

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

HEIDI LANGAN on behalf of herself and all
of others similarly situated,

Plaintiff,

vs.

JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.,

Defendant.

Case No.: 13-cv-01471 (JAM)

SETTLEMENT AGREEMENT

EXHIBIT 5

PROPOSED PRELIMINARY APPROVAL ORDER

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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of others similarly situated,

Plaintiff,

vs.

JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.,

Defendant.

Case No.: 13-cv-01471 (JAM)

**[PROPOSED] ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiff Heidi Langan and Defendant, Johnson & Johnson Consumer Companies, Inc. have entered into a Class Action Settlement Agreement (“Settlement Agreement” or “Agreement”) after substantial motion practice, discovery, an interlocutory appeal, and lengthy arms-length settlement discussions;

AND, WHEREAS, the Court has received and considered the Agreement, including the accompanying exhibits, and the record in this Action;

AND, WHEREAS, the Plaintiff has made an unopposed application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Action, preliminary approval of a Settlement Class, and approval of a notice plan;

AND, WHEREAS, the Court has reviewed the Plaintiff’s application and the supporting memorandum for such order, and has found good cause for same.

NOW, THEREFORE, IT IS HEREBY ORDERED:

The Class Is Preliminarily Certified

1. If not otherwise defined herein, all capitalized terms have the same meanings as set forth in the Agreement.

2. Pursuant to Federal Rule of Civil Procedure 23(e), the Court certifies for the sole purpose of consummating the settlement of the Action in accordance with the Agreement the following Settlement Class: all persons who purchased the Aveeno Baby Wash and Shampoo until November of 2012 and Aveeno Baby Calming Comfort Bath until November of 2013, beginning on the following dates in the following states: in Alaska from January 25, 2011; in California, Connecticut, Delaware, the District of Colombia, Illinois, New York and Wisconsin from January 25, 2010; in Florida, Hawaii, Massachusetts, and Washington from January 25, 2009; in Arkansas and Missouri from January 25, 2008; in Michigan, New Jersey, and Vermont from January 25, 2007; in Rhode Island from January 25, 2003. Excluded from the Settlement Class are: (i) current and former officers and directors of Defendant; (ii) members of the immediate families of the officers and directors of Defendant; (iii) Defendant's legal representatives, heirs, successors, or assigns, and any entity in which they have or have had a controlling interest; and (iv) the judicial officer to whom this lawsuit is assigned.

3. This certification of the Class is made for the sole purpose of consummating the settlement of the Action in accordance with the Settlement Agreement. If the Court's grant of approval does not become final for any reason whatsoever, or if it is modified in any material respect, this class certification shall be deemed void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever, including in any later attempt by or on behalf of Class Representative or anyone else to seek class certification

in this or any other matter.

4. The Class meets all requirements of Federal Rule of Civil Procedure 23 (a) and (b) for certification of the class claims alleged in the operative Complaint, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the Class Representatives and Class Counsel; (e) predominance of common questions of fact and law; and (f) superiority.

5. Class Counsel and the Class Representative are found to be adequate representatives of the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Court also designates Izard, Kindall & Raabe, LLP, whom the Court finds are experienced and adequate counsel having considered the factors set forth in Rule 23(g)(1), as Class Counsel.

**The Settlement Agreement Is Preliminarily
Approved And Final Approval Schedule Set**

6. The Court hereby preliminarily approves the Agreement and the terms and conditions of settlement set forth therein, subject to further consideration at the Final Approval Hearing.

7. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Agreement, and hereby finds that the settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed settlement as set forth in the Agreement.

8. Pursuant to Federal Rule of Civil Procedure 23(e) the Court will hold a final approval hearing on _____, 2019, at _____ a.m./p.m., in the Courtroom of the Honorable Jeffrey Alker Meyer, United States District Court for the District of Connecticut, Richard C. Lee United States Court House, 141 Church Street, New Haven, Connecticut, 06510 for the following purposes:

a. determining whether the proposed settlement of the Action on the terms

and conditions for the Agreement is fair, reasonable, and adequate and should be approved by the Court;

- b. considering the application of Class Counsel for an award of Attorneys' Fees and Expenses as provided for under the Agreement;
- c. considering the application for a Service Award to the Class Representative as provided for under the Agreement;
- d. considering whether the Court should enter the Final Order Approving Settlement;
- e. considering whether the release by the Class Members of the Released Claims as set forth in the Agreement should be provided; and
- f. ruling upon such other matters as the Court may deem just and appropriate.

9. The Court may adjourn the Final Approval Hearing and later reconvene such hearing.

10. Any Class Member may enter an appearance in the Action, at his or her own expense, individually or through counsel. All Class Members who do not enter an appearance will be represented by Class Counsel.

11. The Parties may further modify the Agreement prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the settlement provided therein.

12. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the Agreement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Class

Members.

13. Opening papers in support of final approval of the Settlement Agreement and any application for Attorneys' Fees and Expenses and/or the Class Representative's Service Award must be filed with the Court and served at least fourteen (14) days prior to the Final Approval Hearing. Reply papers, if any, must be filed and served at least five (5) days prior to the Final Approval Hearing.

The Court Approves the Form and Method of Class Notice and Notice Plan

14. The Court approves, as to form and content, the Notice Plan set forth in Section VII of, and Exhibit 4 to the Agreement and the proposed Notice, which is Exhibit 2 to the Agreement on file with this Court.

15. The Court finds that publication of Class Notice substantially in the manner and form set forth in this Order, the Agreement and Notice Plan meets the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

16. Pursuant to the Agreement, the Defendant will notify the appropriate federal and state officials of this Settlement Agreement as required by the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

17. The Court approves the designation of JND Legal Administration of Seattle, Washington to serve as the Court-appointed Settlement Administrator for the settlement. The Settlement Administrator shall disseminate Class Notice and supervise and carry out the notice procedure, the processing of claims, and other administrative functions, and shall respond to Class Member inquiries, as set forth in the Agreement and this Order under the direction and supervision of the Court.

18. The Court directs the Settlement Administrator to establish a Settlement Website, making available copies of this Order, the Class Notice, and Claim Forms that may be downloaded and submitted online or by mail, the Agreement and all exhibits thereto, and such other information as may be of assistance to Class Members or required under the Agreement.

19. The Settlement Administrator is ordered to institute the dissemination of the Class Notice as set forth in the Agreement, no later than 45 days after the Court enters this Preliminary Approval Order, including by publication and internet publication.

20. The costs of the Class Notice, processing of claims, creating and maintaining the Settlement Website, and all other Settlement Administrator and Class Notice expenses shall be paid out of the Settlement Fund in accordance with the applicable provisions of the Agreement.

Procedure For Class Members To Participate In The Settlement

21. Class Members who wish to claim a settlement award must submit their Claim Form and supporting documentation no later than 14 days prior to the Final Approval Hearing. Such deadline may be further extended without notice to the Class by Court Order, by agreement between the Parties, or as set forth in the Agreement.

Procedure for Requesting Exclusion from the Class

22. Any Person falling within the definition of the Class may, upon his or her request, be excluded from the Class. Any such Person must submit a Request for Exclusion to the Settlement Administrator postmarked or delivered no later than 14 days before the Final Approval Hearing (the “Opt-Out Date”), as set forth in the Class Notice.

23. Any Class Member who does not send a signed Request for Exclusion

postmarked or delivered on or before the Opt-Out Date will be deemed to be a Class Member for all purposes and will be bound by all further orders of the Court in this Action and by the terms of the settlement, if finally approved by the Court. The written Request for Exclusion must request exclusion from the Class, must be signed by the potential Class Member and include their email and mailing address as well as a statement indicating that the Person desires to be excluded from the Class. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in the Agreement shall have no rights under the Agreement and shall not be bound by the Agreement or the Final Judgment and Order.

24. A list reflecting all Requests for Exclusion shall be filed with the Court by Plaintiff at or before the Final Approval Hearing.

Procedure for Objecting to the Settlement

25. Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the application for payment of attorneys' fees and reimbursement of expenses, or to the application for the Service Award for the Class Representative may timely file an Objection in writing no later than (fourteen (14) days prior to the Fairness Hearing. Any objection must be signed and must include (a) the case name and number (Langan v. Johnson & Johnson Consumer Companies, Inc., No.: 13-cv-01471 (JAM): (b) the full name, current address, and telephone number of the Class Member making the objection, and (c) a description of the objection, including whatever factual and legal support the objecting Class Members believes to be appropriate. Any objector must also provide the following additional information if the listed conditions apply:

- a. If the objecting Class Member intends to call any witnesses in support of his or her objection, he or she must provide the names and addresses of the

witnesses, together with a brief summary of their testimony;

- b. If the objecting Class Member intends to submit documents in support of his or her objection, he or she must provide copies of each document;
- c. If the objecting Class Member is represented by an attorney or attorneys, the objecting Class Member must provide the name(s), address(es) and phone number(s) of each attorney; and
- d. If the objecting Class Member previously appeared as an objector, or any attorney representing the objecting Class Member provided legal assistance in preparing an objection with respect to another class action settlement, the objecting Class Member must provide the name of the case, the court in which the case was filed, and the docket number.

26. Any Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person or through counsel hired at the Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement, including attorneys' fees. Counsel appearing on behalf of objecting class members must file a notice of appearance in accordance with this Court's rules by no later than 14 days before the Fairness Hearing.

27. Any Class Member who fails to comply with the provisions of the preceding paragraphs 25 and 26 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of the Agreement and by all proceedings, orders, and judgments, including, but not limited to, the Release, in the Action.

28. Pending final determination of whether the settlement should be approved, neither the Class Representative nor any Class Member, either directly, representatively, or in

any other capacity, shall commence or prosecute against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims.

29. All proceedings in this Action with respect to Defendant are hereby stayed and suspended pending the Final Approval of the Class Settlement, except such proceedings as are provided for in the Agreement, or which may be necessary to implement the terms of the Agreement, the Class, or this Order.

30. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement which are not materially inconsistent with either this Order or the terms of the Agreement.

IT IS SO ORDERED.

DATED: _____

HONORABLE JEFFREY ALKER MEYER
UNITED STATES DISTRICT JUDGE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT