts and applicable law, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method provided in this Settlement Agreement of resolving the claims of Class Members;

H. WHEREAS, the Janssen Defendants have concluded that this Settlement Agreement is desirable in order to avoid the time, risk, and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of Class Members;

I. WHEREAS, the Parties intend by this Settlement Agreement to finally resolve, on a national basis (excluding the Province of Quebec), without admission of liability, the Proceeding and all the present and future claims of Class Members relating in any way to their use of Levaquin (excluding only claims for Tendon Injuries);

J. WHEREAS, the Parties shall seek a Settlement Approval Order from the Court;

K. WHEREAS, the Provincial Health Insurers have confirmed, or shall confirm, that they consent to and approve, and will not object to court approval of, the settlement provided for in this Settlement Agreement, and they will accept a payment, as provided for in the Compensation Protocol, in satisfaction of all Provincial Health Insurer Rights of Recovery that they may have, whether by subrogation or by independent right of action, respecting Class Members' use of Levaquin (excluding only claims for Tendon Injuries);

L. NOW THEREFORE, subject to all of the terms and conditions set forth below, this Settlement Agreement embodies the terms of the resolution of claims of Class Members and of the Provincial Health Insurers.

#### **SECTION 1 - DEFINITIONS**

Unless a particular section of this Settlement Agreement explicitly provides for another interpretation, the following terms, as used in this Settlement Agreement and its exhibits, shall have the meanings set forth below. Terms used in the singular shall be deemed to include the

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plural, and vice versa, where appropriate. Feminine pronouns and female references shall be deemed to include the masculine, and vice versa, where appropriate.

- (a) **"Approval Hearing"** means the hearing of the application for final approval of the Settlement Agreement;
- (b) **"Certification and Hearing Notice Order"** means the Court order certifying the Proceeding and approving the Hearing Notice and Hearing Notice Plan, in a form agreed to by the Parties, substantially in the form attached hereto as Schedule "A";
- (c) **"Claim Deadline"** means one hundred and twenty (120) days after the first day on which the Settlement Approval Notice is published;
- (d) **"Class"** means:
  - (i) All persons resident in Canada (excluding residents of Quebec), who were prescribed and/or ingested Levaquin in Canada at any time on or before the date of the certification order; and
  - (ii) All persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages;
- (e) **"Class Counsel Legal Fees"** means all legal fees, disbursements and applicable taxes in respect of all legal services provided by Class Counsel or any other law firm for the benefit of the Class and the Provincial Health Insurers, as approved by the Court, but does not include fees for legal services for the benefit of particular Settling Claimants (which are payable by the Settling Claimant);
- (f) **"Class Counsel"** means Garcha & Company;
- (g) **"Class Member"** means a member of the Class, but, for greater certainty, does not include any Opt Out or Provincial Health Insurer. **"Class Members"** means members of the Class, with the same exceptions;

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- (h) **"Compensation Protocol"** means the Court-approved plan for administering this Settlement Agreement and distributing the Settlement Amount to Class Members;
- (i) **"Court"** means the Supreme Court of British Columbia;
- (j) **"Effective Date"** means the date on which all of the following have occurred: (i) each Provincial Health Insurer has provided all statutorily required consents or approvals, and provided approval of the form of the Provincial Health Insurer Release; (ii) copies of all the Provincial Health Insurer consents and approvals and Provincial Health Insurer Releases have been provided to the Janssen Defendants' Counsel; (iii) the Settlement Approval Order becomes a Final Order; (iv) the Saskatchewan Registration is effected; (v) the Ontario Proceeding is dismissed or the Settlement Approval Order is registered in Ontario pursuant to section 2.5(1); and (vi) the Settlement Agreement has not been and can no longer be terminated pursuant to section 5;
- (k) **"Final Order"** means any order contemplated by this Settlement Agreement from which no appeal lies, in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal, or proposed appeal, such as the delivery of a notice of appeal or application for leave to appeal, or, in respect of any order from which an appeal is taken, that appeal and any subsequent appeal are dismissed;
- (l) **"Hearing Notice Plan"** means the method by which the Hearing Notice is disseminated, in a form agreeable to the Parties and approved by the Court, and substantially in the form attached hereto as Schedule "C";
- (m) **"Hearing Notice"** means the notice (in long, abridged and press release form) approved by the Court, in a form agreed to by the Parties and substantially in the forms attached hereto respectively as Schedule "B", in English and French, which advises Class Members of the certification of the Proceeding (for settlement purposes only), the opt out process, and the hearing to approve the settlement provided for in this Settlement Agreement;

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- (n) **"Janssen Defendants' Counsel"** means the law firm of Blake, Cassels & Graydon LLP;
- (o) **"Janssen Defendants"** means Janssen Inc., Janssen Pharmaceuticals, Inc. (sometimes incorrectly named Janssen Pharmaceuticals Inc.), and Janssen Research & Development, LLC;
- (p) **"Levaquin"** means Levaquin® levofloxacin tablets and/or intravenous solution;
- (q) **"Net Settlement Proceeds"** means the Settlement Amount less the amounts payable in respect of Class Counsel Legal Fees and any other costs associated with claims administration and notice of settlement approval hearing and, where the settlement is approved, notice of settlement approval;
- (r) **"Ontario Proceeding"** means *Barbara Adkin, Edward Prebinski and Andrea Powell v. Janssen-Ortho Inc., Johnson & Johnson Inc., Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, LLC, Ortho-McNeil Pharmaceuticals Inc., Bayer Inc., Bayer Corporation, Bayer Healthcare Pharmaceuticals, Inc., Bayer Healthcare, LLC, and Ranbaxy Pharmaceuticals Canada Inc.*, commenced April 12, 2012 in the Toronto Registry of the Ontario Superior Court of Justice as Court File No. CV-11-43788 00CP;
- (s) **"Opt Out Deadline"** means the date sixty (60) days after the date on which the Hearing Notice is first published, or such other date as the Parties agree and is approved by the Court;
- (t) **"Opt Out Form"** means the form for requesting exclusion from the Class as defined in the Certification and Hearing Notice Order, substantially in the form attached hereto as Schedule "D";
- (u) **"Opt Out Threshold"** shall mean the threshold agreed upon by the Plaintiff and Janssen Defendants in a separate Supplemental Opt Out Agreement; that agreement shall be kept confidential by the Plaintiff and the Janssen Defendants, and if it is requested by the Court, the Parties shall request that it be kept confidential and not filed or that it be sealed by Court;



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- (v) **"Opt Out"** means a person who would have been a Class Member but for her timely and valid request for exclusion pursuant to the opt out procedures set out in the Certification and Hearing Notice Order;
- (w) **"Parties"** means the Plaintiff and the Janssen Defendants;
- (x) **"Peripheral Neuropathy"** means a nerve disorder occurring in the arms or legs with associated symptoms of paresthesia, hypoesthesia, dysesthesia, weakness, numbness, pain, discomfort, burning, tingling, or other alterations of sensation including light touch, pain temperature, position sense and vibration sensation, and diagnosed as peripheral neuropathy by a medical professional;
- (y) **"Plaintiff"** means the Plaintiff in the Proceeding;
- (z) **"Proceeding"** means *Lloyd Achtymichuk v. Bayer Inc., Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC*, commenced in the Vancouver Registry of the Supreme Court of British Columbia under Court File No. S167919;
- (aa) **"Provincial Health Care Recovery Fund"** means a separate fund out of the Settlement Amount allocated to the Provincial Health Insurers as compensation for the Provincial Health Insurer Rights of Recovery;
- (bb) **"Provincial Health Insurer Release"** means a Release in the form attached hereto as Schedule "H";
- (cc) **"Provincial Health Insurer Rights of Recovery"** means all statutory authority for the recovery of costs of insured health or medical services, as defined in the empowering legislation of each jurisdiction and listed in Schedule "G";
- (dd) **"Provincial Health Insurers"** means all provincial and territorial Ministries of Health or equivalents, and/or provincial and territorial plans funding medical and health care services and costs throughout Canada as listed in Schedule "G";

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(cc) **"Released Claims"** means:

- (i) For all Releasors, other than the Provincial Health Insurers, any and all manner of claims, demands, actions, suits, losses, causes of action, whether class, individual or otherwise in nature, whether personal, family, or subrogated, for damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, past or future, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, relating in any way to any conduct anywhere, arising from, based upon, or in respect of any use of Levaquin by a Class Member (excluding only claims for Tendon Injuries), including, without limitation, relating to any facts or conduct alleged (or which could have been alleged) underlying the claims and causes of action which have been asserted or could have been asserted by any Releasor, directly or indirectly, in the Proceeding.
- (ii) For the Provincial Health Insurers, any and all manner of claims which a Provincial Health Insurer ever had, now has or hereafter can, shall or may have pursuant to Provincial Health Insurer Rights of Recovery arising out of or in any way related to Class Members' use of Levaquin (excluding only claims for Tendon Injuries), whether known or unknown, past or future, direct or indirect, subrogated or otherwise, relating in any way to the design, manufacture, sale, distribution, labelling, and/or use of Levaquin by Class Members during the Class Period, and including, without limitation and by way of example, all subrogated and/or direct claims in respect of Class Members that were or could have been brought by the Provincial Health Insurers, whether pursuant to provincial or territorial legislation that permits the recovery of healthcare costs or medical expenses from third parties or otherwise, for the cost of medical care or treatment provided to Class

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Members, as well as medical screening and monitoring, arising from the facts alleged in the Proceeding.

- (ff) **"Released Parties"** means, jointly and severally, individually and collectively, the Janssen Defendants, and any and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, controlling persons, general or limited partners, insurers, vendors, contractors, agents and assigns, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, estate administrators, assigns and personal representatives (or equivalent thereto) of each of the foregoing; any and all suppliers of materials, components, and services used in the manufacture of any Levaquin, including the labelling, packaging, marketing and selling thereof, along with any and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, controlling persons, general or limited partners, insurers, vendors, contractors and assigns, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, estate administrators, assigns and personal representatives (or equivalent thereto) of each of the foregoing; any and all distributors of Levaquin, including those involved in the labelling, packaging, marketing and selling of Levaquin, wholesale distributors, private label distributors, retail distributors, hospitals and clinics, and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, controlling persons, general or limited partners, insurers, vendors, contractors and assigns, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors,

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estate administrators, assigns and personal representatives (or equivalent thereto) of each of the foregoing;

- (gg) **"Releasers"** shall mean, jointly and severally, individually and collectively, the Plaintiff and the Class Members and all of their present, future and former representatives, predecessors, successors, heirs, executors, administrators, insurers and assigns;
- (hh) **"Saskatchewan Registration"** means the registration of the Settlement Approval Order issued by the Court in the Saskatchewan Court of Queen's Bench pursuant to *The Enforcement of Canadian Judgments Act, 2002*, SS 2002, c E-9.1001;
- (ii) **"Settlement Agreement"** means this agreement, including the recitals, exhibits and schedules;
- (ij) **"Settlement Amount"** means CAD \$500,000 plus \$25,000 for notice and administration costs, which amounts are intended to cover claims of all nature and kind including without limitation all claims for interest, taxes, costs, Class Counsel Legal Fees, and other legal fees;
- (kk) **"Settlement Approval Notice"** means the notice (in long, abridged and press release form) in a form approved by the Court, agreed to by the Parties and substantially in the form attached hereto as Schedule "F", in English and French, which advises Class Members of the approval of the settlement provided for in this Settlement Agreement;
- (ll) **"Settlement Approval Notice Plan"** means the method by which the Settlement Approval Notice is disseminated, in a form agreeable to the Parties and approved by the Court;
- (mm) **"Settlement Approval Order"** means the order issued by the Court substantially in the forms of Schedule "E";

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- (nn) "Settling Claimant" (collectively, the "Settling Claimants") means each Class Member who files a claim and receives compensation pursuant to the Compensation Protocol;
- (oo) "Tendon Injuries" means tendinopathy or tendon rupture, including injuries of the Achilles tendon, or tendons of the hand, rotator cuff, biceps, and thumb, as diagnosed by a medical professional;
- (pp) "Trust Account" means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Class Counsel for the benefit of the Settlement Claimants, as provided for in this Settlement Agreement.

## **SECTION 2 - SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

(1) The Parties shall use their best efforts to implement this settlement, to obtain the Settlement Approval Order, Saskatchewan Registration, and dismissal of the Ontario Proceeding, or if the Ontario Proceeding is not dismissed, registration of the Settlement Approval Order pursuant to section 2.5(1), and secure the prompt, complete and final dismissal with prejudice of the Proceeding against the Janssen Defendants. The party required to file applications as a result of this section 2 will provide drafts to the other party in advance, with sufficient time to review and have meaningful input on the contents of same.

### **2.2 Application Seeking Certification and Approval of Notice**

(1) The Plaintiff shall file an application with the Court, on consent of the Janssen Defendants, as soon as practicable after this Settlement Agreement is executed, for an order certifying the Proceeding against the Janssen Defendants (for settlement purposes only) and approving the Hearing Notice and Hearing Notice Plan (the "Certification and Hearing Notice Order").

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### **2.3 Applications Seeking Approval of the Settlement Agreement**

(1) The Plaintiff shall file an application with the Court for the Settlement Approval Order as soon as practicable after:

- (a) the Certification and Hearing Notice Order is granted; and
- (b) the Hearing Notice has been provided to Class Members in accordance with the Certification and Hearing Notice Order.

(2) The application referred to in subsections (1) above shall be set for hearing as soon as practicable after the respective Opt Out Deadline and the date for delivery of the completed Opt Out Forms to the Janssen Defendants.

(3) Class Counsel will provide the Janssen Defendants' Counsel with any statutorily required consents or approvals to the settlement from each of the Provincial Health Insurers prior to publishing or distributing the Hearing Notice, with the consents or approvals provided to the Court in advance of the Approval Hearing.

### **2.4 Saskatchewan Registration**

(1) Once the Court has granted the Settlement Approval Order, Class Counsel will register the Settlement Approval Order issued by the Court in Saskatchewan pursuant to sections 3 and 4 of *The Enforcement of Canadian Judgments Act, 2002*, SS 2002, c E-9.1001, as amended, to effect the Saskatchewan Registration.

(2) The Janssen Defendants will make best efforts to facilitate Class Counsel in effecting the Saskatchewan Registration.

### **2.5 Dismissal of Ontario Proceeding or Registration in Ontario**

(1) In the event that the Ontario Proceeding is not dismissed pursuant to section 29.1 of the *Ontario Class Proceedings Act, 1992*, S.O. 1992, c. 6 by thirty (30) days before the Approval Hearing, the Parties will enter into good faith negotiations to resolve any additional steps required in order to register the Settlement Approval Order in Ontario under the applicable interprovincial judgment enforcement legislation for enforcement purposes, consistent with the principles

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reflected herein regarding the Saskatchewan Registration, and advise the Court of those arrangements at the Approval Hearing; the Court approving the settlement may be asked to resolve any disagreement in this regard at the Approval Hearing, if necessary.

## **2.6 Objections**

(1) A Class Member may object to the approval of the Settlement by sending a written objection by pre-paid mail, courier, or email to Class Counsel. Objections must be received before 5:00 p.m. Vancouver time on a date that is five (5) days before the date of the Approval Hearing.

(2) A Class Member who wishes to object to the Settlement Approval Order must state in his/her/their objection:

(a) The full name, current mailing address, telephone number, and email address of the person who is objecting;

(i) A brief statement of the nature and reasons for the objection;

(ii) A declaration that the person believes he/she/they is a member of the Class and the reason for that belief;

(iii) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, and email address of counsel; and

(iv) Class Counsel shall, no later than three (3) days before the date of the Approval Hearing, report to the Court, by affidavit, with a copy to the Janssen Defendants' Counsel, the names of persons who objected and copies of any objections.

## **2.7 Pre-Application Confidentiality**

(1) Until the application required by section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of Counsel for the Janssen Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records

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(including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law; however, the Janssen Defendants and/or the Janssen Defendants' Counsel may discuss the Settlement Agreement with Bayer Inc. and its counsel at the Janssen Defendants' sole discretion. Nothing in this section shall bar counsel from communicating with clients or the Provincial Health Insurers, provided that they also shall be required to maintain confidentiality consistent with the provisions of this section.

#### **2.8 Settlement Agreement Effective**

- (1) This Settlement Agreement shall only become final following the Effective Date.

### **SECTION 3 - NOTICE TO THE CLASS**

#### **3.1 The Notices**

- (1) The Parties have agreed to the form, contents and method of dissemination of the Hearing Notice and the Settlement Approval Notice, subject to approval by the Court, which shall be sought by way of the Plaintiff's applications.
- (2) The Settlement Approval Notice shall be disseminated in accordance with the Settlement Approval Notice Plan as soon as practicable after the Effective Date.
- (3) The costs of publishing and distributing the Hearing Notice and the Settlement Approval Notice, including the associated professional fees (but expressly excluding Class Counsel Legal Fees), will form part of the costs to be paid out of the Settlement Amount.
- (4) No costs associated with publishing and distributing the Hearing Notice and the Settlement Approval Notice will be incurred until each of the Provincial Health Insurers confirm their approval of this Settlement Agreement and Provincial Health Insurer Release, and provide the statutorily required consents and approvals.

#### **3.2 Cooperation**

- (1) The Parties shall cooperate, assist one another and undertake all reasonable actions in order to ensure that the Notices are disseminated in a timely manner by Class Counsel.



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#### **SECTION 4 - SETTLEMENT BENEFITS**

##### **4.1 Payment of Settlement Amount**

- (1) The Janssen Defendants shall deposit the Settlement Amount in the Trust Account within 30 days of the Effective Date, provided the conditions set forth in section 4.1(2), below, are met.
  - (2) Payment of the Settlement Amount shall be made by wire transfer. At least twenty-one (21) business days prior to any payment becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, Trust Account number, any required tax forms, beneficiary's address and bank contact details.
  - (3) The Settlement Amount to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Released Parties.
  - (4) The Settlement Amount shall be inclusive of all amounts, including, without limitation, interest, costs, Class Counsel Fees and claim administration costs, and other legal fees, and Provincial Health Insurer claims.
  - (5) The Janssen Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.
  - (6) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement and shall not pay out all or any part of the money in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.
- ##### **4.2 Taxes and Interest**
- (1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Class Members and the Provincial Health Insurers and shall become and remain part of the Trust Account and the Net Settlement Proceeds.

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(2) All taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Janssen Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the money in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Janssen Defendants which, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel.

#### **4.3 Compensation Protocol**

(1) Class Counsel will draft the Compensation Protocol, to be approved by the Court. The Janssen Defendants shall have no involvement in the formulation, drafting, or approval of the Compensation Protocol, except that the Parties have agreed that compensation will not be paid to any person unless they have established both that: (i) they ingested brand name Levaquin; and (ii) they did so within sixty (60) days of developing Peripheral Neuropathy. Subject to the foregoing, Class Counsel may consult with the Janssen Defendants and/or Janssen Defendants' Counsel to formulate the Compensation Protocol at Class Counsel's sole discretion.

(2) Upon approval by the Court, the Compensation Protocol will be used in determining the amount each Class Member may be entitled to by way of recovery from the Net Settlement Proceeds.

#### **4.4 Claims and Claimants**

(1) Class Members and Provincial Health Insurers shall be eligible for the relief provided for in this Settlement Agreement and the Compensation Protocol, subject to their terms.

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#### **4.5 *Cy Près* Distribution**

(1) Any *de minimus* funds remaining after distribution of the Net Settlement Proceeds pursuant to the Compensation Protocol, whether as a result of failure of Class Members to make claims or as a result of cheques having become stale dated and/or such other forms of payment as may be made to Settling Claimants and which may otherwise expire without having been claimed, shall be distributed to the Law Foundation of British Columbia and/or to such other organization as proposed by Class Counsel and the Janssen Defendants and approved by the Court.

#### **4.6 Distribution of the Settlement Amount**

(1) On or after the Effective Date, Class Counsel shall distribute the Settlement Amount to the Settling Claimants and Provincial Health Insurers in accordance with the Compensation Protocol, after payment of the following from the Settlement Amount:

- (a) \$15,000 of the Settlement Amount will be allocated to the Provincial Health Care Recovery Fund and distributed on a claims made basis and in the event that the claims made by the Provincial Health Insurers exceeds the Provincial Health Care Recovery Fund amount of \$15,000, the claims amount paid to any Provincial Health Insurer as to their rights of recovery will be made on a *pro rata* basis. Any excess funds remaining in the Provincial Health Care Recovery Fund that have not been distributed in accordance with the Settlement Agreement will be provided to the Law Foundation of British Columbia as a *cy pres* distribution;
  - (b) Class Counsel Legal Fees, as approved by the Court;
  - (c) all of the costs and expenses reasonably and actually incurred in connection with the provision of Settlement Approval Notice in accordance with the Notice Plan;
  - (d) all of the costs and expenses reasonably and actually incurred in connection with the administration of the settlement; and
  - (e) any taxes required by law to be paid to any governmental authority.
- (2) Payments made to the Provincial Health Insurers from the Provincial Health Care Recovery Fund shall be in full and final satisfaction of all Provincial Health Insurer Rights of Recovery they

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may have in relation to Class Members' use of Levaquin (excluding claims relating to Tendon Injuries) pursuant to the legislation of each jurisdiction, whether insured services were already provided or are yet to be provided to Class Members.

(3) In order to receive a payment, a Provincial Health Insurer must execute a Provincial Health Insurer Release.

## **SECTION 5 - TERMINATION**

### **5.1 General**

(1) Termination rights are as follows:

- (a) The Janssen Defendants shall have the right to terminate this Settlement Agreement in the event that:
  - (i) the Opt Out Threshold is exceeded;
  - (ii) any of the Provincial Health Insurers do not both confirm their approval of this Settlement Agreement and provide the statutorily required consents, approvals and release;
  - (iii) the Saskatchewan Registration is denied; or
  - (iv) the Ontario Proceeding is not dismissed or a registration of the Settlement Approval Order in Ontario as described in section 2.5(1) is denied.
- (b) Each of the Parties shall have the right to terminate this Settlement Agreement in the event that:
  - (i) the Settlement Approval Order is denied and, following appeal, the denial of the Settlement Approval Order becomes a Final Order;
  - (ii) the Settlement Approval Order is entered but reversed on appeal and the reversal becomes a Final Order; or
  - (iii) the Court approves this Settlement Agreement in a materially modified form that is not agreed to by both the Parties.

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(2) Any order, ruling or determination made (or rejected) by the Court with respect to the Compensation Protocol (other than the qualification in sub paragraph 4.3(1)(i) and (ii) above) or Class Counsel Legal Fees shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement. For greater certainty, this settlement is not conditioned on the Court's approval of any particular compensation protocol or class counsel fee.

(3) To exercise a right of termination, the terminating party shall deliver a written notice of termination to counsel for the other party within 30 days of the event giving rise to the right to terminate. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in sections 5.2 and 5.3, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

#### **5.2 Effect of Termination**

- (1) In the event this Settlement Agreement is terminated in accordance with its terms:
- (a) it shall be null and void and shall have no force or effect, and the Parties shall not be bound by its terms, except as specifically provided in this Settlement Agreement;
  - (b) any order certifying the Proceeding for the purposes of settlement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and everyone shall be estopped from asserting otherwise;
  - (c) all negotiations, statements and proceedings relating to this Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and shall not be admissible or used as evidence or otherwise in any litigation; and
  - (d) the Parties shall be returned to their respective positions in respect of the Proceeding immediately before the Settlement Agreement was executed.

#### **5.3 Survival**

- (1) Notwithstanding section 5.2(1) of this Settlement Agreement, if this Settlement Agreement is terminated, the provisions of this section, and sections 2.7, 5, 7.1 and 7.2, and the definitions

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applicable thereto of this Settlement Agreement, shall survive termination and shall continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of interpreting these sections of this Settlement Agreement, but for no other purposes.

#### **5.4 Termination Orders**

- (1) If this Settlement Agreement is terminated, Class Counsel shall, within thirty (30) days after termination, apply to the Court for an order:
  - (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in section 5.3(1) of this Settlement Agreement; and
  - (b) setting aside any Certification and Hearing Notice Order and/or Settlement Approval Order made in accordance with the terms of this Settlement Agreement.
- (2) Subject to section 5.4(2) of this Settlement Agreement, the Parties shall consent to the order sought in any application made pursuant to section 5.4(1) of this Settlement Agreement.
- (3) If there is any dispute about the termination of this Settlement Agreement, the Court shall determine any dispute by application on notice to the Parties.

### **SECTION 6 - OPT OUT PROVISIONS**

#### **6.1 Opting Out**

- (1) Persons who wish to opt out and exclude themselves from the Class must do so by sending a complete and signed Opt Out Form to Class Counsel in accordance with the Certification and Hearing Notice Order, by the Opt Out Deadline. An Opt Out will only be valid if it is received by Class Counsel at one of the designated addresses on or before the Opt Out Deadline.

#### **6.2 Opt Out Forms**

- (1) Class Counsel shall provide the Janssen Defendants' Counsel with the number of Opt Outs pursuant to section 6.1(1) and copies of any completed Opt Out Forms within five (5) days of the Opt Out Deadline. The Approval Hearing will be scheduled on a date that falls after this information and the Opt Out Forms are provided.

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**6.3 Defendants' Rights Reserved**

- (1) The Janssen Defendants reserve all of their legal rights and defences with respect to any Opt Outs.

**SECTION 7 - EFFECT OF SETTLEMENT****7.1 No Admission of Liability**

- (1) The Plaintiff and the Released Parties expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, orders and proceedings associated with this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Released Parties, or of the truth of any of the claims or allegations contained in the Proceeding or any other pleading filed by the Plaintiff. Further, this Settlement Agreement shall not be deemed, construed or interpreted to be any admission or evidence of satisfaction of any of the criteria for certification of a class proceeding in respect of any contested certification motion that may be brought absent this Settlement Agreement.

**7.2 Agreement Not Evidence**

- (1) The Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a pending or future proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

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### **7.3 Confidentiality**

(1) Subject to the other terms of this Settlement Agreement, the Plaintiff and Class Counsel (whether directly or via local counsel in any Canadian Province or Territory) may not divulge to anyone for any purpose any information obtained in the course of the Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available (so long as the information does not become publicly available through a breach of this section) or unless ordered to do so by a court of competent jurisdiction.

## **SECTION 8 - RELEASES AND DISMISSALS**

### **8.1 Exclusive Remedy**

(1) This Settlement Agreement shall be the exclusive remedy for all claims by or through Class Members respecting their use of Levaquin, with the exception only of claims for Tendon Injuries.

(2) On the Effective Date, each Class Member, whether or not he or she submits a claim or otherwise receives compensation, shall be deemed by this Settlement Agreement to have completely and unconditionally released, forever discharged, and acquitted the Released Parties from the Released Claims.

(3) Each Class Member, whether or not he/she/they submits a claim or otherwise receives a Claim Amount, will be forever barred and enjoined from continuing, commencing, instituting, prosecuting, seeking to claim or recovering any compensation of any nature or kind in any action, litigation, investigation, or other proceeding in any other forum, directly, representatively or derivatively, or as a class member, asserting against any of the Janssen Defendants any claims that relate to or constitute any Released Claims covered by this Settlement Agreement.

### **8.2 Third-Party Contribution or Indemnity Claims**

(1) Class Members who commence or continue litigation against any person or entity who may make a claim for contribution and/or indemnity against any Released Party, shall limit the value and right of recovery of such claim against such person or entity to the quantum of damages, interest and costs apportioned against such person or entity severally and not jointly with any Released Party. Such Class Members will make best efforts to have any third party or other claims



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made against Released Parties for contribution and/or indemnity in respect of such litigation dismissed, at their expense, and hereby consent to any application brought by a Released Party seeking dismissal of such a claim against it with costs payable by the Class Member to the Released Party.

(2) In the event that litigation commenced or continued by a Class Member who has not opted-out of the Proceeding results in a claim over or judgment against any or all of the Janssen Defendants and/or any other Released Party to pay any amount to any party, such Class Member shall then fully hold harmless, reimburse and indemnify the Janssen Defendants and/or other Released Parties for the full amount of such claim over or judgment, together with any interest, and counsel fees and disbursements incurred by the Janssen Defendants and/or Released Parties in defence of such claims.

(3) To the extent that the provision of benefits to any Settling Claimant under this Settlement Agreement may give rise to a claim or potential claim for subrogation or reimbursement against the Janssen Defendants and/or Released Parties by any person or entity other than a Provincial Health Insurer, the Settling Claimant with respect to whom such claim or potential claim relates shall be responsible for resolving such claim or potential claim prior to receiving any benefits under this Settlement Agreement.

(4) To the extent that any such claim for subrogation or reimbursement is asserted against the Janssen Defendants and/or Released Parties by any person or entity other than a Provincial Health Insurer notwithstanding this provision, such Claimant shall then fully hold harmless, reimburse and indemnify the Janssen Defendants or Released Parties for the full amount of such claims, together with any interest, and counsel fees and disbursements incurred by the Janssen Defendants or Released Parties in the defence of such claims.

### **8.3 Bar Order**

(1) All claims for contribution, indemnity or claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to one or more Class Members' Released Claims, which were or could have been brought in the Proceeding or otherwise by Bayer Inc. against a Releasee or by the Janssen Defendants against Bayer Inc. are barred, prohibited and enjoined (unless such claim is made in respect of a claim by a person who

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has validly opted out of the Proceeding). This provision will be included in the Settlement Approval Order.

(2) Class Members will not make joint and several claims against Bayer Inc. but shall restrict their claims to several claims against Bayer Inc. such that the Class Members shall be entitled to receive only those damages proven to have been caused solely by Bayer Inc.

#### **SECTION 9 - SUBMITTING CLAIMS**

(1) Claims shall be submitted by Class Members in the manner contemplated by the Compensation Protocol, or in any other manner approved by the Court.

#### **SECTION 10 - LIMITATION DEFENCE**

(1) Nothing in this Settlement Agreement shall constitute or be deemed to constitute a waiver by the Janssen Defendants or Released Parties of defences based on statutes of limitation or repose, prescription periods or any other limitation or prescription defence with respect to any Opt Out, or other person.

#### **SECTION 11 - AMENDMENTS TO THE SETTLEMENT AGREEMENT**

(1) The Parties may amend this Settlement Agreement in writing, by consent and upon approval of the Court.

#### **SECTION 12 - LEGAL FEES AND DISBURSEMENTS**

##### **12.1 Fee Approval**

(1) Class Counsel shall bring an application to the Court for the determination of Class Counsel Legal Fees to be paid from the Settlement Amount. Class Counsel Fees will be awarded at the discretion of the Court.

(2) The Settlement Agreement and its approval are not contingent on the outcome of any application regarding Class Counsel Legal Fees. A separate order from the Settlement Approval Order will be taken out with respect to the approval of Class Counsel Fees, disbursements, and any honouraria.

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(3) Class Counsel shall not be precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of this Settlement Agreement. All such amounts awarded shall be paid from the Settlement Amount.

(4) The Released Parties will not be parties to the applications concerning the approval of Class Counsel Legal Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Legal Fees and they will not take any position or make any submissions concerning Class Counsel Legal Fees.

### **SECTION 13 - MISCELLANEOUS PROVISIONS**

#### **13.1 Negotiated Agreement**

(1) This Settlement Agreement is the product of arm's length negotiations between Class Counsel, the Janssen Defendants' Counsel, and/or parties represented by counsel. No Party shall be deemed to be the drafter of this Settlement Agreement or any provisions hereof. No presumption shall be deemed to exist in favor of or against any Party as a result of the preparation or negotiation of this Settlement Agreement.

(2) This Settlement Agreement shall be binding on the Parties regardless of any change in the law that might occur after the date each Party signed this Settlement Agreement.

#### **13.2 Entire Agreement**

(1) This Settlement Agreement, including its recitals and exhibits, as well as other documents expressly referred to and defined herein (e.g. the Hearing Notice, Hearing Notice Plan, Certification and Hearing Notice Order, Settlement Approval Order, Saskatchewan Registration, and Provincial Health Insurer Release) constitutes the entire agreement by and among the Parties with regard to the subject matter of this Settlement Agreement and, on the Effective Date, shall supersede any previous agreements and understandings between the Parties with respect to the subject matter of this Settlement Agreement, except as expressly agreed in writing by the Parties after execution of this agreement.

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### **13.3 Counterparts**

(1) This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(2) Each of the signatories hereto warrant and represent that they are authorized to enter into this Settlement Agreement on behalf of the Parties on whose behalf this Settlement Agreement has been executed.

### **13.4 Class Member Notification**

(1) All communications from Class Counsel to Class Members may be made by regular mail and/or email to such person's last mailing address and/or email address provided by such person to Class Counsel.

### **13.5 Governing Law**

(1) This Settlement Agreement shall be governed by and interpreted pursuant to the laws of British Columbia.

### **13.6 Currency**

(1) All dollar amounts referred to in this Settlement Agreement are expressed in Canadian dollars.

### **13.7 Dates**

(1) Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and, as necessary, with the approval of the Court.

### **13.8 Party Notification**

(1) Any notification, request, instruction or other document to be given by any Party to any other Party to this Settlement Agreement (other than class notification) shall be in writing and shall be addressed as follows:

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(a) If to: **THE PLAINTIFF and/or CLASS COUNSEL,**

**K.S. Garcha  
Garcha & Company  
Barristers & Solicitors  
#405-4603 Kingsway  
Burnaby, BC V5H 4M4  
Tel: 604-435-4444 or 1-844-878-0444 (toll free)  
Fax: 604-435-4944  
Email: ksgarcha@garchalaw.ca**

(b) If to: **THE JANSSEN DEFENDANTS and/or JANSSEN DEFENDANTS' COUNSEL,**

**Gordon McKee and Robin Reinertson  
Blake, Cassels & Graydon LLP  
595 Burrard Street, Suite 2600  
Vancouver, BC V7X 1L3  
Tel.: 604-631-3300 or 416-863-2400  
Email: gordon.mckee@blakes.com and rlr@blakes.com**

### **13.9 French Translation**

- (1) Class Counsel shall prepare a French translation of all notices and forms required for participation in the Settlement.
- (2) In case of any ambiguity or dispute about interpretation, the English version of all documents is official and shall prevail.

### **13.10 French Language Clause**

- (1) Les parties ont convenu que cette Entente soit rédigée en anglais.

### **13.11 Application for Directions**

- (1) Class Counsel or the Janssen Defendants may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All applications contemplated by this Settlement Agreement shall be on notice to the Plaintiff and Janssen Defendants, as applicable.

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**13.12 Acknowledgements**

- (1) Each of the Parties hereby affirms and acknowledges that:
- (a) He, she, they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
  - (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, them or the Party's representative by his, her or its counsel;
  - (c) He, she, they or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
  - (d) No Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute the Settlement Agreement.

**13.13 Communications Regarding this Settlement**

- (1) The Parties agree that no public statements shall be made by them regarding the Proceeding or their settlement that are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements they make regarding the Proceeding will indicate that the settlement with the Janssen Defendants has been negotiated and agreed by the Parties and approved by the Court without any admissions or findings of liability or wrongdoing and without any admissions or conclusions as to the truth of any of the facts alleged in the Proceeding, all of which are specifically denied.

**13.14 Authorized Signatures**

- (1) Each of the undersigned represents that he, she or they is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

**13.15 Date of Execution**

(1) The Parties have executed the Settlement Agreement as of the date on the cover page.

Dated: October 3, 2022

**CLASS COUNSEL**



Name:  
**GARCHA & COMPANY**  
Class Counsel

Dated: Oct. 4, 2022

**JANSSEN INC., JANSSEN  
PHARMACEUTICALS INC., JANSSEN  
RESEARCH & DEVELOPMENT, LLC**



Name: Gordon Walker  
**BLAKE, CASSELS & GRAYDON LLP**

**SCHEDULE "A": CERTIFICATION AND HEARING NOTICE ORDER**

No. S167919  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**LLOYD ACHTYMICHUK**

PLAINTIFF

AND

**BAYER INC., JANSSEN INC., JANSSEN PHARMACEUTICALS, INC.,  
and JANSSEN RESEARCH & DEVELOPMENT, LLC**

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**ORDER**

BEFORE ) THE HONOURABLE JUSTICE SHARMA ) \_\_\_/\_\_\_/2022  
) )  
) )

ON THE APPLICATION of the Plaintiff coming on for hearing before the Honourable Madam Justice Sharma at the Courthouse at 800 Smithe Street, Vancouver, B.C., on \_\_\_/\_\_\_/2022, on reading the materials filed, including the settlement agreement dated as of [5], 2022 ("Settlement Agreement"), and on hearing K.S. Garcha and Paul S. Sanghe, counsel for the Plaintiff, Lloyd Achtymichuk; S. Gordon McKee, Robin L. Reinertson, and Karine Russell, counsel for the Defendants, Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC; and William McNamara, Grant Worden and Morag McGreevey, counsel for the Defendant, Bayer Inc., and on being advised that, subject to Court approval, the Plaintiffs and the Janssen Defendants have entered into the proposed Settlement Agreement attached hereto as Schedule "A", and that the Plaintiff and the Defendants consent to this Order:

THIS COURT ORDERS that:

1. The Settlement Agreement in its entirety is incorporated by reference in this Order. The definitions in the Settlement Agreement are incorporated into and shall be applied in interpreting this Order.



### Certification

2. This Proceeding is certified against the Janssen Defendants as a class proceeding for settlement purposes only.
3. The Class is certified as follows:
  - (i) All resident persons in Canada (excluding residents of Quebec), who were prescribed and/or ingested Levaquin in Canada at any time on or before the date of the certification order; and
  - (ii) All persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages.
4. Lloyd Achtymichuk is appointed as the representative plaintiff for the Class.
5. The causes of action asserted on behalf of the Class are set out in the Third Further Amended Notice of Civil Claim herein and include, among other things, negligence, breach of duty to warn, negligent and fraudulent misrepresentation, breach of the applicable consumer protection legislation, unjust enrichment, and waiver of tort. The relief sought by the Class is set forth in the Third Further Amended Notice of Civil Claim herein and includes various declarations, general, special, punitive, aggravated and exemplary damages, orders with respect to medical monitoring, accounting and disgorgement of profits, damages pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c. 126, interest, and costs.
6. The common issue in the Proceeding for settlement purposes is: Did the Janssen Defendants breach a duty to warn of the risk of Peripheral Neuropathy?

### Notices

7. The long, abridged and press release form of the Hearing Notice are hereby approved substantially in the forms attached to this Order as Schedules "B" to "D".
8. The Hearing Notice Plan is hereby approved substantially in the form attached to this Order as Schedule "E" and that the Hearing Notice shall be disseminated in accordance with the Hearing Notice Plan.
9. The Hearing Notice Plan constitutes fair and reasonable notice to the Class of the settlement Approval Hearing.

### Opt Outs

10. The Opt Out Form is approved substantially in the form attached to this Order as Schedule "F".
11. The Opt Out Deadline to opt out of this Proceeding is set for a date that is sixty (60) days after the date on which the Hearing Notice is first published.

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12. A member of the Class may opt out of this Proceeding by sending a complete Opt Out Form to Class Counsel by the Opt Out Deadline.
13. If a member of the Class opts out of this Proceeding, all related family class members will be deemed to have opted out of the Proceeding.
14. No person may opt out a Class Member who is a minor or a person who is otherwise under a legal disability without leave of the Court after notice to the office of the Public Guardian and Trustee, as the case may be.
15. No Class Member may opt out of the Proceeding after the Opt Out Deadline.
16. Within five (5) days of the Opt Out Deadline, Class Counsel shall provide to the Janssen Defendants the number of Opt Outs and copies of any completed Opt Out Forms in accordance with the Settlement Agreement.

#### **Settlement Approval Hearing**

17. The application for settlement approval in this Proceeding shall be heard on [§] at the Courthouse, at 800 Smithe Street, Vancouver, B.C., or at such other place and time or on such other terms, as this Court may direct in light of COVID-19 protocols.
18. The Approval Hearing will be conducted to determine whether the Settlement Agreement is fair, reasonable, and in the best interest of Class Members in accordance with the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

#### **Objections**

19. A Class Member may object to the approval of the settlement by sending a written objection by pre-paid mail, courier, or email to Class Counsel in accordance with the Settlement Agreement. Objections must be received before 5:00 p.m. Vancouver time five (5) days before the date of the Approval Hearing.
20. A Class Member who wishes to object to the Settlement Approval Orders must state in their objection:
  - (i) The full name, current mailing address, telephone number, and email address of the person who is objecting;
  - (ii) A brief statement of the nature and reasons for the objection;
  - (iii) A declaration that the person believes they are a member of the Class and the reason for that belief; and
  - (iv) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, and email address of counsel.

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**Other**

21. This Order is contingent upon, and the terms of this Order shall not be effective unless and until: (i) the Saskatchewan Registration of the Settlement Approval Order is effected in the Saskatchewan Court of Queen's Bench pursuant to *The Enforcement of Canadian Judgements Act, 2002*, SS 2002, c E-9.1001; and (ii) the Ontario Proceeding is dismissed pursuant to section 29.1 of the *Ontario Class Proceedings Act, 1992*, S.O. 1992, c. 6 by thirty (30) days before the Approval Hearing, or if the Ontario Proceeding is not dismissed, the Settlement Approval Order is registered in Ontario under the applicable interprovincial judgment enforcement legislation for enforcement purposes.
22. In the event the Settlement Agreement is not approved by the Court, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, then the Settlement Agreement shall become null and void pursuant to its terms, and the within Order certifying this Proceeding for settlement purposes is hereby set aside, without further Order of this Court.
23. There shall be no costs of this application.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

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Signature of K. S. Garcha  
Lawyer for the Plaintiff, Lloyd Achtymichuk

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Signature of S. Gordon McKee  
Lawyer for the Defendants, Janssen, Inc.,  
Janssen Pharmaceuticals, Inc., and Janssen  
Research & Development, LLC

---

Signature of William McNamara  
Lawyer for the Defendant, Bayer Inc.

BY THE COURT.

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Registrar

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## SCHEDULE "B": LONG, ABRIDGED AND PRESS RELEASE FORM OF HEARING NOTICE

### NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT OF LEVAQUIN® LITIGATION

**PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS.**

This Notice contains a summary of some of the terms of the Settlement Agreement. All capitalized terms not otherwise defined have the meaning ascribed to them in the Settlement Agreement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

### NOTICE OF CERTIFICATION FOR SETTLEMENT PURPOSES

A Canada-wide settlement ("Settlement") (excluding residents of Quebec) has been reached with respect to the Janssen Defendants in a proposed class action relating to the prescription drug Levaquin® and Peripheral Neuropathy. This notice advises you that as a part of the settlement process, the following lawsuit (the "Proceeding") has been certified against the Janssen Defendants as a class action for settlement purposes: *Lloyd Achtymichuk v. Bayer Inc., Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC*, in the Vancouver Registry of the Supreme Court of British Columbia under Court File No. S167919. The Settlement is not in respect of claims against Bayer Inc. in the Proceeding. The Proceeding as it relates to Bayer Inc. is ongoing.

The Proceeding raises various allegations against the Janssen Defendants and sought damages on behalf of Canadians (excluding residents of Quebec) for Peripheral Neuropathy allegedly related to the use of Levaquin. The Janssen Defendants deny the allegations made in the Proceeding, make no admission as to the truth of these allegations, and deny any wrongdoing.

The allegations made in the Proceeding have not been proven in Court and should not be considered in any way to be medical advice.

This Notice advises you of the certification of the Proceeding as a class action for the purpose of implementing the national Settlement Agreement (the "Settlement") and of the hearing that will be held to decide whether the Settlement should be approved. You may attend the Settlement approval hearing. You can review the originating pleading, the certification Order, as well as the Settlement Agreement and related documents at the settlement website: [\[insert\]](#) or you can contact the Court or Class Counsel, at the address listed below.

### WHO IS INCLUDED?

If the Settlement is approved, it will apply to: (a) All resident persons in Canada (excluding residents of Quebec) who were prescribed and used Levaquin in Canada at any time on or before the date of the certification order; and (b) All persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages (together, the "Class"). The Settlement excludes claims for Tendon Injuries.

A Certification Order for the purposes of settlement has been granted for the following Class:

- (i) All persons resident in Canada (excluding residents of Quebec), who were prescribed and/or ingested Levaquin in Canada at any time on or before the date of the certification order; and
- (ii) All persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages.

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**WHAT IS THE PROPOSED SETTLEMENT?**

The Settlement provides for the creation of a \$525,000 (CDN) settlement fund which will be used to pay the costs of notice and administration, compensation for approved claimants, the claims of Provincial Health Insurers, and Class Counsel legal fees.

Payments to approved claimants will be made to Class Members who show that they (a) ingested brand name Levaquin; and (ii) they did so within sixty (60) days of developing Peripheral Neuropathy. Net settlement proceeds will be allocated among the approved claimants in accordance with the Compensation Protocol. The Compensation Protocol can be found here: [§]. Not all Class Members will be eligible for compensation.

[§] of the Settlement Amount will be allocated to a Provincial Health Care Recovery Fund for the recovery of any costs of insured health or medical services by the Provincial Health Insurers.

If the Settlement is approved, Class Counsel will make an application for Class Counsel legal fees of \$[§] to be paid from the Settlement Amount. Approval of the Settlement is not contingent on the outcome of any application regarding Class Counsel legal fees.

Any undistributed balance of the Settlement Amount as determined by Class Counsel will be donated, *cy près* to an organization(s) proposed by Class Counsel and to the Law Foundation of British Columbia, as approved by the Court and advised by Class Counsel.

**RIGHT TO PARTICIPATE OR OPT OUT**

If you are a Class Member and wish to participate in the Settlement, you do not need to do anything at this time. Class Members who do not opt out will be bound by the Settlement and the releases in it and will be entitled to share in any of the benefits that may become available to them as Class Members, provided that they proceed within the timeframes provided for in the Settlement to advance their claims.

Remaining in the Class will not affect your rights, if any, in the Saskatchewan lawsuit described below, in respect of claims for Tendon Injuries.

If you are a Class Member and you do not wish to participate in the Settlement, then you must opt out. Opt Out Forms are available at [insert website] or by contacting Class Counsel at the address below. The deadline to opt out of the Settlement and the Proceeding is [date]. By opting out, you are choosing:

- (1) not to take part in the Settlement;
- (2) not to participate in any way in the Proceeding; AND
- (3) not to participate in any benefits arising from the Settlement or the Proceeding against the Janssen Defendants.

Class Members who opt out will not be bound by the Settlement or the releases in the Settlement but will also not be entitled to share in any of the proceeds that may become available to Class Members as part of the Settlement.

The Proceeding against the Janssen Defendants will be dismissed as part of the Settlement. There will be no further opportunity to opt out of the Settlement, or the Proceeding as it relates to the Janssen Defendants.

**SETTLEMENT APPROVAL HEARING**

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In order for the Settlement to become effective, it must be approved by the Supreme Court of British Columbia. The Court must be satisfied that the Settlement is fair, reasonable, and in the best interest of the Class Members. The date for the Settlement Approval Hearing has been scheduled for [insert date & time] at the Supreme Court of British Columbia, 800 Smith Street, Vancouver, British Columbia.

If the Settlement approval hearing is adjourned and/or if the hearing is to be held virtually, details will be posted on the settlement website [insert].

In the event that the Settlement Agreement is not approved by the Court in a form agreed to by the Parties, the Settlement Agreement shall terminate and its terms shall no longer be binding on the Class Members. In that case, all parties shall be restored to their pre-Settlement Agreement positions and the certification order shall be set aside.

#### **OBJECTING TO THE PROPOSED SETTLEMENT AND OPPORTUNITY TO APPEAR**

If you wish to object to the proposed Settlement, you must submit a written objection no later than [date].

Your written objection must be sent to the Class Counsel by no later than [date] at the address listed below in this Notice. Class Counsel will file copies of all objections with the Court.

You may also attend the hearing on the date noted above, and if you have submitted a written objection, you may request to make oral submissions to the Court.

#### **NOTICE OF SETTLEMENT APPROVAL**

If the proposed Settlement is approved by the Court, a notice of approval will be published on [website] and otherwise made available as ordered by the Court. Class Members will have a limited amount of time to submit a claim for compensation. If the proposed Settlement is approved, a downloadable version of the claim package will be made available online at [website] or, alternatively, a claim package can be requested from Class Counsel by e-mail at: [insert email address Class Counsel wishes to use], by telephone at [telephone number], or by regular mail at the address listed below. If you intend to submit a claim under the proposed Settlement, you must do so on or before the expiry of the claim period, which will be posted on the settlement website: [website]

#### **OTHER PROPOSED CLASS ACTION IN SASKATCHEWAN**

There is currently another proposed class action involving Levaquin and claims for Tendon Injuries (not Peripheral Neuropathy) before the court in Saskatchewan that is not part of the Settlement (*Louise Joy Allison and Debra Gillis v. Janssen Ortho Inc., Johnson & Johnson Inc., Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, LLC, Ortho-McNeil Pharmaceuticals Inc., Bayer Inc., Bayer Corporation, Bayer Healthcare, LLC, Ranbaxy Pharmaceuticals Canada Inc., Apotex Inc. and Teva Canada Limited*, commenced in the Regina Registry of the Saskatchewan Court of Queen's Bench as Court File No. Q.B. No. 2361 of 2010). This Saskatchewan lawsuit is not certified but ongoing and relates to claims for Tendon Injuries.

#### **WHO REPRESENTS ME? CLASS COUNSEL IS:**

**Garcha & Company**  
 Barristers & Solicitors  
 #405-4603 Kingsway  
 Burnaby, BC, V5H 4M4  
 Tel.: 604-435-4444 or 1-844-878-0444 (toll free)  
 Fax: 604-435-4944  
 Email: [ksqgarcha@garchalaw.ca](mailto:ksqgarcha@garchalaw.ca)

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**LEGAL FEES**

At the Settlement Approval Hearing, Class Counsel will request approval for payment of their fees, disbursements, and applicable taxes. Class Counsel has pursued the lawsuit on a contingency basis of [%] and will seek approval from the Court for Class Counsel legal fees of \$[?] in accordance with the terms of their retainer agreement with the representative plaintiff. Individual Class Members may be responsible for legal fees incurred in advancing their claims under the Settlement, in accordance with any retainer agreements they may have entered into.

**FOR MORE INFORMATION:**

For more information on the status of the Approval Hearing or on how to opt out of the Settlement, comment or object to the Settlement, or to view the Settlement Agreement, visit [website] which will be periodically updated with information on the Settlement approval process and the Proceeding.

This Notice is a summary of the Settlement. You should consult the Settlement Agreement at the settlement website: [website] or contact Class Counsel for specific details as to your rights and obligations under the Settlement.

If you have questions about the Settlement and/or would like to obtain more information and/or copies of the Settlement Agreement and related documents in both English and French, please visit the settlement website at [website] or contact Class Counsel.

**PLEASE DO NOT CALL THE DEFENDANTS OR THE COURT ABOUT THE PROCEEDING.**

*This Notice has been approved by the Supreme Court of British Columbia.*

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**NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT OF LEVAQUIN® LITIGATION****PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS.**

A Canada-wide settlement ("Settlement") (excluding residents of Quebec) has been reached with respect to the Janssen Defendants in a proposed class action relating to the prescription drug Levaquin® and Peripheral Neuropathy. This notice advises you that as a part of the settlement process, the following lawsuit has been certified against the Janssen Defendants as a class action for settlement purposes: *Lloyd Achtymichuk v. Bayer Inc., Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC*, in the Vancouver Registry of the Supreme Court of British Columbia under Court File No. S167919 (the "Proceeding"). The Settlement excludes claims for Tendon Injuries. The Settlement is not in respect of claims against Bayer Inc. in the Proceeding. The Proceeding as it relates to Bayer Inc. is ongoing.

A hearing to approve the Settlement has been scheduled for [date].

If the Settlement is approved, it will apply to: (a) All persons resident in Canada (excluding residents of Quebec) who were prescribed and/or ingested Levaquin in Canada at any time on or before the date of the certification order; and (b) All persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages (the "Class"). To determine whether you may be eligible to receive compensation, visit [website].

If you qualify as a member of the Class and wish to participate in the Settlement, you do not need to do anything at this time. If the Settlement is approved by the Court mentioned above, another notice will be published and additional information will be provided on how to make a claim for benefits pursuant to the Settlement.

If you qualify as a member of the Class and you do not wish to participate in the Settlement, then you must opt out by completing an Opt Out Form and submitting it to Class Counsel. Class Members who do not opt out will be bound by the Settlement and the releases in it, if it is approved, and will be entitled to share in any of the benefits that may become available to them as Class Members, provided that they proceed within the timeframes provided for in the Settlement to advance their claims. The deadline to opt out of the Settlement and the Proceeding is [date].

Remaining in the Class will not affect your rights, if any, in a separate proposed class action involving Levaquin and claims for Tendon Injuries (not Peripheral Neuropathy) in Saskatchewan that is not part of the Settlement (*Louise Joy Allison and Debra Gillis v. Janssen Ortho Inc., Johnson & Johnson Inc., Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, LLC, Ortho-McNeil Pharmaceuticals Inc., Bayer Inc., Bayer Corporation, Bayer Healthcare, LLC, Ranbaxy Pharmaceuticals Canada Inc., Apotex Inc. and Teva Canada Limited*, commenced in the Regina Registry of the Saskatchewan Court of Queen's Bench as Court File No. Q.B. No. 2361 of 2010). This Saskatchewan lawsuit is not certified but ongoing and relates to claims for Tendon Injuries.

If you wish to remain a member of the Class, as applicable, but object to the proposed Settlement, you must submit a written objection no later than [date].

**CONTACT**

This is an abbreviated notice. For the complete notice, including information on benefits that may be available through the Settlement, a copy of the Settlement Agreement, how to participate in the Settlement Approval Hearing, the Opt Out Form, information on how to object to the approval of the Settlement Agreement, and all other related information is available at [website] or by contacting:

**Garcha & Company**  
Barristers & Solicitors  
#405-4603 Kingsway  
Burnaby, BC, V5H 4M4



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Tel.: 604-435-4444 or 1-844-878-0444 (toll free)  
Fax: 604-435-4944  
Email: [ksgarcha@garchalaw.ca](mailto:ksgarcha@garchalaw.ca)

**Please do not call the Defendants or the Court about the Proceeding.**  
*This Notice has been approved by the Supreme Court of British Columbia.*

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## **Garcha & Company Announces the Certification and Issues The Notice of Certification and Proposed Settlement of Levaquin® Class Action Litigation**

**PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS.**

**Vancouver:** K.S. Garcha of Garcha & Company announces that a Canada-wide settlement ("Settlement") (excluding residents of Quebec) has been reached with respect to the Janssen Defendants in a proposed class action relating to the prescription drug Levaquin® and Peripheral Neuropathy. As a part of the settlement process, the following lawsuit (the "Proceeding") has been certified against the Janssen Defendants as a class action for settlement purposes: *Lloyd Achtymichuk v. Bayer Inc., Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC*, in the Vancouver Registry of the Supreme Court of British Columbia under Court File No. S167919. The Settlement excludes claims for Tendon Injuries. The Settlement is not in respect of claims against Bayer Inc. in the Proceeding. The Proceeding as it relates to Bayer Inc. is ongoing.

A hearing to approve the Settlement has been scheduled for **[date]**.

If the Settlement is approved, it will apply to: (i) All persons resident in Canada (excluding residents of Quebec) who were prescribed and/or ingested Levaquin in Canada at any time on or before the date of the certification order; and (ii) All persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages (the "Class").

To determine whether you may be eligible to receive compensation, visit **[website]**.

If you qualify as a member of the Class and wish to participate in the Settlement, you do not need to do anything at this time. If the Settlement is approved by the Court mentioned above, another notice will be published, and additional information will be provided on how to make a claim.

If you qualify as a Class Member and you do not wish to participate in the Settlement, then you must opt out by completing an Opt Out Form and submitting it to Class Counsel. Class Members who do not opt out will be bound by the Settlement and the releases in it, if it is approved, and will be entitled to share in any of the benefits that may become available to them as Class Members, provided that they proceed within the timeframes provided to advance their claims. The deadline to opt out of the Settlement and the Proceeding is **[date]**.

Remaining in the Class will not affect your rights, if any, in a separate proposed class action involving Levaquin and claims for Tendon Injuries (not Peripheral Neuropathy) in Saskatchewan that is not part of the Settlement (*Louise Joy Allison and Debra Gillis v. Janssen Ortho Inc., Johnson & Johnson Inc., Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, LLC, Ortho-McNeil Pharmaceuticals Inc., Bayer Inc., Bayer Corporation, Bayer Healthcare, LLC, Ranbaxy Pharmaceuticals Canada Inc., Apotex Inc. and Teva Canada Limited*, commenced in the Regina Registry of the Saskatchewan Court of Queen's Bench as Court File No. Q.B. No. 2361 of 2010). This Saskatchewan lawsuit is not certified but ongoing and relates to claims for Tendon Injuries.

If you wish to remain a Class Member but object to the Settlement, you must submit a written objection no later than **[date]**.

### **CONTACT**

This is an abbreviated notice. For the complete notice, including information on benefits that may be available through the Settlement, a copy of the Settlement Agreement, how to participate in the Settlement Approval Hearing, the Opt Out Form, information on how to object to the approval of the Settlement Agreement, and all other related information is available at **[website]**, or by contacting:

**Garcha & Company**  
Barristers & Solicitors

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#405-4603 Kingsway  
Burnaby, BC, V5H 4M4  
Tel.: 604-435-4444 or 1-844-878-0444 (toll free)  
Fax: 604-435-4944  
Email: [ksgarcha@garchalaw.ca](mailto:ksgarcha@garchalaw.ca)

**Please do not call the Defendants or the Court about the Proceeding.**

*This Notice has been approved by the Supreme Court of British Columbia.*

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**SCHEDULE "C": NOTICE PLAN****NOTICE PLAN**

All capitalized terms not otherwise defined have the meaning ascribed to them in the Settlement Agreement. The Hearing Notice and the Settlement Approval Notice (together the "Notices") shall be disseminated as follows:

1. The Notices (long form) will be sent by email or direct mail by Class Counsel to any person who has requested it or who has inquired about the Proceeding or who has registered to receive updates through Class Counsel's website. Where the person specifically requests, the Notice will be sent in English and French;
2. The Notices (long form) will be sent by email to each of the Provincial Health Insurers by Class Counsel;
3. The Notices (long form) will be posted by Class Counsel, in English and French, on their website;
4. A national press release, in a form to be agreed upon by the Janssen Defendants, will be issued by Class Counsel in English and French;
5. The Notices (short form, ¼ page) will be published once, in the weekend edition of the following newspapers:
  - a. Vancouver Sun;
  - b. The National Post (National Edition);
  - c. Calgary Herald;
  - d. Regina Leader Post;
  - e. Winnipeg Free Press;
  - f. Toronto Star;
  - g. St. John's Telegram;
  - h. Telegraph Journal; and
  - i. Halifax Chronicle Herald.
6. Digital Banner Notices (digital display banner ads), in a form to be agreed upon by the Janssen Defendants, will be available for ten (10) business days on the following digital news outlet:
  - a. The National Post and their other media properties of the Postmedia Network (in English).

**SCHEDULE "D": OPT OUT FORM**

**OPT OUT FORM  
LEVAQUIN CLASS ACTIONS**

**Complete and return this Opt Out Form by no later than [DATE], ONLY IF YOU DO NOT WISH TO PARTICIPATE IN THE LEVAQUIN CLASS ACTION.**

For the purposes of this Opt Out Form, the following definitions apply:

**"Settlement"** means the Settlement Agreement made as between the Plaintiff and the Janssen Defendants, a copy of which is available at: [website]

**"Levaquin Class Action"** means the following action: *Lloyd Achtymichuk v. Bayer Inc., Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC*, in the Vancouver Registry of the Supreme Court of British Columbia under Court File No. S167919.

**Consequences of Opting Out**

By completing and returning this Opt Out Form as set out below, you are choosing:

- 1) not to take part in the Settlement,
- 2) not to participate in any way in the Class Action, AND
- 3) not to participate in any benefits arising from the Settlement or the Class Action.

If you complete this Opt Out Form you will not be bound by the Settlement or the release in the Settlement, but you will also not be entitled to share in any of the proceeds that may become available to Class Members as part of the Settlement.

In order to be effective, this form must be fully completed and sent to Class Counsel at the address set out below and must be received or postmarked no later than [date]. Opt Out Forms received or postmarked after [date] will not be accepted. For more information on the Settlement Agreement and the Levaquin Class Action, please visit [website]

Your name: \_\_\_\_\_ (required)

Your address: \_\_\_\_\_ (required)

\_\_\_\_\_  
\_\_\_\_\_

Province in which you purchased, ingested, used, or acquired your Levaquin® prescription:

\_\_\_\_\_ (required)

Your telephone number: ( ) - (required)

Your email address: \_\_\_\_\_ (optional)

Brief statement of reason(s) for Opting Out:

\_\_\_\_\_  
\_\_\_\_\_

**Declaration:**

I wish to opt out of the Settlement and the Levaquin Class Action. I understand that by submitting this Opt Out Form I will not receive any benefits under the Settlement but will not be bound by the Settlement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Return completed Opt Out Form to Class Counsel by mail or email:**

**Garcha & Company**  
Levaquin Class Action Settlement  
#405-4603 Kingsway  
Burnaby, BC, V5H 4M4  
Email: [ksgarcha@garchalaw.ca](mailto:ksgarcha@garchalaw.ca)

**SCHEDULE "E": SETTLEMENT APPROVAL ORDER**

No. S167919  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**LLOYD ACHTYMICHUK**

**PLAINTIFF**

AND

**BAYER INC., JANSSEN INC., JANSSEN PHARMACEUTICALS, INC.,  
and JANSSEN RESEARCH & DEVELOPMENT, LLC**

**DEFENDANTS**

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**ORDER**

BEFORE ) THE HONOURABLE JUSTICE SHARMA ) \_\_\_/\_\_\_/2022  
) )  
) )

ON THE APPLICATION of the Plaintiff coming on for hearing before the Honourable Madam Justice Sharma at the Courthouse at 800 Smithe Street, Vancouver, B.C., on \_\_\_/\_\_\_/2022, on reading the materials filed, including the settlement agreement dated as of [date], 2022 ("Settlement Agreement"), and on hearing K.S. Garcha and Paul S. Sanghe, counsel for the Plaintiff, Lloyd Achtymichuk; S. Gordon McKee, Robin L. Reinertson, and Karine Russell, counsel for the Defendants, Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC; and William McNamara, Grant Worden and Morag McGreevey, counsel for the Defendant, Bayer Inc., and on being advised that the Plaintiff and the Defendants consent to this Order:

THIS COURT ORDERS that:

**Settlement Approval**

1. The definitions in the Settlement Agreement are incorporated into and shall be applied in interpreting this Order.

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2. In the event of a conflict between the terms of this Order and the Settlement Agreement, the terms of this Order shall prevail.
3. All provisions of the Settlement Agreement (including its Preamble & Recitals and Definitions) form part of this Order and are binding upon the Class Members who did not opt out of this action in accordance with the Certification and Hearing Notice Order dated [date] including those persons who are mentally incapable, Class Counsel, the Provincial Health Insurers, and the Janssen Defendants.
4. The settlement of this action, as set out in the Settlement Agreement, is fair and reasonable and in the best interests of Class Members and is hereby approved pursuant to section 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, and shall be implemented and enforced in accordance with its terms.

#### **Notice and Notice Plan**

5. The form and content of the Settlement Approval Notice (long, abridged and press release form) substantially in the form attached to this Order as Schedule "A" is hereby approved.
6. The form and content of the Settlement Approval Notice Plan substantially in the form attached to this Order as Schedule "B" is hereby approved.

#### **Claims Administration**

7. Class Counsel [or such other as the Court may direct] shall administer the Settlement Amount.
8. The Janssen Defendants shall have no liability whatsoever relating to the administration of the Settlement Agreement. This includes all aspects of the administration, including, without limitation, any distribution or investment of the Settlement Amount paid by Class Counsel.

#### **Release, Bar Order, and Dismissal**

9. The releases provided at section [8] of the Settlement Agreement are approved and will take effect upon the Effective Date.
10. The Settlement Agreement and this Order are binding upon Class Members, whether or not such Class Members receive or claim compensation, including persons who are minors or are mentally incapable, and the need for service or notice of this or any further or subsequent steps in these proceedings on the Public Guardian and Trustee, as well as all other requirements in *Public Guardian and Trustee Act* and Rules 25-2 of the *Supreme Court Civil Rules*, are hereby dispensed with.
11. Upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Released Parties from the Released Claims.



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12. Upon the Effective Date, each Class Member shall be deemed to have consented to the dismissal of any other action or proceeding he or she may have commenced asserting Released Claims as against the Released Parties, without costs and with prejudice.
13. Upon the Effective Date, Class Members shall not institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Released Party, or against any other person that is entitled to claim contribution or indemnity from any Released Party, or against any other person that is entitled to claim contribution or indemnity from any Released Party, in respect of any Released Claim, except for the continuation of the Proceeding against Bayer Inc.
14. All claims for contribution, indemnity or claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to one or more Class Members' Released Claims, which were or could have been brought in the Proceeding or otherwise by Bayer Inc. against a Released Party or by the Janssen Defendants against Bayer Inc. are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of the Proceeding).
15. The Class Members shall not make joint and several claims against Bayer Inc. but shall restrict their claims to several claims against Bayer Inc. such that the Class Members shall be entitled to receive only those damages proven to have been caused solely by Bayer Inc.
16. The Parties may, without further notice to the Class or further Order of the Court, amend, modify or expand the terms and provisions of the Settlement Agreement by written agreement provided any such changes are consistent with this Order and do not limit the rights of Class Members under the Settlement Agreement.
17. Neither the Settlement Agreement (including all terms thereof), nor its performance and implementation, shall be construed as any admission by the Janssen Defendants, including but not limited as to: (1) the validity of any claim, theory, or fact; (2) any liability, fault, or responsibility; or (3) the existence, cause, or extent of any damages or losses alleged or suffered by any Class Member.
18. Other than that which has been provided in the Settlement Agreement, no Released Party shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.
19. The approval of the Settlement Agreement is contingent upon (i) the Saskatchewan Registration of the Settlement Approval Order being effected in the Saskatchewan Court of Queen's Bench pursuant to *The Enforcement of Canadian Judgements Act, 2002*, SS 2002, c E-9.1001; and (ii) the dismissal of the Ontario Proceeding pursuant to section 29.1 of the *Ontario Class Proceedings Act, 1992*, S.O. 1992, c. 6 by thirty (30) days before the Approval Hearing, or if the Ontario Proceeding is not dismissed, the registration of the Settlement Approval Order in Ontario under the applicable

interprovincial judgment enforcement legislation for enforcement purposes. If such registration, orders or dispositions are not secured in Saskatchewan and Ontario, this Order shall be null and void without prejudice to the rights of the Parties to proceed with this Proceeding and any agreement between the Parties incorporated into this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

20. This Order shall be null and void in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason.
21. For purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Parties acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
22. On notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any provisions of the Settlement Agreement.
23. Upon the Effective Date, this Proceeding is hereby dismissed against the Janssen Defendants, without costs and with prejudice, and such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

---

Signature of K. S. Garcha  
Lawyer for the Plaintiff, Lloyd Achtymichuk

---

Signature of S. Gordon McKee  
Lawyer for the Defendants, Janssen, Inc.,  
Janssen Pharmaceuticals, Inc., and Janssen  
Research & Development, LLC

---

Signature of William McNamara  
Lawyer for the Defendant, Bayer Inc.

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BY THE COURT.

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Registrar

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## SCHEDULE "F": LONG, ABRIDGED AND PRESS RELEASE FORM OF SETTLEMENT APPROVAL NOTICE

### LEVAQUIN® LITIGATION: NOTICE OF SETTLEMENT APPROVAL

**PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS.**

This Notice contains a summary of some of the terms of the Settlement Agreement. All capitalized terms not otherwise defined have the meaning ascribed to them in the Settlement Agreement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

### NOTICE OF SETTLEMENT APPROVAL

This is a notice for Class Members in the following proceeding ("Proceeding"): *Lloyd Achtymichuk v. Bayer Inc., Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC*, in the Vancouver Registry of the Supreme Court of British Columbia under Court File No. S167919. The Proceeding raised various allegations against the Janssen Defendants and sought damages on behalf of Canadians (excluding residents of Quebec) allegedly related to the use of Levaquin® and Peripheral Neuropathy. The settlement ("Settlement") of the Proceeding against the Janssen Defendants has been approved by the Court.

### WHO IS INCLUDED

The Settlement applies to: (i) All resident persons in Canada (excluding residents of Quebec) who were prescribed and/or ingested Levaquin in Canada at any time on or before date of the certification order; and (ii) All persons who by virtue of a personal relationship to one or more of such persons described in (i) above have claims for common law or statutory damages. The Settlement excludes claims for Tendon Injuries.

### SUMMARY OF THE SETTLEMENT

The Settlement provides for the payment of \$525,000, which will be used to pay approved claims, the related claims of the Provincial Health Insurers, the costs of notice and administering the Settlement, and Class Counsel legal fees, disbursements, and applicable taxes.

The Janssen Defendants deny all allegations and deny any wrongdoing or liability. The Court has not taken any position on the merits of the arguments of either the Plaintiff or the Janssen Defendants, but has determined that the Settlement Agreement is fair, reasonable, and in the best interests of the Class Members. A term of the Settlement Agreement is that the Proceeding will be dismissed against the Janssen Defendants, which means that the lawsuit has come to an end with respect to the Janssen Defendants, and there will be no trial regarding the allegations against them.

### PARTICIPATING IN THE SETTLEMENT

Class Members who satisfy the eligibility criteria set out in the Compensation Protocol may be entitled to benefits that will be calculated in accordance with the process detailed in the Compensation Protocol.

**Until all claims have been adjudicated it will not be possible to determine the exact value of the compensation that may be paid to eligible claimants.**

The medical condition that may qualify Class Members for compensation includes Peripheral Neuropathy. You may be eligible for compensation under the Compensation Protocol if you ingested brand name Levaquin, and did so within sixty (60) days of developing Peripheral Neuropathy.

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[§] of the Settlement Amount will be allocated to a Provincial Health Care Recovery Cost Fund for the recovery of costs of insured health or medical services by the Provincial Health Insurers.

Any undistributed balance of the Settlement Amount as determined by Class Counsel will be donated, cy près to the Law Foundation of British Columbia and/or to such other organization as proposed by Class Counsel and the Janssen Defendants and approved by the Court.

#### **MAKING A CLAIM**

To make a claim under the Settlement, you must complete and submit a claim form (including the necessary supporting injury evidence and prescription evidence detailed in the Compensation Protocol) to Class Counsel before the **[claim deadline]**. If you do NOT submit your claim on time, you will not be eligible for any benefits under the Settlement Agreement.

For further details on how claims will be evaluated, you should refer to the Compensation Protocol available at **[website]**.

The claim form requires that you provide medical records which can be time consuming to retrieve. It is very important that you start this process as soon as possible, if you or your lawyer have not already done so. You may wish to retain a lawyer to assist you in this process. You can retain Class Counsel or a lawyer of your choice.

#### **LEGAL FEES**

The Court approved Class Counsel's legal fees in the amount of **[\$[§]]** plus applicable taxes and disbursements in the amount of **[\$[§]]** plus applicable taxes. Class Counsel were retained on a contingency basis and were responsible for funding all expenses incurred in pursuing this litigation.

#### **FOR MORE INFORMATION**

If you have questions about the Settlement, or would like to obtain more information or copies of the Settlement Agreement, Compensation Protocol or other related documents, in English or French, please visit the settlement website at **[website]**, or contact Class Counsel.

This Notice is a summary of the Settlement Agreement. You should consult the Settlement Agreement or contact Class Counsel for specific details as to your rights and obligations under the Settlement Agreement.

#### **CLASS COUNSEL**

K.S. Garcha  
Garcha & Company  
Barristers & Solicitors  
#405-4603 Kingsway  
Burnaby, BC V5H 4M4  
Tel: 604-435-4444 or 1-844-878-0444 (toll free)  
Fax: 604-435-4944  
Email: [ksgarcha@garchalaw.ca](mailto:ksgarcha@garchalaw.ca)

**PLEASE DO NOT CALL THE DEFENDANTS OR THE COURT ABOUT THIS PROCEEDING.**

*This Notice has been approved by the Supreme Court of British Columbia.*

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**LEVAQUIN® LITIGATION: NOTICE OF SETTLEMENT APPROVAL****PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS.**

A Canada-wide settlement ("Settlement") (excluding residents of Quebec) has been reached with respect to the Janssen Defendants in a class action relating to the prescription drug Levaquin® and Peripheral Neuropathy. The Settlement of the Proceeding against the Janssen Defendants has been approved by the Court. The Janssen Defendants deny all allegations and deny any wrongdoing or liability. The Settlement excludes claims for Tendon Injuries.

If you were prescribed Levaquin® at any time on or before **[date of certification]** and subsequently experienced Peripheral Neuropathy (as defined in the Settlement Agreement), you may be entitled to compensation. The Settlement provides for the payment of \$525,000, which will be used to pay approved claims, the related claims of the Provincial Health Insurers, the costs of notice and administering the Settlement, and Class Counsel legal fees, disbursements, and applicable taxes.

The Courts have approved a Compensation Protocol that determines which Class Members are eligible for compensation and in what amount. For more information about how compensation is determined, you should review the long form Notice, Compensation Protocol, Settlement Agreement and related documents at **[website]**, or contact Class Counsel listed below.

**PARTICIPATING IN THE SETTLEMENT**

To make a claim for compensation under the Settlement Agreement, you must complete and submit a claim form (including the necessary supporting injury evidence and prescription evidence detailed in the Compensation Protocol) to Class Counsel before **[claim deadline]**. If you do NOT submit your claim on time, you will not be eligible for any benefits under the Settlement Agreement.

The claim form requires that you provide medical records which can be time consuming to retrieve. It is very important that you start this process as soon as possible, if you or your lawyer have not already done so. You may wish to retain a lawyer to assist you in this process. You can retain Class Counsel or a lawyer of your choice.

**FOR MORE INFORMATION:**

If you have questions about the Settlement and/or would like to obtain more information, please visit **[website]** or contact Class Counsel:

K.S. Garcha  
Garcha & Company  
Barristers & Solicitors  
#405-4603 Kingsway  
Burnaby, BC V5H 4M4  
Tel: 604-435-4444 or 1-844-878-0444 (toll free)  
Fax: 604-435-4944  
Email: [ksgarcha@garchalaw.ca](mailto:ksgarcha@garchalaw.ca)

Please do not call the Defendant or the Court about this Proceeding.

*This Notice has been approved by the Supreme Court of British Columbia.*

## Garcha & Company Announces the Settlement of the Levaquin® Class Action Litigation

**PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS.**

**VANCOUVER:** K.S. Garcha of Garcha & Company announces that a Canada-wide settlement ("Settlement") (excluding residents of Quebec) has been reached with respect to the Janssen Defendants in a class action relating to the prescription drug Levaquin® and Peripheral Neuropathy. The Settlement of the Proceeding against the Janssen Defendants has been approved by the Court. The Janssen Defendants deny all allegations and deny any wrongdoing or liability. The Settlement excludes claims for Tendon Injuries.

If you were prescribed Levaquin® at any time on or before **[date of certification]** and subsequently experienced Peripheral Neuropathy (as defined in the Settlement Agreement), you may be entitled to compensation. The Settlement provides for the payment of \$525,000, which will be used to pay approved claims, the related claims of the Provincial Health Insurers, the costs of notice and administering the settlement, and Class Counsel legal fees, disbursements, and applicable taxes.

The Court has approved a Compensation Protocol that determines which Class Members are eligible for compensation and in what amount. For more information about how compensation is determined, you should review the long-form Notice, Compensation Protocol, Settlement Agreement and related documents at **[website]**.

To make a claim for compensation under the Settlement Agreement, you must complete and submit a claim form (including the necessary supporting evidence detailed in the Compensation Protocol) to Class Counsel before **[claim deadline]**. If you do NOT submit your Claim on time, you will not be eligible for any benefits under the Settlement Agreement.

The claim form requires that you provide medical records which can be time consuming to retrieve. It is very important that you start this process as soon as possible, if you or your lawyer have not already done so. You may wish to retain a lawyer to assist you in this process. You can retain Class Counsel or a lawyer of your choice.

### CONTACT

This is an abbreviated notice. For the complete notice, including information on benefits that may be available through the Settlement, and to obtain a copy of the settlement agreement and Compensation Protocol visit **[website]** or contact Class Counsel:

K.S. Garcha  
Garcha & Company  
Barristers & Solicitors  
#405-4603 Kingsway  
Burnaby, BC V5H 4M4  
Tel: 604-435-4444 or 1-844-878-0444 (toll free)  
Fax: 604-435-4944  
Email: [ksgarcha@garchalaw.ca](mailto:ksgarcha@garchalaw.ca)

Please do not call the Defendant or the Court about this Proceeding.

*This Notice has been approved by the Supreme Court of British Columbia.*

## SCHEDULE "G": LIST OF PROVINCIAL HEALTH INSURERS

Province/ Territory	Ministry / Department	Legislation	Right of Recovery
Nova Scotia	Minister of Health and Wellness Department of Health and Wellness	<i>Health Services and Insurance Act</i> , RSNS 1989, c 197	"cost of the care, services and benefits"
New Brunswick	Minister of Health  Executive Council	<i>Medical Services Payment Act</i> , RSNB 1973, c M-7  <i>Health Services Act</i> , RSNB 2014, c 112	"entitled services"
Prince Edward Island	Minister of Health and Wellness	<i>Health Services Payment Act</i> , RSPEI 1988, c H-2  <i>Hospital and Diagnostic Services Insurance Act</i> , RSPEI 1988, c H-8	"basic health services" "insured services"
Newfoundland and Labrador	Minister of Health and Community Services	<i>Medical Care and Hospital Insurance Act</i> , SNL2016 cM-5.01	"insured services"
Ontario	Minister of Health and Minister of Long-Term Care	<i>Health Insurance Act</i> , RSO 1990 c H 6  <i>Home Care and Community Services Act 1994</i> , S.O., 1994, c.26	"insured services" "approved services"
Manitoba	Minister of Health, Seniors and Active Living	<i>Health Services Insurance Act</i> , CCSM, 2015 c H35	"insured services"
Saskatchewan	Minister of Health	<i>The Health Administration Act</i> , SS 2014, c E-13.1	"health services"
Quebec	Régie de l'assurance maladie du Québec	<i>Health Insurance Act</i> , 2017 CQLR c A-29	"insured services"



Province/ Territory	Ministry / Department	Legislation	Right of Recovery
		<i>Hospital Insurance Act, CQLR c A-28</i>	
Yukon	Minister of Health and Social Services	<i>Hospital Insurance Services Act, RSY 2002, c 112</i> <i>Health Care Insurance Plan Act, RSY 2002, c.107</i>	"insured services" "insured health services"
Northwest Territories and Nunavut	Minister of Health and Social Services	<i>Hospital Insurance and Health and Social Services Administration Act, RSNWT 1998, c T-3</i> <i>Medical Care Act, R.S.N.W.T. 1988, c.M-8</i>	"insured services"
Alberta	Minister of Health	<i>Crown's Right of Recovery Act, SA 2009, c C-35</i>	"the Crown's cost of health services"
British Columbia	Minister of Health	<i>Healthcare Costs Recovery Act, SBC 2008 c. 27</i>	"health care services"

**SCHEDULE "H": PROVINCIAL HEALTH INSURER CONSENT AND RELEASE**

**WHEREAS** [province specific legislation] (the "Act") permits a direct or subrogated claim (a "Claim") for the recovery of the costs for [insured services or analogous term] that have been incurred in the past and that will probably be incurred in the future and as further described in the Act and its regulations (collectively [Insured Services or Analogous Term]);

**AND WHEREAS** a proceeding was commenced in British Columbia against Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC., (collectively, the "Janssen Defendants") on behalf of a proposed class of Canadian residents (excluding residents of Quebec) who have been prescribed and/or ingested Levaquin and experienced Peripheral Neuropathy (as defined in the Settlement Agreement) (the "Proceeding");

**AND WHEREAS** pursuant to a Settlement Agreement dated [5] (the "Settlement Agreement") the Proceeding and all of the present and future claims of Class Members (as defined in the Settlement Agreement) for or relating in any way to Levaquin (excluding only claims for Tendon Injuries) are to be fully resolved, on a national basis (excluding Quebec), without admission of liability;

**AND WHEREAS** the Provincial Health Insurer (as defined in the Settlement Agreement) hereby consents to the Settlement Agreement;

**AND WHEREAS** pursuant to the Settlement Agreement, Class Members will have an opportunity to submit individual claims for settlement benefits (the "Settling Claimants" as further defined in the Settlement Agreement);

**IN CONSIDERATION OF** the payment to be made from the Settlement Amount to the Provincial Health Insurer as good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the undersigned, [5], on behalf of the Provincial Health Insurer (hereinafter "Releasor"), releases any and all manner of claims which the Provincial Health Insurer ever had, now has or hereafter can, shall or may have pursuant to provincial or territorial legislation that permits the recovery of healthcare costs or medical expenses from third parties, whether known or unknown, past or future, direct or indirect, subrogated or otherwise, relating in any way to the design, manufacture, sale, distribution, labelling, and/or use of Levaquin (excluding only claims for Tendon Injuries, as defined in the Settlement Agreement) by Class Members during the Class Period, and including, without limitation and by way of example, all subrogated and/or direct claims in respect of Class Members that were or could have been brought for the cost of medical care or treatment provided to Class Members, as well as medical screening or monitoring, arising from the facts alleged in the Proceeding, against the Released Parties (as defined in the Settlement Agreement).

**AND THE STATUTORILY DESIGNATED OFFICIAL FOR THE PROVINCIAL HEALTH INSURER REPRESENTS AND CONFIRMS** that s/he has authority to bind the Releasor.

**AND THE RELEASOR ACKNOWLEDGES** and agrees that s/he has not been induced to execute this Release by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition express or implied or collateral agreement affecting the said release.

**AND FOR THE SAID CONSIDERATION** the Releasor covenants and agrees not to make a claim or to commence or take proceedings against any of the Released Parties, including any person, firm, partnership, business or corporation who or which might claim contribution from, or to be indemnified by the Released Parties, in respect of those matters to which this release applies.

**AND IT IS UNDERSTOOD** that Released Parties, and each of them, do not admit any liability to the Releasor or others and that such liability is specifically and expressly denied.

**IN WITNESS WHEREOF** the Releasor [?] has hereunto set his/her hand and seal this  
day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name of Statutorily Designated  
Official for the Provincial Health Insurer on  
behalf of [Province]

\_\_\_\_\_  
Signature of Statutorily Designated Official for  
the Provincial Health Insurer on behalf of  
[Province]