

**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

May 27, 2019

**DECLARATION OF MARK P. KINDALL IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES
AND A LEAD PLAINTIFF SERVICE AWARD**

I, Mark P. Kindall, hereby declare as follows:

1. I am a partner at the law firm of Izard Kindall & Raabe LLP ("IKR") and am competent to declare the matters stated herein.

2. My firm represents Plaintiff Heidi Langan in this putative class action lawsuit against Johnson & Johnson Consumer Companies, Inc. ("J&J"). I submit this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorney's Fees and Expenses and a Case Contribution Award.

Settlement Negotiations

3. Settlement negotiations were conducted by highly qualified counsel who respectively sought to obtain the best possible result for their clients. Prior to settling, counsel for the Parties had the benefit of extensive and complete discovery, including extensive review of over

100,000 pages documents and depositions of fact and expert witnesses, as well as guidance from the Court, in the form of its rulings on the Motion to Dismiss, the Motion for Class Certification, the cross-motions for Summary Judgment and the *Daubert* motions, and additional guidance from the Second Circuit with respect to key class certification issues. Accordingly, counsel for the Parties were well aware of the strengths and weaknesses of their case.

4. Moreover, settlement was only reached after multiple efforts. In October of 2015, the Parties exchanged mediation submissions, but after a ten-minute telephone call on October 21, 2015, Magistrate Judge Martinez cancelled the scheduled mediation altogether, when the Parties indicated that Settlement discussions were unlikely to be productive until the pending class certification motion was decided by the court.

5. Following the issuance of the Court's Omnibus Ruling on March 13, 2017, the Parties agreed to engage in settlement discussions and retained an experienced and highly regarded private mediator, Professor Eric Green.

6. The Parties again prepared and exchanged mediation submissions and attended an all-day in-person mediation session in New York City on May 8, 2017.

7. The Parties were unable to reach agreement at the May 8, 2017 mediation session but agreed to continue working on possible settlement terms with the assistance of Professor Green.

8. However, when the Second Circuit accepted Defendant's Rule 23(f) petition, Defendant indicated that further discussions would have to await the outcome of the appeal.

9. Settlement discussions did not resume until after the Second Circuit handed down its decision in July of 2018. The Parties scheduled another in-person mediation session with

Professor Green for September 14, 2018. However, the Parties failed to reach agreement at the September 14, 2018 mediation session as well.

10. Again, the Parties agreed to continue their negotiations, and exchanged additional offers and counteroffers through Professor Green in the weeks following in the September 14, 2018 mediation. In the end, Professor Green made a mediator's proposal of \$2.4 million, which the Parties accepted on October 2, 2018. Negotiation of the final text of the SA took over a month, but the agreement was signed by all parties on November 27, 2018.

Settlement Approval

11. There are no agreements made in connection with the proposed settlement other than the Settlement Agreement itself.

12. Plaintiff and Class Counsel have diligently prosecuted this action for six years. Prior to filing the Complaint, Class Counsel engaged in extensive research concerning the nature and properties of the non-natural ingredients of the Products, the pricing of the Products relative to competitor products that were not marketed as "natural," and variations in state consumer protection laws around the country.

13. Plaintiff's damages expert calculated that the challenged "natural" representation caused the cost of the products to be inflated by approximately 10 percent, resulting in just under \$4 million in damages to the Class over the Class Periods.

14. The \$2.4 million settlement represents approximately sixty percent (60%) of the actual damages sustained by the Class as determined by Plaintiff's damages expert (Defendant's expert, of course, found that there were no damages).

15. Plaintiff Heidi Langan reviewed the Complaint before it was filed and received periodic updates concerning this litigation. She responded to discovery, was deposed, and discussed the proposed Settlement terms with Class Counsel.

IKR's Time, Lodestar, and Expenses

16. I was the attorney primarily involved in the day-to-day management and oversight of this litigation, although other firm attorneys were involved in its successful prosecution and resolution. The firm's experience, as well those of the attorneys involved in the litigation, are described in detail in the IKR Firm Resume attached as Exhibit B.

17. As of May 25, 2019, IKR attorneys and staff have spent 2058 hours prosecuting this case, including time devoted to investigating, drafting pleadings, engaging in discovery and motion practice, reviewing documents, conducting and defending depositions, retaining and consulting experts, negotiating, and finally settling this case. IKR's aggregate lodestar is \$1,309,812.50, broken down as follows:

Attorney	Title	Years of Practice	Rate	Hours	Lodestar
Robert A. Izard	Partner	35	\$ 925	276.250	\$255,531.25
Mark P. Kindall	Partner	30	\$ 850	698.500	\$593,725.00
Seth R. Klein	Partner	23	\$ 750	191.625	\$143,718.75
Jeffrey S. Nobel	Partner	25*	\$ 650	34.000	\$22,100.00
Douglas P. Needham	Associate	11	\$ 550	.875	\$481.25
Nicole A. Veno	Associate	4*	\$ 350	646.125	\$226,143.75
Oren Faircloth	Associate	3	\$ 350	94.750	\$33,162.50
Jennifer Somers	Contract Attorney	25	\$ 300	116.500	\$34,950.00
Total				2058.625	\$1,309,812.50

* Years of practice as of date of retirement or departure from firm

18. The schedule shown in the preceding paragraph was prepared from contemporaneous daily time records regularly prepared and maintained by IKR, which are available at the request of the Court.

19. The hourly rates shown above are the same as current rates charged for services in non-contingent hourly rate billing matters with respect to counsel still with the firm. For attorneys no longer with the firm, the hourly rate shown is the rate at which the firm billed their services as of the date of their departure. Numerous courts throughout the country and in this state have accepted IKR's rates as the basis for lodestar calculations in other class actions in which we have served as counsel.

20. Counsel have incurred a total of \$216,534.84 in unreimbursed expenses in connection with the prosecution of this case as of May 25, 2019. The vast majority of the expenses involved payments to experts, without whose analysis this case could not have been prosecuted. Unreimbursed expenses are broken down as follows:

Category	Amount
Court Costs	\$2,033.50
3 rd Party Printing	\$210.00
Expert Fees	\$150,179.75
Mediation Fees	\$10,459.12
PACER	\$562.40
Investigation (cost of obtaining IRI Market Data)	\$22,342.50
Electronic Document Hosting	\$11,606.38
Service of Process	\$1,724.90
Transcripts	\$12,646.07
Travel	\$4,403.24
Postage/Delivery	\$366.98
Total	\$216,534.84

21. The expenses shown in the preceding paragraph were actually incurred and paid over the course of the litigation. Counsel incurred these expenses with no guarantee that they would ever be recovered except in the event that the litigation was successful, and the Court approved the reimbursement. I have reviewed these expenses and believe that they were both necessary and appropriate for the prosecution of the case.

Notice and Claims Administration

22. After reaching agreement on the terms of the settlement, IKR solicited competitive bids from reputable firms to serve as the Settlement Administrator with respect to both notice and claims administration. IKR selected JND Legal Administration, which provided the low bid. JND has been exceptionally responsive and has provided regular updates on the progress of both execution of the class notice and the response of the Class.

Additional Exhibits

23. A true and accurate copy of the Settlement Agreement and its Exhibits is attached hereto as Exhibit A and Exhibits 1–5 thereto.

24. A true and correct copy of the IKR firm resume is attached hereto as Exhibit B.

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

DATED: May 27, 2019

/s/ Mark P. Kindall
Mark P. Kindall