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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

15 WILLIAM MCKINNEY,
16)
Plaintiff,)
17)
vs.)
18)
BAYER HEALTHCARE LLC; BAYER)
19 HEALTHCARE PHARMACEUTICALS, INC.;)
and DOES 1-20,)
20)
Defendants.)
21)
22)
23)

Case No. CV 09 5561 CW
**STIPULATION AND [PROPOSED]
ORDER RE: DISMISSAL WITH
PREJUDICE OF PLAINTIFF'S
SEVENTH CAUSE OF ACTION**

24 The parties, plaintiff William McKinney (“plaintiff”) and defendants Bayer HealthCare
25 LLC (Bayer) and Bayer HealthCare Pharmaceuticals Inc. (collectively, “defendants”),¹ by and
26 through their undersigned counsel, hereby stipulate as follows:

27 ¹ Defendants’ position is that Bayer HealthCare Pharmaceuticals Inc. is not a proper party to
28 these proceedings as it never employed plaintiff, or had any involvement in the facts which
allegedly gave rise to this action.

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ORDER

Based upon the above Stipulation of the parties and good cause otherwise appearing, this Court hereby dismiss, with prejudice, plaintiff's seventh cause of action for Intentional Infliction of Emotional Distress. The Court further orders that plaintiff shall be permitted to seek at trial only so-called "garden variety" emotional distress damages (*see Turner v. Imperial Stores*, 161 F.R.D. 89 (S.D. Cal. 1995)) and may offer no expert witness testimony (including by treating physicians) that any medical/psychological/emotional condition of plaintiff's was caused by or exacerbated by defendants' conduct. The Court further orders that defendants Bayer HealthCare LLC shall withdraw Request for Production Nos. 11, 14, 23, 24, Special Interrogatories Nos. 17-20, and Request for Productions Nos. 11, 14, 23, 24 in regards to its Amended Notice of Deposition of Plaintiff..

IT IS ORDERED.

Dated: October 25, 2010

By 
Claudia Wilken
United States District Court Judge