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17
18 **UNITED STATES DISTRICT COURT**
19 **EASTERN DISTRICT OF CALIFORNIA**

20 JOANN MARTINELLI, individually and on
21 behalf of all others similarly situated,

22 Plaintiff,

23 v.

24 JOHNSON & JOHNSON and McNEIL
25 NUTRITIONALS, LLC,

26 Defendants.

Case No. 2:15-cv-01733-MCE-DB

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT**

Hon. Morrison C. England, Jr.

1 WHEREAS, Class Representative JoAnn Martinelli and Defendants Johnson & Johnson
2 and McNeil Nutritionals, LLC have reached a proposed settlement and compromise of the claims
3 in the above-captioned matter, which is embodied in the Stipulation of Settlement that has been
4 provided to the Court;

5 WHEREAS, the parties have applied to the Court for preliminary approval of the proposed
6 Settlement; and

7 WHEREAS, the capitalized terms herein shall have the same meaning as in the Stipulation
8 of Settlement;

9 NOW, THEREFORE, the Court, having read and considered the Stipulation of Settlement
10 and accompanying documents, as well as the Motion for Preliminary Approval of Settlement and
11 supporting papers, and the parties to the Stipulation of Settlement having consented to the entry of
12 this order, and good cause appearing,

13 IT IS HEREBY ORDERED AS FOLLOWS:

14 1. Subject to further consideration by the Court at the time of the Final Approval
15 Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the
16 Settlement Class, as falling within the range of possible final approval, and as meriting submission
17 to the Settlement Class for its consideration.

18 2. The settlement set forth in the parties' Stipulation of Settlement is within the range
19 of reasonableness and possible final approval in that it appears fair, reasonable, and adequate. The
20 agreement contained in that Stipulation of Settlement was reached as a result of extensive arm's-
21 length negotiations between the Parties and their counsel with the assistance of an experienced
22 mediator. This included three separate mediation sessions before the Stipulation of Settlement was
23 reached. Additionally, before entering into the Stipulation of Settlement, this Action had been
24 vigorously litigated for more than five years. Thus, the Parties and their counsel had sufficient
25 information to evaluate the strengths and weaknesses of the case and to conduct informed
26 settlement discussions.

1 3. For purposes of the Settlement only, the Court certifies the Settlement Class, which
2 consists of all individuals who purchased Benecol Regular Spreads and Benecol Light Spreads in
3 the United States from January 1, 2008 to December 31, 2011 for personal use.

4 4. The requirements for certification of the Settlement Class under Fed. R. Civ. P.
5 23(a), and (b)(3) have been satisfied for settlement purposes. The Court finds, for settlement
6 purposes only, that: (a) the Settlement Class is defined by objective criteria and ascertainable; (b)
7 the numerosity requirement is satisfied; (c) there are questions of law and fact that are common to
8 the Settlement Class, and those questions of law and fact common to the Settlement Class
9 predominate over any questions affecting any individual Settlement Class Member; (d) the claims
10 of the Plaintiff are typical of the claims of the Settlement Class she seeks to represent for purposes
11 of settlement; (e) a class action is superior to other available means of adjudicating this dispute; (f)
12 and Plaintiff and Class Counsel are adequate representatives of the Class. The Court has also
13 conducted the choice of law analysis required by *In re Hyundai and Kia Fuel Economy Litigation*,
14 881 F.3d 679 (9th Cir. 2018) and determined that it can certify a nationwide class under California
15 law and that California has a substantial interest in regulating the conduct of companies who do
16 business in California.

17 5. The Court provisionally appoints JoAnn Martinelli as the Class Representative of
18 the Settlement Class.

19 6. The Court appoints Scott A. Bursor and Bursor & Fisher, P.A., as Class Counsel for
20 purposes of this Settlement.

21 7. A Final Approval Hearing shall be held before this Court at 2:00 p.m. on March 24,
22 2021 in Courtroom 7, on the 14th floor, of the Robert T. Matsui United States Courthouse, 501 I
23 Street, Sacramento, CA 95814, to address: (a) whether the proposed Settlement should be finally
24 approved as fair, reasonable and adequate; (b) whether the Final Approval Order and Judgment
25 should be entered; (c) whether the application for approval of the payment of attorneys' fees to
26 Class Counsel from the Settlement Fund should be approved; (d) whether Class Counsel's
27 application for reimbursement of costs and expenses and the payment of incentive awards to the
28

1 Class Representative from the Settlement Fund should be approved; and (e) any other matters that
2 the Court deems appropriate.

3 8. Since the settlement set forth in the parties' Stipulation of Settlement is within the
4 range of reasonableness for possible Final Approval, Class Notice should be provided to the
5 Settlement Class pursuant to the Stipulation of Settlement, as follows:

6 a. The Court appoints JND, a well-qualified and experienced claims and notice
7 administrator, as the Settlement Administrator. Defendants are directed to provide JND with
8 contact information in its possession that identifies Class Members or likely Class Members.
9 Defendants shall provide this information, and JND shall retain this information, for the sole
10 purpose of effecting Class Notice as provided in the Stipulation of Settlement and this Order.

11 b. The Court hereby approves the Long-Form Notice attached as Exhibit B to
12 the Settlement Agreement. On or before thirty (30) days after the entry of an order granting
13 preliminary approval, Class Counsel shall cause a copy of the Long Form Notice to be posted on a
14 dedicated website together with links to important case documents, such as the Preliminary
15 Approval Order, this Stipulation of Settlement, the First Amended Class Action Complaint, and
16 Defendants' Answer to First Amended Class Action Complaint.

17 c. Class Counsel shall register www.benecolsettlement.com for notice
18 purposes, along with several additional domains that will mirror and/or link to that website. Class
19 members will be directed to the website by hyperlinks embedded in the email version of the Short
20 Form Notice. The www.benecolsettlement.com website will allow Class Members to submit
21 Claim Forms online and will contain information relevant to Class Members, including but not
22 limited to the Long Form Notice, all applicable deadlines, the Stipulation of Settlement, Class
23 Notice, a downloadable Claim Form, all papers filed by the parties in support of the proposed
24 Settlement (including Plaintiff's anticipated motion for a Fee and Expense Award), orders of the
25 Court pertaining to the Stipulation of Settlement, and contact information for the Settlement
26 Administrator, including a toll-free telephone number, e-mail, and U.S. mail.

27 d. The Court hereby approves the Short Form Notice attached as Exhibit F to
28 the Settlement Agreement. On or before thirty (30) days after the entry of an order granting

1 preliminary approval, the Settlement Administrator shall cause a copy of the Short Form notice to
2 be sent by email to all class members for whom email addresses are identified.

3 e. The Settlement Administrator shall undertake Publication Notice, which
4 means publication of the Short Form Notice in accordance with the Media Plan attached as Exhibit
5 C to the Settlement Agreement.

6 f. The Publication Notice shall run from thirty (30) days after the entry of an
7 order granting preliminary approval to one hundred and fifty (150) days after the entry of an order
8 granting preliminary approval.

9 g. The Court approves the Class Notice and Claims forms, including the Long
10 Form Notice, the Short Form Notice, and the Claim Form, attached as Exhibit A to the Settlement
11 Agreement.

12 h. The Court determines that the Class Notice, as set forth in the parties'
13 Stipulation of Settlement, complies with all legal requirements, including but not limited to the Due
14 Process Clause of the United States Constitution. Thus, the Court directs that Class Notice shall be
15 given to the Class as provided herein and in Section IV of the parties' Stipulation of Settlement.

16 9. Settlement Class Members will have until the Claim Deadline, one hundred and
17 twenty (120) days after the start of Publication Notice, to submit a Claim Form.

18 10. If a Settlement Class Member wishes to exclude himself or herself from the
19 Settlement, that Settlement Class Member will have until the Opt-Out Date, ninety (90) days after
20 the start of Publication Notice, to submit a valid Request for Exclusion in the manner set forth in
21 Article 5.3 of the Stipulation of Settlement. All Settlement Class Members who do not timely
22 submit a valid Request for Exclusion will be bound by the Final Order and Final Judgment, and
23 enjoined from bringing or prosecuting any action relating to the Released Claims.

24 11. At least seven (7) calendar days prior to the Fairness Hearing, Class Counsel shall
25 prepare or cause the Settlement Administrator to prepare a list of the persons who have excluded
26 themselves in a valid and timely manner from the Settlement Class, and Class Counsel shall file
27 that list with the Court.

1 12. The deadline for the Plaintiffs to file and serve papers in support of their application
2 for final approval of the Stipulation of Settlement, as well as Class Counsel’s motion for fees,
3 costs, and incentive awards, shall be fourteen (14) days before the Objection deadline.

4 13. Any objections by any Settlement Class Member to the certification of the
5 Settlement Class, the approval of the proposed settlement set forth in the parties’ Stipulation of
6 Settlement, or the award of attorneys’ fees, costs, and incentive awards, shall be heard and any
7 papers submitted in support of said objections shall be considered by the Court at the Fairness
8 Hearing only if, on or before the Objection deadline, on ninety (90) days after the start of
9 Publication Notice, such objector files with the Court a written objection and notice of the
10 objector’s intention to appear, and otherwise complies with the requirements set forth in Article V
11 of the Stipulation of Settlement.

12 14. The deadline for the parties to file and serve any response to any timely objections
13 shall be on fourteen (14) days after the Objection deadline.

14 15. The parties shall, pursuant to the terms and conditions of the Stipulation of
15 Settlement, take all necessary and appropriate steps to execute the terms and conditions of the
16 Stipulation of Settlement and this Preliminary Approval Order.

17 16. Pending the Fairness Hearing, all proceedings, other than the proceedings necessary
18 to carry out or enforce the terms and conditions of the Stipulation of Settlement and the
19 Preliminary Approval order in the Action are stayed, and Class Members are enjoined from
20 bringing or prosecuting any action relating to the Released Claims or from receiving benefits from
21 any action based on the Released Claims.

22 17. The dates for each of the deadlines issued in this order are summarized below:

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Event	Triggering Event	Date
Settlement Website posted	30 days after entry of an order granting preliminary approval	

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1	Dissemination of Notice and start of Publication Notice	30 days after entry of an order granting preliminary approval order	
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3	Deadline for Class Representative to file motion in support of final settlement approval	14 days after Objection deadline	
4			
5	Deadline for Class Representative to file fee and expense application(s)	14 days before Objection deadline	
6			
7	Deadline for class members to file a claim	120 days after the start of Publication Notice	
8			
9	Deadline for class members to request exclusion from class	90 days after the start of Publication Notice	
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11	Deadline for class members to submit an objection	90 days after the start of Publication Notice	
12			
13	Deadline for Class Representative to respond to objections	14 days after Objection deadline	
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15	Final settlement approval hearing	14 days after the submission of Class Representative response to objections; approximately 150 days after the entry of an order granting preliminary approval	
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19	Website taken down	After final resolution of appeals and distribution of settlement monies	
20			
21			

22 **18.** All Class Members and/or their representatives, who do not timely and properly
23 exclude themselves from the Class are, pending the Court’s ruling on the motion for final approval
24 of the settlement, preliminarily barred and enjoined from directly, indirectly, derivatively, in a
25 representative capacity, or in any other capacity, filing, commencing, prosecuting, maintaining,
26 intervening in, participating in, conducting, or continuing any action in any forum (state or federal)
27 as individual actions, class members, putative class members, or otherwise against the Released
28 Persons (as that term is defined in the Settlement Agreement) in any court or tribunal asserting any

1 of the Released Claims (as that term is defined in the Settlement Agreement) under the terms of the
2 Settlement Agreement, and/or from receiving benefits from any lawsuit, administrative or
3 regulatory proceeding, or order in any jurisdiction, based on those Released Claims. In addition,
4 all such persons are hereby barred and enjoined from filing, commencing, or prosecuting a lawsuit
5 against Defendants (or against any of their related parties, parents, subsidiaries, or affiliates) as a
6 class action, a separate class, or group for purposes of pursuing a putative class action (including
7 by seeking to amend a pending complaint to include class allegations or by seeking class
8 certification in a pending action in any jurisdiction) on behalf of Class Members who do not timely
9 exclude themselves from the Class, based on the Released Claims under the Settlement Agreement.
10 Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court find that issuance of this preliminary
11 injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority
12 over the Action.

13 IT IS SO ORDERED.

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15 Dated: September 27, 2021

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18 MORRISON C. ENGLAND, JR.
19 SENIOR UNITED STATES DISTRICT JUDGE
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