

David E. Bower (SBN 119546)
MONTEVERDE & ASSOCIATES PC
600 Corporate Pointe, Suite 1170
Culver City, CA 90230
Tel: (213) 446-6652
Fax: (212) 202-7880

*Counsel for Lead Plaintiff and
Lead Counsel for the Putative Class*

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

TONY PLANT, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

JAGUAR ANIMAL HEALTH, INC., JAMES
J. BOCHNOWSKI, LISA CONTE, JOHN
MICEK III, and ARI AZHIR,

Defendants.

Case No. 3:17-cv-04102-RS
Hon. Richard Seeborg

CLASS ACTION

**ORDER APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE**

WHEREAS, an action pending before this Court is styled *Plant v. Jaguar Animal Health, Inc., et al*, Case No. 3:17-cv-04102-RS (the “Litigation”);

WHEREAS, the Court-appointed Lead Plaintiff Tony Plant (“Lead Plaintiff”) has made a motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in accordance with a Stipulation of Settlement dated December 29, 2020 (the “Stipulation”), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Litigation between the Settling Parties and for dismissal with prejudice of the Litigation against Defendants and of the Released Claims against Defendants and Defendants’ Released Persons upon the terms and conditions set forth therein;

WHEREAS, the Court having read and considered the Stipulation and the Exhibits annexed thereto;

WHEREAS, the Settling Parties to the Stipulation having consented to entry of this Order; and

WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Preliminary Approval of Settlement:** The Court has reviewed the Stipulation, and finds that the Stipulation resulted from arm’s length negotiations, and does hereby preliminarily approve the Stipulation and Settlement set forth therein as being fair, reasonable and adequate to Settlement Class Members subject to further consideration at the hearing described in ¶2 below.

(a) Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for purposes of this Settlement only, the Litigation is hereby preliminarily certified as a class action on behalf of all record holders and all beneficial holders of Jaguar Animal Health, Inc. (“Jaguar”) common stock who purchased, sold or held such stock during the period from and including June 30, 2017, the record date for voting on the merger

1
2
3 between Jaguar and Napo Pharmaceuticals, Inc. (“Napo”), whereby Jaguar’s
4 shareholders and option/warrant holders would hold approximately 25% of the total
5 outstanding stock of the combined company (the “Merger), through and including July
6 31, 2017, the date the Merger closed, including any and all of their respective
7 predecessors, successors, trustees, executors, administrators, estates, legal
8 representatives, heirs, assigns and transferees (the “Settlement Class”). Excluded
9 from the Settlement Class are (i) Defendants; (ii) members of the immediate families
10 of each Defendant; (iii) Jaguar’s subsidiaries and affiliates; (iv) any entity in which
11 any Defendant has a controlling interest; (v) the legal representatives, heirs,
12 successors, administrators, executors, and assigns of each Defendant; and (vi) any
13 Persons or entities who properly exclude themselves by filing a valid and timely
14 request for exclusion.

15 (b) The Court finds, for the purposes of the Settlement only, that the prerequisites for a
16 class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have
17 been satisfied in that: (a) the number of Settlement Class Members is so numerous that
18 joinder of all members is impracticable; (b) there are questions of law and fact
19 common to the Settlement Class; (c) the claims of Lead Plaintiff are typical of the
20 claims of the Settlement Class he seeks to represent; (d) Lead Plaintiff and Lead
21 Counsel have and will fairly and adequately represent the interests of the Settlement
22 Class; (e) the questions of law and fact common to the Settlement Class Members
23 predominate over any questions affecting only individual Settlement Class Members;
24 and (f) a class action is superior to other available methods for the fair and efficient
25 adjudication of the controversy.

26 (c) Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of
27 the Settlement only, Lead Plaintiff is preliminarily certified as the class representative
28 and Monteverde & Associates PC is preliminarily certified as Lead Counsel.

1
2
3 2. **Settlement Hearing:** A hearing shall be held before this Court on **May 27, 2021,**
4 **at 1:30 p.m.** (a date that is at least 110 calendar days from the date of this Order) (the “Final
5 Approval Hearing”). Settlement Class Members should check the Settlement Class website in
6 advance of the Final Approval Hearing to determine whether that hearing will occur in person at
7 the United States District Court for the Northern District of California, 450 Golden Gate Avenue,
8 San Francisco, CA 94102 or via a remote link. At the Final Approval Hearing the Court will (a)
9 determine whether the proposed Settlement is fair, reasonable, and adequate to the Settlement
10 Class and should be approved by the Court; (b) determine whether an Order and Final Judgment
11 as defined in ¶1.20 of the Stipulation should be entered; (c) determine whether the proposed Plan
12 of Allocation should be approved; (d) determine the amount of attorneys’ fees and expenses that
13 should be awarded to Lead Counsel; (e) determine any award to Lead Plaintiff pursuant to 15
14 U.S.C. § 78u-4(a)(4); (f) hear any objections by Settlement Class Members to: (i) the Settlement
15 or Plan of Allocation; (ii) certification of the Settlement Class, Lead Plaintiff, and Lead Counsel;
16 (iii) any award to Lead Plaintiff; and/or (iv) the award of attorneys’ fees and expenses to Lead
17 Counsel; and (g) consider such other matters the Court deems appropriate. The Court may adjourn
18 the Final Approval Hearing without further notice to the Settlement Class Members.

19 3. The Court approves the form, substance, and requirements of the Notice of
20 Pendency and Proposed Settlement of Class Action (“Notice”) and Proof of Claim and Release,
21 substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively.

22 4. The Court approves the form of the Summary Notice, substantially in the form
23 annexed hereto as Exhibit A-3.

24 5. Defendants shall comply with the Class Action Fairness Act, 28 U.S.C. §§ 1711 *et*
25 *seq* (“CAFA”). At least ten (10) calendar days prior to the Final Approval Hearing, Defendants’
26 counsel shall file with the Court an appropriate affidavit or declaration regarding compliance with
27 CAFA.

1
2
3 6. **Retention of Claims Administrator and Method of Giving Notice:** The firm of
4 RG/2 (the “Claims Administrator”) is hereby appointed to supervise and administer the notice
5 procedure as well as the processing of claims as more fully set forth below.

6 (a) The Claims Administrator shall make reasonable efforts to identify all Settlement
7 Class Members and not later than **February 25, 2021** (a date twenty-one (21) calendar
8 days after the Court signs and enters this Order) (the “Notice Date”), the Claims
9 Administrator shall cause a copy of the Notice and Proof of Claim and Release,
10 substantially in the forms annexed hereto, to be mailed by First-Class Mail to all
11 Settlement Class Members who can be identified with reasonable effort and to be
12 posted on its website at www.rg2claims.com/jaguar.html

13 (b) Not later than **March 8, 2021** (a date ten (10) calendar days after the Notice Date),
14 Monteverde & Associates PC shall cause the Summary Notice to be published in
15 *PRNewswire*.

16 (c) Not later than **May 20, 2021** (a date seven (7) calendar days prior to the Final Approval
17 Hearing), Lead Counsel shall serve on Defendants’ Counsel and file with the Court
18 proof, by affidavit or declaration, of such mailing and publishing referenced in 6(a)-
19 (b).

20 (d) Nominees who held, purchased or acquired Jaguar common stock for the benefit of
21 another Person during the Settlement Class Period shall be requested to send the
22 Notice and Proof of Claim and Release to such beneficial owners of Jaguar common
23 stock within fifteen (15) calendar days after receipt thereof, or, send a list of the names
24 and addresses of such beneficial owners to the Claims Administrator within fifteen
25 (15) calendar days of receipt thereof, in which event the Claims Administrator shall
26 promptly mail the Notice and Proof of Claim and Release to such beneficial owners.

27 7. The form and content of the notice program described herein and the methods set
28 forth herein for notifying the Settlement Class of the Settlement and its terms and conditions, the

1
2
3 Fee and Expense Application, and the Plan of Allocation: (a) meet the requirements of Federal
4 Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the
5 Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), 15 U.S.C. § 77z-1(a)(7)
6 (the “PSLRA”), and any other applicable law, and is the best notice practicable under the
7 circumstances; (b) constitutes notice that is reasonably calculated, under the circumstances, to
8 apprise the Settlement Class Members of the pendency of the Litigation, the effect of the proposed
9 Settlement (including the releases contained therein), and of their right to object to the proposed
10 Settlement, exclude themselves from the Settlement Class, and/or appear at the Final Approval
11 Hearing; and (c) constitutes due, adequate, and sufficient notice to all Persons entitled thereto. The
12 date and time of the Final Approval Hearing shall be included in the Notice and Summary Notice
13 before they are mailed and published, respectively. All fees, costs, and expenses incurred in
14 notifying Settlement Class Members shall be paid from the Settlement Fund and in no event shall
15 any of the Defendants or Defendants’ Released Persons bear any responsibility for such fees, costs
16 or expenses. All Settlement Class Members (except Persons who request exclusion pursuant to
17 ¶10 below) shall be bound by all determinations and judgments in the Litigation concerning the
18 Settlement, including, but not limited to, the releases provided for therein, whether favorable or
19 unfavorable to the Settlement Class, regardless of whether such Persons seek or obtain by any
20 means, including, without limitation, by submitting a Proof of Claim and Release or any similar
21 document, any distribution from the Settlement Fund or the Net Settlement Fund.

22 8. Pending final determination by the Court as to whether the Settlement, as set forth
23 in the Stipulation, is fair, reasonable and adequate and should be finally approved and whether the
24 Order and Final Judgment dismissing the action with prejudice should be approved, neither Lead
25 Plaintiff nor any Settlement Class Member, either directly, representatively or in any other
26 capacity, shall assert, commence, aid or prosecute against any of the Released Claims against any
27 of the Defendants or Defendants’ Released Persons in this Litigation or in any other proceeding,
28 arbitration, or forum. This injunction is necessary to protect and effectuate the Settlement, this

Order, and the Court's flexibility and authority to effectuate the Settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments.

9. **Settlement Class Members' Participation in the Settlement:** Settlement Class Members who wish to participate in the Settlement shall complete and submit the Proof of Claim and Release in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim and Releases must be postmarked or submitted electronically no later than **June 25, 2021** (a date one hundred and twenty (120) calendar days from the Notice Date). Any Settlement Class Member who fails to submit a Proof of Claim and Release within the time provided, or whose Proof of Claim and Release is otherwise not approved, shall in all other respects be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Order and Final Judgment and the releases provided for therein, and will be barred from asserting any Released Claims against any of the Defendants or Defendants' Released Persons. Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. No person shall have any claim against Lead Plaintiff, Lead Counsel or the Claims Administrator by reason of the decision to exercise or not exercise such discretion.

- (a) The Proof of Claim and Release submitted by each Settlement Class Member must, unless otherwise ordered by the Court: (i) be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (ii) be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation deemed adequate by Lead Counsel or the Claims Administrator; (iii) include in the Proof of Claim and Release a certification of current authority to act on behalf of the Settlement Class Member if the

person executing the Proof of Claim and Release is acting in a representative capacity;
(iv) be complete and contain no material deletions or modifications of any of the printed matter contained therein; and (v) be signed under penalty of perjury.

(b) By submitting a Proof of Claim, a Settlement Class Member will be deemed to have submitted to the jurisdiction of this Court with respect to the Settlement Class Member's claim, including, but not limited to, all releases provided for in the Stipulation and in the Order and Final Judgment.

(c) Any Settlement Class Member may enter an appearance in the Litigation, at his, her, or its own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Lead Counsel.

10. **Exclusion from the Settlement Class:** Any Person falling within the definition of the Settlement Class may, upon request, be excluded or "opt out" from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), by First-Class Mail such that it is received no later than **May 6, 2021** (a date twenty-one (21) calendar days before the Final Approval Hearing). A Request for Exclusion must be signed and state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) the number of shares of Jaguar common stock held, purchased, acquired or sold during the Settlement Class Period and the dates held during the Settlement Class Period; and (c) that the Person wishes to be excluded from the Settlement Class. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

Lead Counsel shall cause to be provided to Defendants' Counsel copies of all Requests for Exclusion and a list of all Settlement Class Members who have requested exclusion, and any written revocation of Requests for Exclusion, as expeditiously as possible and in any event no later than **May 13, 2021** (a date fourteen (14) calendar days prior to the Final Approval Hearing).

11. **Appearance and Objections at Settlement Hearing:** Any Settlement Class Member may appear and object if he, she, or it has any reason why the proposed Settlement of the Litigation should not be approved as fair, reasonable and adequate, or why a judgment should not be entered thereon, why the Plan of Allocation should not be approved, why the requested attorneys' fees and expenses should not be awarded to Lead Counsel, or why any award should not be approved for Lead Plaintiff; provided, however, that no Settlement Class Member or any other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Order and Final Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, any attorneys' fees and expenses to be awarded to Lead Counsel, or any award to Lead Plaintiff, unless written objections and copies of any papers and briefs are received via mail and in electronic format by Monteverde & Associates PC, Juan E. Monteverde, The Empire State Building, 350 Fifth Avenue, Suite 4405, New York, New York 10118, Email: jmonteverde@monteverdelaw.com; Troutman Pepper Hamilton Sanders LLP, M. Duncan Grant and Christopher B. Chuff, 1313 Market Street, Suite 5100, Wilmington, Delaware 19899, Email: duncan.grant@troutman.com & chris.chuff@troutman.com, no later than **May 6, 2021** (a date twenty-one (21) calendar days before the Final Approval Hearing) and said objections, papers and briefs are filed with the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, no later than **May 13, 2021** (a date fourteen (14) calendar days before the Final Approval Hearing). Any such objection must: (a) indicate the objector's name, address, and telephone number; (b) specify the reason(s) for the objection; (c) identify the date(s), price(s), and number(s) of shares of Jaguar common stock held, purchased, acquired or sold during the Settlement Class Period by the objector; (d) provide documents demonstrating such holding(s), purchase(s), acquisition(s) and/or sale(s); and (e) be signed by the objector. Any Member of the Settlement Class who does not make his, her, or its objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed

1
2
3 from making any objection to the fairness, reasonableness, or adequacy of the proposed
4 Settlement as incorporated in the Stipulation, to the Plan of Allocation, to the award of attorneys'
5 fees and expenses to Lead Counsel, and to any award to Lead Plaintiff, unless otherwise ordered
6 by the Court. Attendance at the Final Approval Hearing is not necessary. However, Persons
7 wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation,
8 and/or the application for an award of attorneys' fees and expenses are required to indicate in
9 their written objection their intention to appear at the hearing. Settlement Class Members do not
10 need to appear at the Final Approval Hearing or take any other action to indicate their approval
11 of the Settlement.

12 12. **Settlement Funds:** All funds held by the Escrow Agent shall be deemed and
13 considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the
14 Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further
15 order(s) of the Court.

16 13. **Supporting Papers:** All papers in support of the Settlement, Plan of Allocation,
17 and any application by Lead Counsel for attorneys' fees and expenses and payment of time and
18 expenses to Lead Plaintiff shall be filed and served no later than **April 22, 2021** (a date thirty-five
19 (35) calendar days prior to the Final Approval Hearing) and any reply papers shall be filed and
20 served no later than **May 20, 2021** (a date seven (7) calendar days prior to the Final Approval
21 Hearing).

22 14. Defendants' Released Persons shall have no responsibility for the Plan of
23 Allocation, any application for attorneys' fees and expenses submitted by Lead Counsel, or any
24 award to Lead Plaintiff, and such matters will be considered separately from the fairness,
25 reasonableness, and adequacy of the Settlement.

26 15. At or after the Final Approval Hearing, the Court shall determine whether the Plan
27 of Allocation proposed by Lead Counsel, and whether any application for attorneys' fees and
28 expenses, should be approved.

1
2
3 16. **Settlement Administration Fees and Expenses:** All reasonable expenses incurred
4 in identifying and notifying Settlement Class Members as well as administering the Settlement
5 Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the
6 Settlement, or it otherwise fails to become effective, neither Lead Plaintiff nor any of their
7 counsel, including Plaintiff's Counsel, shall have any obligation to repay any amounts actually
8 and properly incurred or disbursed pursuant to ¶2.7 of the Stipulation.

9 17. **Use of this Order:** Neither the Stipulation, nor any of its terms or provisions, nor
10 any of the negotiations, discussions, proceedings connected with it, nor any act performed or
11 document executed pursuant to or in furtherance of the Stipulation or the Settlement may be
12 construed as an admission, concession, or presumption by or against any of the Defendants or
13 Defendants' Released Persons of the truth of any of the allegations in the Litigation, or of any
14 liability, fault, or wrongdoing of any kind; or as a waiver by any of the Parties of any arguments,
15 defenses, or claims he, she, or it may have in the event the Stipulation is terminated; or offered or
16 received in evidence, or otherwise used by any person in the Litigation, or in any other action or
17 proceeding, whether civil, criminal, or administrative, in any court, administrative agency, or
18 other tribunal, except in connection with any proceeding to enforce the terms of the Stipulation.
19 The Defendants, Defendants' Released Persons, Lead Plaintiff, Settlement Class Members, and
20 each of their counsel may file the Stipulation and/or the Order and Final Judgment in any action
21 that may be brought against them in order to support a defense or counterclaim based on principles
22 of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or
23 any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

24 18. **Stay and Temporary Injunction:** All proceedings in the Litigation are stayed until
25 further order of this Court, except as may be necessary to implement the Settlement or comply
26 with the terms of the Stipulation. Pending final determination of whether the Settlement should
27 be approved, neither Lead Plaintiff nor any Settlement Class Member, either directly,
28 representatively, or in any other capacity shall commence or prosecute any of the Released Claims

1
2
3 against any of the Defendants or Defendants' Released Persons in any action or proceeding in
4 any court or tribunal.

5 19. The Court reserves the right to alter the time or the date of the Final Approval
6 Hearing without further notice to the Settlement Class Members, provided that the time or the
7 date of the Final Approval Hearing shall not be set at a time or date earlier than the time and date
8 set forth in ¶2 above, and retains jurisdiction to consider all further applications arising out of or
9 connected with the proposed Settlement. The Court may approve the Settlement, with such
10 modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to
the Settlement Class.

11 20. **Termination of Settlement:** If the Settlement fails to become effective as defined
12 in the Stipulation or is terminated, then, in any such event, the Stipulation, including any
13 amendment(s) thereof, except as expressly provided in the Stipulation, and this Order shall be
14 null and void, of no further force or effect, and without prejudice to any Settling Party, and may
15 not be introduced as evidence or used in any actions or proceedings by any person or entity against
16 the Settling Parties, and they shall be deemed to have reverted to their respective positions in the
Litigation prior to mediation.

17 IT IS SO ORDERED.

18 DATED: February 2, 2021



THE HONORABLE RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE