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10 Lead Counsel for the Class

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN FRANCISCO DIVISION

14 RICHARD GREGORY, On Behalf of Himself )  
 15 and All Others Similarly Situated, )

16 Plaintiff, )

17 vs. )

18 CHIRON CORPORATION, HOWARD H. )  
 PIEN, JOHN A. LAMBERT and DAVID V. )  
 19 SMITH, )

20 Defendants. )

Case No.: C-04-4293-VRW

CLASS ACTION

RESPONSE TO  
 FEBRUARY 9, 2009 ORDER,  
 SUBMITTED ON BEHALF OF  
 ALL PARTIES

1 On February 9, 2009 this Court entered an Order (Docket # 197), which, found that the  
 2 proposed “Final Order and Judgment” submitted by the Parties under the terms of the Settlement  
 3 Stipulation (Docket #186) does not comply with FRCP 54(a)<sup>1</sup> and 58(a).<sup>2</sup> The February 9, 2009  
 4 Order (Docket # 197) provides among other things “Counsel are requested to review the attached  
 5 proposed form of judgment and inform the court whether it meets with their approval. In  
 6 addition, counsel should prepare a proposed form of order to resolve any outstanding issues that  
 7 require judicial resolution in order to implement their settlement.”

8 Submitted herewith as Exhibit A, is a proposed form of Judgment in substitution for the  
 9 Court’s proposed form (Docket #197-2), and, submitted as Exhibit B, is a proposed separate  
 10 form of Order Approving Class Action Settlement, Plan of Allocation and Common Fund Fee  
 11 and Expense Award. “to resolve any outstanding issues that require judicial resolution in order to  
 12 implement their settlement.”

13 Plaintiff’s Counsel and Defendants’ Counsel have conferred and Defendants’ Counsel  
 14 have authorized Plaintiff’s Counsel to represent that they join in this response.

15 Revised Proposed Judgment Form (Exhibit A):

16 A. *Required Addition of Class Findings:*

17 Plaintiff’s Counsel submit that because this is a class action, the judgment to be entered  
 18 herein is required by FRCP 23(c)(3)(B)<sup>3</sup> to “describe those to whom the Rule 23(c )(2) notice  
 19 was directed, who have not requested exclusion, and whom the court finds to be class members.”

20 \_\_\_\_\_  
 21 <sup>1</sup> FRCP 54(a) provides “**Definition, Form.** “Judgment” as used in these rules includes a decree and any  
 22 order from which an appeal lies. A Judgment should not include recitals of pleadings, a master’s report, or a record  
 of prior proceedings.”

23 <sup>2</sup> FRCP 58(a) provides “**Separate Document.** Every judgment and amended judgment must be set out in a  
 24 separate document, but a separate document is not required for an order disposing of a motion: (1) for judgment  
 under Rule 50(b); (2) to amend or make additional findings under Rule 52(b); (3) for attorneys fees under Rule 54;  
 (4) for a new trial, or to alter or amend the Judgment under Rule 59; or (5) for relief under Rule 60.”

25 <sup>3</sup> FRCP 23(c)(3)(B) provides “**Judgment.** Whether or not favorable to the class, the judgment in a class  
 26 action must: . . . (B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the  
 27 Rule 23(c )(2) notice was directed, who have not requested exclusion, and whom the court finds to be class  
 members.”

1 The attached proposed Judgment (Exhibit A) includes, as paragraph 1, a description of those to  
2 whom the Rule 23(c )(2) notice was directed. The attached proposed Judgment includes, as  
3 paragraph 2, a list of the only persons or entities who have requested exclusion. The attached  
4 proposed Judgment, at paragraph 3, describes whom the court finds to be class members.

5 B. *Deletion of language that Plaintiff shall recover \$30 million plus:*

6 As part of the Settlement (reflected in paragraph 30(a) of the Stipulation), the parties  
7 agreed to settle the Action without any concession of liability on the Defendants' part and,  
8 indeed, Defendants expressly deny liability. The formulation in the Court's proposed form of  
9 judgment that "Lead Plaintiff . . . shall recover from defendants . . . the sum of \$30 million  
10 plus . . ." is a form of words often found in judgments following determinations of liability.  
11 Accordingly, the parties believe it would be more appropriate, and consistent with the agreed  
12 terms of the settlement, to replace this language with the formulation " Defendants shall pay to  
13 Lead Counsel's escrow account for the benefit of the Settlement Class, in Settlement of the  
14 Action, the sum of \$30 million plus interest thereon in an amount equivalent to interest at the  
15 thirty-day Treasury Bill rate from June 6, 2006 to the date of payment of this judgment."

16 C. *Addition of provisions Approving Settlement and Dismissing Action:*

17 In addition to the payment provision, the proposed Judgment (Exhibit A) includes, as  
18 paragraph 5 a provision finding the Stipulation to be a fair, reasonable and adequate settlement  
19 and directs the parties to consummate it in accordance with its terms. Further, the proposed  
20 Judgment at paragraph 6 provides for the dismissal of the Consolidated Amended Complaint,  
21 with prejudice, and except as provided in the Stipulation, without costs.

22 D. *Addition of Reservation of Jurisdiction And Rule 54(b) Certification:*

23 Under the terms of the Stipulation, the parties request the Court to retain jurisdiction over  
24 the parties and the Class Members for the administration, interpretation, effectuation or  
25 enforcement of the Stipulation. Such continued jurisdiction will be needed for purposes of  
26 administering and distributing the settlement proceeds to the Class Members. Accordingly the  
27 proposed Judgment (Exhibit A) includes, as paragraph 7, a reservation of jurisdiction.

28

1 Nevertheless the complaint will be dismissed with prejudice and **all** claims against **all** defendants  
2 released, so it is appropriate to include as paragraph 8 a Rule 54(b) certification so there is no  
3 question that the Judgment is a final appealable order, notwithstanding the reservation of  
4 jurisdiction for these limited purposes.

5 E. *Addition of Court’s Direction to Clerk to Enter Judgment:*

6 Pursuant to FRCP 58(b)(2),<sup>4</sup> the Court’s approval (not just Clerk’s approval) is required  
7 for the form of judgment when the judgment grants “relief not described in” FRCP 58(b). FRCP  
8 58(b) limits the Clerk’s authority to enter a judgment without the Court’s approval to where the  
9 jury returns a general verdict, the Court awards only costs or a sum certain, or the court denies all  
10 relief. As any proposed judgment herein must comply with FRCP 23(c)(3)(B) and should  
11 comply with the Stipulation’s provisions for approving the Settlement and dismissing the  
12 Complaint, it is beyond the Clerk’s authority to enter without the Court’s approval. Accordingly,  
13 the attached proposed Judgment adds a signature line for the Court’s approval of the form of  
14 judgment.

15  
16 Revised Proposed form of “Order Approving Class Action Settlement,  
Plan of Allocation and Common Fund Fee and Expense Award” (Exhibit B):

17 In accordance with this Court’s February 9, 2009 Order (Docket # 197), The parties have  
18 prepared the attached proposed Order Approving Class Action Settlement, Plan of Allocation  
19 and Common Fund Fee and Expense Award, which includes, in one form of Order, all of the  
20 remaining provisions we submit are needed “to resolve any outstanding issues that require  
21 judicial resolution in order to implement their settlement.” This one proposed Order, together  
22 with the proposed Judgment, would substitute for the three forms of orders previously submitted  
23 as Docket Nos. 186, 187 and 188 (which were updated and re-filed as Docket Nos. 196-1, 196-3,  
24

25  
26 <sup>4</sup> FRCP 58(b)(2) provides “**Court’s Approval Required.** Subject to Rule 54(b) the court must promptly  
27 approve the form of judgment, which the clerk must promptly enter, when: (A) the jury returns a special verdict  
with answers to written questions, or (B) the court grants other relief not described in this subdivision (b).”

1 and 196-5) for approving (i) the Settlement, (ii) the Plan of Allocation, and (iii) payment of the  
2 Attorneys Fees and Expenses from the common fund recovery.

3 As previously stated, the Stipulation requires entry of orders substantially in the forms  
4 provided for approval of the Stipulation to become final, and for the Settlement to become  
5 effective. The proposed form of Order includes the following provisions which we submit are  
6 required “in order to implement their settlement”: (i) finding jurisdiction of the parties and class  
7 members (paragraph 1); (ii) finding that the prerequisites for a class action under Federal Rules  
8 of Civil Procedure 23 (a) and (b)(3) have been satisfied (paragraph 2); (iii) finally certifying this  
9 action as a class action on behalf of a defined class with particular exclusions (paragraph 3); (iv)  
10 finding that the notice given constituted due and sufficient notice to all persons and entities  
11 entitled thereto (paragraph 4); (v) approving the Settlement as being fair, reasonable, and  
12 directing the parties to consummate it (paragraph 5); (vi) providing for the dismissal of the  
13 Complaint, with prejudice and without costs (paragraph 6); (vii) providing for the release and  
14 discharge by Plaintiffs and all Class Members of the “Released Claims” as defined in the  
15 Stipulation (Paragraphs 7 and 8); (viii) providing for the release and discharge by Defendants of  
16 the “Released Defendants Claims” as defined in the Stipulation (Paragraph 9); (ix) confirming  
17 that the Orders entered under the Settlement shall not be construed as an admission or concession  
18 of any thing (paragraph 10); (x) making a finding, as required by the PSLRA, that all parties and  
19 their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil  
20 Procedure as to all proceedings herein.

21 In addition, the unified proposed form of Order includes the provisions to effectuate the  
22 approval of the Plan of Allocation (paragraph 12) and to implement the payment of the  
23 attorneys’ fees and expenses approved by the Court (paragraph 13).

24 Finally the proposed form of Order includes provisions to return the parties to the status  
25 quo in the event the Order does not become Final (by e.g., being vacated, modified or reversed  
26 on appeal) (paragraph 14).

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\* \* \* \*

It is respectfully requested that the Court enter the forms of Judgment submitted herewith as Exhibit A, and the Order submitted herewith as Exhibit B.

DATED: February 27, 2009

MILBERG LLP  
JEFF S. WESTERMAN

*/s/ Jeff S. Westerman*  
\_\_\_\_\_  
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Counsel for Plaintiffs

DECLARATION OF SERVICE BY MAIL

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I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, employed in the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is One California Plaza, 300 South Grand Avenue, Suite 3900, Los Angeles, California 90071-3149.

2. That on February 27, 2009, declarant served the foregoing PLAINTIFF'S RESPONSE TO FEBRUARY 9, 2009 ORDER by depositing a true copy thereof in a United States mailbox at Los Angeles, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

4. That a true and correct copy of this document is being e-mail served to the following persons who commented on the settlement by e-mail:

- (a) Mr. Steve Rogers at [mailto:roges57@yahoo.com];
- (b) Ms. Laurie Lamb at [mailto:blamb@earthlink.net];
- (c) Mr. Jerome Gleim at [mailto:JGleim@aol.com];
- (d) Mr. Leland G. Coe at [mailto:leecoe@paulbunyan.net];
- (e) Roy W. Fogle and Patricia A. Fogle, Trustees of the Roy W & Patricia A. Fogle Trust dated 12/28/1998 at [mailto:prfogle@sbcglobal.net]; and
- (f) Mr. Peter Williamson and Ms. Margaret Williamson at [mailto:pwmcw@cox.net].

5. That on the above date, declarant served via e-mail to: scac@law.stanford.edu.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of February, 2009, at Los Angeles, California.

  
ELIZABETH VILLALOBOS

**SERVICE LIST**

*Richard Gregory v. Chiron Corporation, et al.*  
 USDC ~ San Francisco - Case No.C-04-4293-VRW

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<b><i>Other Counsel</i></b>	
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## Exhibit A

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

**In re CHIRON CORP SECURITIES  
LITIGATION**

**No C 04-4293 VRW**

**JUDGMENT**

\_\_\_\_\_ /

This action having come before the court for approval of a class action settlement pursuant to FRCP 23(e), and the court having considered the same and, on \_\_\_\_\_, 2009, entered an Order Approving Class Action Settlement, Plan of Allocation, and Common Fund Fee and Expense Award, Doc #\_\_, which among other things ordered entry of judgment, now therefore:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Pursuant to Rule 23(c)(2), this Court’s Notice of Proposed Settlement (the “Cover Notice”) and a Notice of Pendency of Class Action and Proposed Settlement Thereof, Motion for Attorneys’ Fees and Settlement Fairness Hearing

1 (the “Settlement Notice”), substantially in the forms approved by the Court, were  
2 mailed to all persons or entities reasonably identifiable, who purchased or  
3  
4 otherwise acquired the common stock of Chiron Corporation, now known as  
5 Novartis Vaccines and Diagnostics, Inc. (“Chiron”) during the period from July 23,  
6 2003 through October 5, 2004 (the “Class Period”) as shown by the records of  
7  
8 Chiron’s transfer agent, and as further identified through the mailing of the Cover  
9 Notice, and Settlement Notice pursuant to earlier orders of the Court, at the  
10  
11 respective addresses set forth in such records. A summary notice substantially in  
12  
13 the form approved by the Court was published in the national edition of *The Wall*  
14  
15 *Street Journal*, and *Investor’s Business Daily* pursuant to the specifications of the  
16  
17 Court.

18 2. Only the following persons and/or entities have requested exclusion  
19 from the Settlement Class: Murat H. Polat; Lawrence M. Franks and Ellen S.  
20 Berelson; Mark L. Anderson; Jerry W. Cox, Esq.; William L Teel; Preston W.  
21 Thomas; and Patricia S. Stuart.

22 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure the Court  
23  
24 certified this action as a class action on behalf of a Settlement Class consisting of  
25  
26 “all persons who purchased or otherwise acquired the common stock of Chiron  
27  
28 during the period from July 23, 2003 through October 5, 2004.” Excluded from  
the Settlement Class are the Individual Defendants, Howard H Pien, John A

1 Lambert and David V Smith, their heirs, affiliates, successors and assigns, and the  
2 current or former officers and directors of Chiron. Also excluded from the Class  
3  
4 are the persons and/or entities listed in paragraph 2 above.

5  
6 4. Defendants shall pay to Lead Counsel's escrow account for the benefit  
7 of the Settlement Class, in Settlement of the Action, the sum of \$30 million plus  
8 interest thereon in an amount equivalent to interest at the thirty-day Treasury Bill  
9 rate from June 6, 2006 to the date of payment of this judgment.  
10

11  
12 5. The Stipulation and Agreement of Settlement dated as of March 29,  
13 2007 (the "Stipulation") is approved as fair, reasonable, and adequate and in the  
14 best interests of the Settlement Class, and the Class Members and the parties are  
15 directed to consummate the settlement in accordance with the terms and provisions  
16 of the Stipulation.  
17

18  
19 6. The Consolidated Amended Complaint For Violations of the Federal  
20 Securities Laws, dated April 14, 2005 (the "Complaint") and the Action are hereby  
21 dismissed with prejudice and, except as provided in the Stipulation, without costs  
22 as against Defendants.  
23

24  
25 7. Exclusive jurisdiction is hereby retained over the parties and the Class  
26 Members for all matters relating to this Action, including the administration,  
27  
28

1 interpretation, effectuation or enforcement of the Stipulation and this Judgment,  
2 and including any application for fees and expenses incurred in connection with  
3  
4 administering and distributing the settlement proceeds to the Class Members.

5  
6 8. Notwithstanding the foregoing reservation of jurisdiction over the  
7 parties and the Class Members for all matters relating to the administration,  
8 interpretation, effectuation or enforcement of the Stipulation, this Judgment  
9  
10 disposes of all claims asserted in the action against all parties to the action. There  
11 is no just reason for delay in the entry of a Judgment. The Clerk of the Court is  
12 expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure  
13  
14 to enter this Judgment.

15  
16 Dated: \_\_\_\_\_, 2009

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19 \_\_\_\_\_  
20 Cora Klein, DEPUTY CLERK  
21 United States District Court  
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1 Pursuant to FRCP 58(b)(2) the form of the foregoing Judgment is approved  
2 and the Clerk is directed to promptly enter it.  
3

4 Dated: \_\_\_\_\_, 2009  
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7 \_\_\_\_\_  
8 Honorable Vaughn R. Walker  
9 UNITED STATES DISTRICT JUDGE  
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## Exhibit B

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10 Lead Counsel for the Class

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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RICHARD GREGORY, On Behalf of Himself ) Case No. C-04-4293-VRW  
16 and All Others Similarly Situated, )  
Plaintiff, ) CLASS ACTION  
17 )  
18 vs. ) ORDER APPROVING CLASS ACTION  
SETTLEMENT, PLAN OF ALLOCATION  
19 CHIRON CORPORATION, HOWARD H. ) AND COMMON FUND FEE AND  
PIEN, JOHN A. LAMBERT and DAVID V. ) EXPENSE AWARD  
20 SMITH, )  
21 Defendants. )

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ORDER APPROVING CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION AND COMMON  
FUND FEE AND EXPENSE AWARD  
CASE NO.:C-04-4293-VRW

1 On the 3<sup>rd</sup> day of December, 2008, a hearing was held before this Court to determine: (1)  
 2 whether the terms and conditions of the Stipulation and Agreement of Settlement dated as of March  
 3 29, 2007 (the “Stipulation”) are fair, reasonable, and adequate for the settlement of all claims  
 4 asserted by the Class against Defendants in the Consolidated Amended Complaint For Violations of  
 5 the Federal Securities Laws, dated April 14, 2005 (the “Complaint”) now pending in this Court  
 6 under the above caption (including the release of the Released Parties) and are in the best interests of  
 7 the Class and should be approved; (2) whether judgment should be entered dismissing the Complaint  
 8 on the merits and with prejudice in favor of Defendants and as against all persons or entities who are  
 9 members of the Class herein who have not requested exclusion therefrom; and (3) whether the Plan  
 10 of Allocation (the “Plan”) proposed by Lead Plaintiff should be approved as a fair and reasonable  
 11 method for allocating the common fund recovery among Class Members; and (4) whether and in  
 12 what amount to award Plaintiff’s Counsel fees and reimbursement of expenses.

13 All capitalized terms used herein have the meanings as set forth and defined in the  
 14 Stipulation.

15 The Court has considered all matters submitted to it at the hearing and otherwise.

16 As shown by the *Affidavit of Michael Joaquin of Gilardi & Co. LLC RE: A) Dissemination of*  
 17 *Notices Concerning Proposed Settlement, B) Report on Requests for Exclusion Received, C) Report*  
 18 *on Comments and/or Objections Received, and D) Interim Report on Proofs of Claim* (Docket 183),  
 19 the Court’s Notice of Proposed Settlement (the “Cover Notice”), the Notice of Pendency of Class  
 20 Action and Proposed Settlement Thereof, Motion for Attorneys’ Fees and Settlement Fairness  
 21 Hearing (the “Settlement Notice”), and the Proof of Claim and Release form (the “Proof of Claim”)   
 22 substantially in the forms approved by the Court were mailed to all persons or entities reasonably  
 23 identifiable, who purchased or otherwise acquired the common stock of Chiron Corporation, now  
 24 known as Novartis Vaccines and Diagnostics, Inc. (“Chiron”) during the period from July 23, 2003  
 25 through October 5, 2004 (the “Class Period”) as shown by the records of Chiron’s transfer agent, and  
 26 as further identified through the mailing of the Cover Notice, the Settlement Notice, and the Proof of  
 27 Claim pursuant to earlier orders of the Court, at the respective addresses set forth in such records.

1 And, as shown by the *Declaration of George A. Bauer III RE: Publication of the Summary Notice of*  
2 *Pendency of Class Action, Proposed Settlement and Settlement Hearing* (Docket 184), a summary  
3 notice of the hearing substantially in the form approved by the Court was published in the national  
4 edition of *The Wall Street Journal*, and *Investor's Business Daily* pursuant to the specifications of  
5 the Court.

6 NOW, THEREFORE, the Court having now approved the Stipulation and entered an Order  
7 on January 6, 2009, (Docket 195) approving the Settlement and awarding fees, and by Order dated  
8 February 9, 2009 (Docket 197) having invited counsel to comment on the form of judgment to be  
9 entered and to prepare a proposed form of order to resolve any outstanding issues that require  
10 judicial resolution in order to implement their settlement, and having read Plaintiff's Counsel  
11 "Response to February 9, 2009 Order Submitted On Behalf of All Parties", proposing entry of this  
12 Order and the accompanying form of judgment (the "Judgment"), IT IS HEREBY ORDERED  
13 THAT:

14 1. The Court has jurisdiction over the subject matter of the Action, the Lead Plaintiff, all  
15 Class Members, and Defendants. The Court directs the Clerk to enter the Judgment.

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

25 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure this Court hereby finally  
26 certifies this action as a class action on behalf of all persons who purchased or otherwise acquired  
27 the common stock of Chiron during the period from July 23, 2003 through October 5, 2004.

1 Excluded from the Settlement Class are the Individual Defendants, Howard H Pien, John A Lambert  
2 and David V Smith, their heirs, affiliates, successors and assigns, and the current or former officers  
3 and directors of Chiron. Also excluded from the Class are the following persons and/or entities who  
4 have requested exclusion from the Settlement Class: Murat H. Polat; Lawrence M. Franks and Ellen  
5 S. Berelson; Mark L. Anderson; Jerry W. Cox, Esq.; William L Teel; Preston W. Thomas; and  
6 Patricia S. Stuart.

7 4. Notice of the Pendency of this Action as a class action and of the proposed Settlement  
8 was given to all Class Members who could be identified with reasonable effort. The form and  
9 method of notifying the Class Members of the pendency of the action as a class action and of the  
10 terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal  
11 Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §  
12 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process, and  
13 any other applicable law, constituted the best notice practicable under the circumstances, and  
14 constituted due and sufficient notice to all persons and entities entitled thereto.

15 5. The Settlement is approved as fair, reasonable, and adequate and in the best interests  
16 of the Class, and the Class Members and the parties are directed to consummate the Settlement in  
17 accordance with the terms and provisions of the Stipulation.

18 6. The Complaint and the Action are hereby dismissed with prejudice and, except as  
19 provided in the Stipulation, without costs as against Defendants.

20 7. Lead Plaintiff and the Class Members, in their individual capacities, their capacities  
21 as purchasers, holders or sellers of Chiron common stock, and on behalf of themselves, their heirs,  
22 agents, representatives, executors, administrators, beneficiaries, predecessors, successors, assigns  
23 and transferees, immediate and remote, are hereby permanently barred and enjoined from directly,  
24 indirectly or derivatively instituting, commencing or prosecuting any and all claims, causes of  
25 action, demands, rights, or liabilities (including but not limited to claims for violation of the federal  
26 securities laws, negligence, gross negligence, professional negligence, breach of duty of care and/or  
27 breach of duty of loyalty and/or breach of the duty of candor, fraud, breach of fiduciary duty,

1 mismanagement, corporate waste, malpractice, breach of contract, negligent misrepresentation,  
2 violations of any state statutes including, without limitation, the California Corporations Code and  
3 California Business & Professions Code and its Delaware equivalent, or federal statutes, rules or  
4 regulations, and any “Unknown Claims” as defined below) that have been or that could have been  
5 asserted in this or any other forum by or on behalf of Lead Plaintiff, the Settlement Class or any  
6 Settlement Class Member based on, arising out of, in connection with, or related in any way to their  
7 purchase or other acquisition, holding or sale or other disposition of Chiron’s common stock during  
8 the Settlement Class Period. By way of illustration, not limitation, Released Claims shall include  
9 claims, causes of action, demands, rights, or liabilities based on, arising out of, in connection with, or  
10 relating in any way to:

11 (i) any of the facts, circumstances, allegations, representations, statements,  
12 reports, disclosures, transactions, events, occurrences, acts, omissions or failures to act, of whatever  
13 kind or character, irrespective of the state of mind of the actor performing or omitting to perform the  
14 same, that have been or could have been alleged in any pleading, amended pleading, argument,  
15 complaint, amended complaint, brief, motion, report, discovery response or filing in the Action;

16 (ii) any matter, cause or thing whatsoever, including, but not limited to, any  
17 action, omission or failure to act of whatever kind or character, irrespective of the state of mind of  
18 the actor performing or omitting to perform the same, arising out of or relating to the adequacy,  
19 accuracy or completeness of any disclosure or statement made in any filings, proxy statements,  
20 prospectus, reports, press releases, statements, representations, analyst reports or announcements  
21 concerning Chiron’s operations, services, products, financial condition or prospects or in any filing  
22 with the Securities and Exchange Commission or any other federal or state governmental agency or  
23 regulatory board (collectively referred to as “public statements”), or in the preparation or  
24 dissemination of, or failure to disseminate, any such public statements, at any time during or  
25 concerning July 23, 2003, through and including October 5, 2004; or

26 (iii) any of the facts, circumstances, representations, statements, reports,  
27 disclosures, transactions, events, occurrences, acts or omissions of whatever kind or character,

1 regardless of the state of mind of the actor performing or omitting to perform the same, encompassed  
2 by subparagraph (a) and (b), above, that have been or that could have been alleged, or made the  
3 subject of any claim or action in state court or otherwise under the law of any state, common law or  
4 in equity, in any pleading, amended pleading, demand, complaint, amended complaint, motion,  
5 discovery response or filing.

6 (the “Released Claims”) against any and all of the Defendants, Novartis AG, Novartis Corporation,  
7 Novartis Biotech Partnership, Inc., and their past, present and future parent entities, affiliates,  
8 subsidiaries, predecessors, successors and assigns, and each of their past, present and future officers,  
9 directors, attorneys, auditors, accountants, advisors, consultants, insurers, employees, associates,  
10 stockholders, controlling persons, representatives, underwriters and other agents, including their  
11 agents, assigns, spouses, heirs, executors, trustees, general and limited partners and partnerships,  
12 personal representatives, estates and administrators (the “Released Parties”).

13 “Unknown Claims” means any Released Claims that Lead Plaintiff or any other Settlement  
14 Class Member does not know or suspect to exist in his, her or its favor at the time of the release of  
15 the Released Persons which, if known by him, her or it, might have affected his, her or its settlement  
16 with and release of the Released Persons, or might have affected his, her or its decision not to object  
17 to this Settlement. With respect to any and all Released Claims, upon the Effective Date, Lead  
18 Plaintiff shall expressly and each of the other Settlement Class Members shall be deemed to have,  
19 and by operation of this [Order and the Judgment] shall have, expressly waived, the provisions,  
20 rights and benefits of California Civil Code §1542, which provides:

21 A general release does not extend to claims which the creditor does not know or  
22 suspect to exist in his or her favor at the time of executing the release, which if  
23 known by him or her must have materially affected his or her settlement with the  
24 debtor.

25 Lead Plaintiff shall expressly and each of the other Settlement Class Members shall be deemed to  
26 have, and by operation of this [Order and the Judgment] shall have, expressly waived any and all  
27 provisions, rights and benefits conferred by any law of any state or territory of the United States, or  
28 principle of common law, which is similar, comparable and equivalent to California Civil Code

1 §1542. Lead Plaintiff and the other Settlement Class Members may hereafter discover facts in  
2 addition to or different from those which he, she or it now knows or believes to be true with respect  
3 to the subject matter of the Released Claims, but Lead Plaintiff shall expressly and each other  
4 Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of this  
5 [Order and the Judgment] shall have, fully, finally, and forever settled and released any all Released  
6 Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not  
7 concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity  
8 now existing or coming into existence in the future, including, but not limited to, conduct that is  
9 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to  
10 the subsequent discovery or existence of such different or additional facts. Lead Plaintiff and the  
11 other Settlement Class Members shall be deemed by operation of this [Order and the Judgment] to  
12 have acknowledged, that the foregoing waiver was separately bargained for and a key element of the  
13 settlement of which this release is a part.

14 8. The Released Claims are hereby compromised, settled, released, discharged and  
15 dismissed as against the Released Parties on the merits and with prejudice by virtue of the  
16 proceedings herein and this Order and the Judgment.

17 9. Defendants and the successors and assigns of any of them, are hereby permanently  
18 barred and enjoined from instituting, commencing or prosecuting any and all claims, rights or causes  
19 of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or  
20 any other law, rule or regulation, including both known claims and Unknown Claims, that have been  
21 or could have been asserted in the Action or any forum by the Defendants or any of them or the  
22 successors and assigns of any of them against Lead Plaintiff, any or all of the Class Members or their  
23 attorneys, which arise out of or relate in any way to the institution, prosecution, assertion, defense,  
24 resolution or settlement of the Action (except for claims to enforce the Settlement) (the “Released  
25 Defendants’ Claims”). The Released Defendants’ Claims are hereby compromised, settled, released,  
26 discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and  
27 this Order and the Judgment.

1           10.   Neither this Order, the Judgment, nor the Stipulation or any of their terms and  
2 provisions or any documents executed or any proceedings taken pursuant to it, shall be:

3                   (a)   offered or received against the Released Parties as evidence of or construed as  
4 or deemed to be evidence of any presumption, concession, or admission by any of the Released  
5 Parties with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that  
6 has been or could have been asserted in the Action or in any litigation, or the deficiency of any  
7 defense that has been or could have been asserted in the Action or in any litigation, or of any  
8 liability, negligence, fault, or wrongdoing of Defendants;

9                   (b)   offered or received against the Released Parties as evidence of a presumption,  
10 concession or admission of any fault, misrepresentation or omission with respect to any statement or  
11 written document approved or made by any Defendant;

12                   (c)   offered or received against the Released Parties as evidence of a presumption,  
13 concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way  
14 referred to for any other reason as against any of the Released Parties, in any other civil, criminal or  
15 administrative action or proceeding, other than such proceedings as may be necessary to effectuate  
16 the provisions of the Stipulation; provided, however, that Defendants may refer to this Order and the  
17 Judgment, the Stipulation or any of its terms and provisions or any documents executed or any  
18 proceedings taken pursuant to it to effectuate the liability protection granted them hereunder,  
19 including in any action that may be brought against them in order to support a defense or  
20 counterclaim based on the principles of res judicata, collateral estoppel, full faith and credit, release,  
21 good faith settlement, judgment bar reduction, or any other theory of claim preclusion or issue  
22 preclusion or any other defense or counterclaim;

23                   (d)   construed against Defendants as an admission or concession that the  
24 consideration to be given hereunder represents the amount which could be or would have been  
25 recovered after trial; or

26                   (e)   construed as or received in evidence as an admission, concession or  
27 presumption against Lead Plaintiff or any of the Class Members that any of their claims are without  
28

1 merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable  
2 under the Complaint would not have exceeded the Gross Settlement Fund.

3 11. The Court finds that all parties and their counsel have complied with each  
4 requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

5 12. The proposed Plan of Allocation is approved. Lead Plaintiff and the Claims  
6 Administrator are authorized and directed to utilize the Plan as the basis for calculating the Proofs of  
7 Claim and Releases submitted by Settlement Class Members in connection with the Settlement.

8 13. The award of attorneys' fees and expenses provided in the Order filed January 6,  
9 2009 (Docket #195) is an award from a common fund recovered for the Class, it shall be paid to  
10 Lead Plaintiff's Counsel from the gross settlement fund (it is not separately payable by the  
11 Defendants) and is payable with interest at the same rate, net of taxes, that the payment amount  
12 earns. The award of attorneys' fees shall be allocated among Plaintiff's Counsel in a fashion which,  
13 in the opinion of Lead Plaintiff's Counsel, fairly compensates Plaintiff's Counsel for their respective  
14 contributions in the prosecution of the Action.

15 14. In the event this Order does not become Final (including, by way of example and not  
16 limitation, is vacated, modified or reversed on appeal), it shall be rendered null and void and shall be  
17 vacated and, in such event, (i) all orders entered and releases delivered in connection therewith shall  
18 be null and void and inadmissible in any proceeding in any tribunal, and (ii) the Settlement Class  
19 shall be automatically decertified without prejudice to Lead Plaintiff's right to seek, or Defendants'  
20 right to oppose, class certification in the future, and (iii) each party shall be restored to his, her or its  
21 respective position as it existed prior to June 6, 2006.

22  
23 Dated: March 11, 2009

HONORABLE VAUGHN R. WALKER  
UNITED STATES DISTRICT JUDGE