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 22 Peter Batchkoff

23 UNITED STATES DISTRICT COURT

24 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

25 PETER BATCHKOFF on behalf of himself
 26 and others similarly situated,

27 Plaintiff,

28 v.

BOEHRINGER INGELHEIM
 PHARMACEUTICALS, INC.,

Defendant

Case No. C10-4830-EDL

**STIPULATION TO STAY ACTION;
 [PROPOSED] ORDER THEREON**

Complaint Filed: September 24, 2010
 Trial Date: None set

TO THE HONORABLE COURT:

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff PETER BATCHKOFF (“Plaintiff”) and Defendant BOEHRINGER INGELHEIM PHARMACEUTICALS, INC. (“Defendant”), through their respective counsel of record, as follows:

RECITALS

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2 1. The complaint commencing this action was filed on September 24, 2010 in the San
3 Francisco County Superior Court. Defendant removed this action to federal Court on October 25,
4 2010.

5 2. The gravamen of Plaintiff's Complaint is the application of the administrative and
6 outside sales person exemptions to pharmaceutical representatives employed by Boehringer
7 Ingelheim Pharmaceuticals, Inc. The applicability of the exemptions to pharmaceutical
8 representatives employed by Bayer Corp., Wyeth, and AstraZeneca LP is currently pending
9 before the Ninth Circuit Court of Appeal in the following three cases: *D'Este v. Bayer Corp.*,
10 COA No. 07-56577 ("*Bayer*"); *Barnick v. Wyeth*, COA No. 07-56684 ("*Wyeth*"); and *Menes v.*
11 *AstraZeneca LP*, COA No. 07-56120 ("*Menes*"). Oral argument was heard in the three cases on
12 February 11, 2009. On May 5, 2009, the Ninth Circuit submitted questions on the applicability of
13 the outside sales person exemption and the administrative exemption to pharmaceutical
14 representatives to the California Supreme Court which was denied. The Ninth Circuit
15 subsequently entered an order on July 13, 2009, staying the *Bayer*, *Wyeth* and *Menes* cases
16 pending a decision by the California Supreme Court in *Harris v. Superior Court* (No. S-156555)
17 ("*Harris*").

18 3. At least two other cases involving pharmaceutical representatives in the Ninth
19 Circuit have been stayed pending outcome of *Bayer*, *Wyeth* and *Menes*. (See *Brody v.*
20 *AstraZeneca LP*, COA No. 08-56120 and *Rivera v. Schering Corp.*, COA No. 08-56565). A
21 putative class action case involving pharmaceutical representatives in the Central District of
22 California has also been stayed. (*Silverman v. Smithkline Beecham Corp.*, Case No. CV 06-
23 07272).

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1 **STIPULATION**

2 In light of the recitals detailed above, and the possibility that the *Bayer, Wyeth* and *Menes*
3 decisions will provide guidance in this case, the Parties stipulate and agree to stay this case until
4 decisions have been issued by the Ninth Circuit in *Bayer, Wyeth* and *Menes* to avoid wasting
5 judicial resources and to avoid expending attorneys' fees and costs litigating unfocused issues in
6 this case.

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8 Date: March 8, 2011

JACKSON LEWIS LLP

9
10 By: /s/ Cary G. Palmer

Cary G. Palmer
Nathan W. Austin

11
12 Attorneys for Defendant
13 BOEHRINGER INGELHEIM
14 PHARMACEUTICALS, INC.

15
16 Date: March 8, 2011

RUDY, EXELROD, ZIEFF & LOWE, LLP

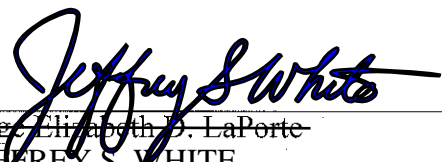
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18 By: /s/ Steven G. Zieff

Steven G. Zieff (SBN 84222)
David A. Lowe (SBN 178811)
John T. Mullan

19
20 Attorneys for Plaintiff

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22 **IT IS SO ORDERED.**

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24 Dated: March 16, 2011


25 ~~Judge Elizabeth B. LaPorte~~
26 JEFFREY S. WHITE
27 UNITED STATES DISTRICT JUDGE
28

4841-3139-8920, v. 1