

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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

Plaintiff,

v.

JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.,

Defendant.

Civil Action No. 3:13-CV-01471-JAM

December 17, 2018

**DECLARATION OF ROBERT A. IZARD IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Robert A. Izard, hereby declare as follows:

1. I am a partner at the law firm of Izard Kindall & Raabe LLP (“IKR”), counsel for Plaintiff, Heidi Langan, in this putative class action lawsuit against Johnson & Johnson Consumer Companies, Inc. (“J&JCC” or “Defendant”). I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval and have personal knowledge of the facts contained herein.

2. Before bringing this Action,¹ this firm exhaustively investigated Plaintiff's claims.

3. Plaintiff filed a class action complaint against J&JCC on October 7, 2013, in the United States District Court for the District of Connecticut. The Complaint alleged that Defendant manufactured and sold Wash and Bath Products labelled "Natural Oat Formula," even though they were comprised almost entirely of synthetic ingredients. The Complaint alleged violations of the Connecticut Unfair Trade Practices Act ("CUTPA"), as well as violations of thirty other consumer protection statutes.

4. On November 27, 2013, Plaintiff filed an Amended Complaint reducing the number of consumer protection statutes claimed to have been violated to twenty-one. On January 24, 2014, Defendant moved to dismiss the Amended Complaint and on May 12, 2014, the Court denied Defendant's Motion to Dismiss. Defendant filed its Answer to Plaintiff's Amended Complaint on July 1, 2014.

5. From July 2014 until August 2015, the Parties engaged in extensive discovery, which included review and analysis of thousands of pages of documents produced by J&JCC, and depositions of several witnesses, including Plaintiff and her experts.

6. On August 3, 2015, Plaintiff moved for class certification. On September 21, 2015, Defendant filed its opposition to Plaintiff's Motion for Class Certification along with motions to exclude the testimony of Plaintiff's experts. On

¹ This Action followed an initial filing in the United States District Court for the District of New Jersey on January 25, 2013, entitled *Virgil and Langan v. Johnson & Johnson Consumer Companies, Inc.*, Case No. 3:13-cv-00524-MLC-DEA, which was voluntarily discontinued with prejudice on September 30, 2013.

October 15, 2015, Plaintiff filed her Reply in Further Support of Motion for Class Certification and oppositions to Defendants' motions to exclude. On November 18, 2015, the Parties both filed motions for summary judgment. On December 11, 2015, the Parties filed their oppositions to the motions for summary judgment.

7. On March 13, 2017, this Court denied the motions for summary judgment, denied the motions to exclude the testimony of Plaintiff's experts, and certified a class.² Defendant petitioned the United States Court of Appeals for the Second Circuit for permission to appeal the class certification, which was granted. The Second Circuit vacated this Court's grant of class certification and remanded the case.

8. Thereafter, the Parties agreed to the proposed Settlement. As discussed in Plaintiff's Memorandum of Law in Support of Preliminary Approval, the proposed Settlement is procedurally and substantively fair, adequate, and reasonable. The parties have engaged in extensive motion practice and discovery, which included the production and review of thousands of pages of documents, fact and expert depositions, and an appeal to the Second Circuit. The proposed Settlement, reached after roughly five years of litigation and arm's-length negotiations among the Parties and their counsel, including two separate mediation sessions with Professor Eric Green, was informed by the exchange of

² All purchasers of the Aveeno Baby Brand Wash and Shampoo until November of 2012 and Aveeno Baby Brand Calming Comfort Bath baby wash 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 Columbia, 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; and in any additional states which the Court determines to have sufficiently similar law to Connecticut without creating manageability issues, who purchased the Products primarily for personal, family or household purposes. Specifically excluded from this Class are: the Defendant, the officers, directors and employees of Defendant; any entity in which Defendant has a controlling interest; any affiliate, legal representative of Defendant; the judge to whom this case is assigned and any member of the judge's immediate family; and any heirs, assigns and successors of any of the above persons or organizations in their capacity as such.

significant information throughout the discovery and settlement process. The negotiations leading to the proposed Settlement were conducted by highly qualified counsel, who respectively sought to obtain the best possible result for their clients.

9. Izard Kindall & Raabe LLP has substantial experience prosecuting class action cases. Based on our experience and judgment, we believe that the proposed Settlement is an excellent result for the Class. The \$2.4 million settlement is extremely reasonable based on the total damages at issue and the risks involved in continued litigation.

10. Based on Plaintiff's expert analysis, the damages sustained by the Class as a result of the premium attributable to Defendant's representations that the Products were made using a "Natural Oat Formula" are approximately \$3.9 million. \$2.4 million is roughly 60 percent of this total.

11. By the time the Parties agreed to the proposed Settlement, the case was at an advanced stage of discovery and the issues in this Action had been thoroughly vetted through extensive motion practice and completion of both fact and expert discovery. The Parties have a thorough understanding of the case and are well positioned to evaluate the merits of the Action.

12. I support the proposed Settlement because I believe there were significant risks to continuing this litigation. This case involves complex issues of consumer perception of the Covered Products and the amount of alleged loss attributable to the challenged advertising. Also, the Class is not certified, and even if this Court were to certify the Class, there is no assurance class status would be maintained through trial. Further, Plaintiff faces significant risks of establishing both liability and damages. The proposed

settlement allows individuals who feel they suffered a loss to seek monetary recompense in a timely fashion.

13. It is also apparent that continuing litigation would require considerable time and resources. The Parties would have to engage in further motion practice to certify the Class. The case would likely go to trial, and whichever party did not prevail would likely appeal the judgment. Even if Plaintiff prevailed, it could take years for Class Members to obtain relief.

14. The Plaintiff, Heidi Langan, supports the approval of the proposed Settlement.

15. Attached to this Declaration is a true and accurate copy of the Settlement Agreement (Exhibit A).

16. Attached to the Settlement Agreement are true and accurate copies of a proposed Claim Form, a form of proposed Notice, a proposed Order and Final Judgment, a summary of the Notice Plan, and a proposed Preliminary Approval Order (Exhibits 1 -5 to Exhibit A).

17. A true and accurate copy of the Firm Resume of IZARD KINDALL & RAABE LLP is attached as Exhibit B to this Declaration.

I declare under penalty of perjury that the foregoing is, to the best of my knowledge, true and correct.

Executed this 17th day of December, 2018 at West Hartford, Connecticut.

/s/ _____
Robert A. IZARD

CERTIFICATE OF SERVICE

I, Robert A. Izard, hereby certify that on this 17th day of December 2018, the foregoing was filed electronically. Notice of this filing will be sent by email to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this document through the court's CM/ECF system.