

SUPREME COURT
FILED

JUL 03 2013

IN THE SUPREME COURT OF CALIFORNIA

S198616

Frank A. McGuire Clerk

Deputy

IN RE CIPRO CASES I & II

Judicial Council Coordination Proceeding Nos. 4154 & 4220

CALIFORNIA COURT OF APPEAL – FOURTH APPELLATE DISTRICT – NO. D05631
SUPERIOR COURT OF SAN DIEGO – HON. RICHARD E.L. STRAUSS
NOS. JCCP 4154 AND JCCP 4220
**SERVICE ON ATTORNEY GENERAL AND DISTRICT ATTORNEY REQUIRED
UNDER BUSINESS AND PROFESSIONS CODE § 17209 AND C.R.C. 8.29**

**APPELLANTS' OPPOSITION TO MOTION OF RESPONDENTS
BARR LABORATORIES, INC., HOECHST MARION ROUSSEL,
INC., THE RUGBY GROUP, INC., AND WATSON
PHARMACEUTICALS, INC. FOR TRANSFER WITHOUT
DECISION UNDER RULE 8.528(d)**

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Appellants oppose the Generic Defendants' motion. A complete remand of this action is unnecessary, imprudent, and likely to result in a further multi-year delay.

The issue before this Court is a purely legal one: the proper standard under California antitrust law for analyzing pharmaceutical reverse payment agreements. The courts below adopted a legal standard developed by the Second Circuit in *In re Tamoxifen Citrate Antitrust Litigation* (2d Cir. 2006) 466 F.3d 187, in a case arising under the federal Sherman Act, 15 U.S.C. section 1. In *Federal Trade Commission v. Actavis, Inc.* (U.S. June 17, 2013) No. 12-416, the United States Supreme Court, applying federal antitrust law, rejected that standard. The Court neither applied nor construed California's Cartwright Act, Business and Professions Code section 16720, *et seq.*, or Unfair Competition Law, Business and Professions Code section 17200, *et seq.* Simply put, neither *Tamoxifen* nor *Actavis* is the law of California; it is in the interests of justice and efficiency for this Court to address and resolve the legal issues raised by this appeal.

The relief sought by the non-settling Generic Defendants runs counter to those interests and would only serve to delay resolution of this case. The Generics do not specify what additional facts should be subject to discovery or what additional facts need to be determined. The Generics do not say how a ruling by this Court settling the applicable legal standard would not benefit the parties, as well as future litigants. Moreover, if the Superior Court were directed to reopen summary judgment proceedings in connection with the claims against the Generics, this would leave open and unresolved the question of whether or not the Superior Court applied the proper standard. The ensuing appeals of this action—which has already been pending for over twelve years—might take years to wend their way back to this Court.

Appellants therefore respectfully request that this Court deny the Generic Defendants' motion and, instead, enter Appellants' proposed Order.

Respectfully submitted,

Dated: July 3, 2013

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By: 

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No. S198616

In the

Supreme Court
of the
State of California

IN RE CIPRO CASES I AND II

KARYN McGAUGHEY, et al.,
Plaintiffs-Appellants,

v.

BAYER CORPORATION, et al.,
Defendants-Respondents.

ON PETITION FOR REVIEW FROM THE FOURTH APPELLATE DISTRICT, DIVISION ONE,
NO. D056361, ON APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
HON. RICHARD E. L. STRAUSS · CASE NOS. JCCP 4154 AND JCCP 4220
**SERVICE ON ATTORNEY GENERAL AND DISTRICT ATTORNEY REQUIRED UNDER
BUSINESS AND PROFESSIONS CODE § 17209 AND CRC 8.29**

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Attorneys for Plaintiffs-Appellants and all others similarly situated

I, Brian Troxel, declare as follows:

I am employed with the law firm of Lief, Cabraser, Heimann & Bernstein LLP, whose address is 275 Battery Street, 29th Floor, San Francisco, California 94111-3339. I am over the age of eighteen years, and am not a party to this action.

On July 3, 2013, I served the following documents described as:

- 1. APPELLANTS' OPPOSITION TO MOTION OF RESPONDENTS BARR LABORATORIES, INC., HOECHST MARION ROUSSEL, INC., THE RUGBY GROUP, INC., AND WATSON PHARMACEUTICALS, INC. FOR TRANSFER WITHOUT DECISION UNDER RULE 8.528(d); and this**
- 2. PROOF OF SERVICE**

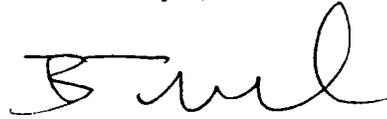
via U.S. Mail on:

SEE ATTACHED SERVICE LIST

I placed a copy in a separate envelope, with postage fully prepaid, for each addressee named below for collection and mailing on the below indicated day following the ordinary business practices at Lief, Cabraser, Heimann & Bernstein. I certify I am familiar with the ordinary business practices of my place of employment with regard to collection for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit or mailing affidavit.

I declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct.

Executed at San Francisco, California on July 3, 2013.

A handwritten signature in black ink, appearing to read "Brian Troxel", written in a cursive style.

Brian Troxel

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