

# NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT OF FLUOROQUINOLONE LITIGATION

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

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

## NOTICE OF CERTIFICATION FOR SETTLEMENT PURPOSES

A Canada-wide settlement ("Settlement") (excluding residents of Quebec) has been reached with respect to Janssen Inc., Janssen Pharmaceuticals, Inc., and Janssen Research & Development, LLC (the "Janssen Defendants") and Bayer Inc. in a proposed class action relating to the fluoroquinolone prescription drugs Levaquin, Cipro and Avelox, and Peripheral Neuropathy. "Levaquin" means Levaquin® branded (*i.e.*, not generic) levofloxacin tablets and/or intravenous solution distributed in Canada by the Janssen Defendants. "Cipro" means all formulations of Cipro® branded (*i.e.*, not generic) ciprofloxacin distributed or licensed in Canada by Bayer Inc. "Avelox" means all formulations of Avelox® branded (*i.e.*, not generic) moxifloxacin distributed or licensed in Canada by Bayer Inc.

This notice advises you that as a part of the settlement process, the following lawsuit (the "Proceeding") has been certified against the Janssen Defendants and Bayer Inc. 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 raises various allegations against the Janssen Defendants and Bayer Inc. and sought damages on behalf of Canadians (excluding residents of Quebec) for Peripheral Neuropathy allegedly related to the use of Levaquin, Cipro and Avelox. The Janssen Defendants and Bayer Inc. 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 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 Agreements and related documents at the settlement website: [www.garchaandcompany.ca](http://www.garchaandcompany.ca) 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 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;

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

### **WHAT IS THE PROPOSED SETTLEMENT?**

As it relates to the Janssen Defendants, 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. As it relates to Bayer Inc., the Settlement provides for the creation of a \$725,000 (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 (together, the "Settlement Amount").

Payments to approved claimants will be made to Class Members who show that they (a) ingested Levaquin, Cipro or Avelox; and (ii) they did so within sixty (60) days prior to developing Peripheral Neuropathy. Net settlement proceeds will be allocated among the approved claimants in accordance with the Compensation Protocols. The Compensation Protocols can be found at section 4.3 of the Janssen Settlement Agreement and Bayer Settlement Agreement. Not all Class Members will be eligible for compensation.

\$35,000 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 33% of the total Settlement Amount plus taxes and disbursements 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-prés* to the Law Foundation of British Columbia and to an organization(s) proposed by Class Counsel, 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.

**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 [www.garchaandcompany.ca](http://www.garchaandcompany.ca) or by contacting Class Counsel at the address below. The deadline to opt out of the Settlement and the Proceeding is September 24, 2024.** 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 and Bayer Inc.

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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 and Bayer Inc. 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 or Bayer Inc.

### **SETTLEMENT APPROVAL HEARING**

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 **November 1, 2024 at 10:00 a.m. Pacific Time** at the Supreme Court of British Columbia, 800 Smithe 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 [www.garchaandcompany.ca](http://www.garchaandcompany.ca).

In the event that the Settlement Agreements are not approved by the Court in a form agreed to by the Parties, the Settlement Agreements shall terminate, and their 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 **5:00 p.m. Pacific Time, October 27, 2024**.

Your written objection must be sent to the Class Counsel by no later than **October 27, 2024**, 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 [www.garchaandcompany.ca](http://www.garchaandcompany.ca) 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 [www.garchaandcompany.ca](http://www.garchaandcompany.ca) or, alternatively, a claim package can be requested from Class Counsel by e-mail at: [ksgarcha@dusevicgarchalaw.ca](mailto:ksgarcha@dusevicgarchalaw.ca), by telephone at **604-436-3315 and 1-844-878-0444 (toll free)**, 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: [www.garchaandcompany.ca](http://www.garchaandcompany.ca).

**Questions? Visit [www.garchaandcompany.ca](http://www.garchaandcompany.ca) or call 1-844-878-0444 (toll free)**

## WHO REPRESENTS ME?

### CLASS COUNSEL IS:

DUSEVIC & GARCHA

Barristers & Solicitors

#210 - 4603 Kingsway

Burnaby, BC V5H 4M4

Tel: 604-436-3315 or 1-844-878-0444 (toll free)

Fax: 604-436-3302

Email: [ksgarcha@dusevicgarchalaw.ca](mailto:ksgarcha@dusevicgarchalaw.ca)

### 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 33% plus taxes and disbursements of the total recovery and will seek approval from the Court as to such 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 Agreements, visit [www.garchaandcompany.ca](http://www.garchaandcompany.ca) 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 Agreements at the settlement website: [www.garchaandcompany.ca](http://www.garchaandcompany.ca) 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 Agreements and related documents in both English and French, please visit the settlement website at [www.garchaandcompany.ca](http://www.garchaandcompany.ca) 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.*