

**IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI**

HANNAH RAMSEY- STANDAGE,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

ABBOTT LABORATORIES,

Defendant.

Case No. 22PH-CV00853

**PLAINTIFF’S SUGGESTIONS IN SUPPORT OF PLAINTIFF’S UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

Plaintiff Hannah Ramsey-Standage (“Plaintiff”), Individually and as a Class Representative on behalf of all similarly situated persons and a proposed Settlement Class, respectfully requests that the Court preliminarily approve the class action Settlement that is described in detail in the Class Action Settlement Agreement and Exhibits attached thereto and filed contemporaneously herewith as Exhibit 1; grant certification of the proposed Settlement Class for the purposes of the Settlement; appoint Kroll Settlement Administration as Settlement Administrator; approve the provision of Notice to the Settlement Class; appoint the Plaintiff as well as Rita De Lao and Kara Rutenbar Hatmaker as Class Representatives; appoint the following as Lead Class Counsel: (i) Law Office of L. DeWayne Layfield, PLLC; (ii) KamberLaw LLC; and (iii) Steelman Gaunt Crowley; and appoint the following as Class Counsel: (i) Law Office of L.

DeWayne Layfield, PLLC; (ii) KamberLaw LLC; and (iii) Steelman Gaunt Crowley; (iv) Southern Atlantic Law Group PLLC; and (v) Law Offices of Howard W. Rubinstein PA.¹

At this preliminary approval stage, the Court need only review the proposed Settlement to determine whether it is within the permissible “range of possible judicial approval” and thus, whether the notice to the class and the scheduling of the formal fairness hearing is appropriate. *See* FEDERAL JUDICIAL CENTER, MANUAL FOR COMPLEX LITIGATION, § 21.632 (4th ed. 2004); 4 WILLIAM B. RUBENSTEIN ET AL., NEWBERG ON CLASS ACTIONS § 11:25 (4th ed. 2002); *see also* *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 377 (Mo. Ct. App. 1997) (stating that the purpose of a preliminary approval hearing is for the court to make a “preliminary examination of the record before it and make a preliminary determination as to whether it appears that a **settlement class** should be tentatively certified.”).

I. BACKGROUND OF THE LITIGATION

1. This case arises out of Plaintiff’s allegations that Defendant Abbott Laboratories (“Defendant” or “Abbott”) deceptively and unlawfully packaged, marketed and labeled certain powdered infant formula Products as defined in the Settlement Agreement, which are sold in a variety of sizes, and collectively referred to herein as “Products” or a “Product.” Specifically, Plaintiff alleges that Defendant represented that the Products are capable of making a certain number of liquid 4-ounce bottles of formula; however, contrary to these representations, the Products do not always yield the represented number of 4-ounce bottles of liquid formula when consumers follow the “Instructions for Preparation & Use” on the labels of the Products.

¹ Capitalized terms used herein but not defined herein shall have the meaning ascribed to such terms in the Settlement Agreement.

Plaintiff's Petition and Jury Demand – Class Action was filed on June 24, 2022, and includes claims for violations of the Missouri Merchandising Practices Act (“MMPA”), Unjust Enrichment, Breach of Express Warranty, and Breach of Implied Warranty.

Prosecution of this claim, however, began long before the Petition was filed. This Settlement is a product of engagement between the Parties, which was preceded by intensive case investigation by Plaintiff. Plaintiff began investigating this case in 2020, including by obtaining independent laboratory testing of several of the Products. Plaintiff delivered a demand letter, which included copies of the laboratory results, to Defendant on or about December 7, 2020. Since shortly after delivery of the demand letter, and an exchange of initial telephone conversations between the Parties, the Parties have been engaged in intensive settlement discussions for well over a year and a half. Those settlement efforts included: an initial settlement demand; provision of Plaintiff's laboratory test results to Defendant; informal discovery from Defendant to Plaintiff; informal settlement discussions between the parties; an October 13, 2021 full day mediation with a neutral mediator, the Hon. Wayne Andersen (Ret.) of JAMS; and several months of additional follow-up negotiations after the mediation (many of which negotiations included the Hon. Wayne Andersen's participation). *See* Declaration of L. DeWayne Layfield, attached hereto as Exhibit 2. (“Layfield Declaration”). Through these continuous and vigorous efforts, the Settlement Agreement was ultimately reached.

II. NATURE OF THE SETTLEMENT

As explained in the Settlement Agreement (see Exhibit 1 to the Unopposed Motion), Defendant has agreed to provide both monetary and substantial injunctive relief that will correct the issue identified in the Complaint. Defendant has agreed to a two-tiered structure for monetary relief to Class Members, under which Defendant will provide cash benefits to Settlement Class

Members who timely file Claims by the Claims Deadline and who provide all the necessary information to the Settlement Administrator. Defendant has agreed to pay a maximum of \$15.00 per Household to Settlement Class Members who do not have a valid Proof of Purchase and a maximum of \$45.00 per Household to Settlement Class Members who provide valid Proof(s) of Purchase. Defendant will provide a Maximum Settlement Amount of US \$19,500,000 in the aggregate, inclusive of (a) the amount awarded to Class Counsel attorneys' fees and costs/expenses; (b) the amount awarded to Settlement Class Representatives for service awards; and (c) reasonable and necessary claims Administration Expenses (including any and all payments to the Claims Settlement Administrator for cost of notice, costs of administration, administration expenses, administration fees or other charges by the Settlement Administrator in connection with the administration and processing of claims under the terms of this Settlement Agreement or Orders of the Court implementing this Settlement Agreement). *See* Settlement Agreement Sections II. (¶2.2), and X. In addition, Defendant will provide Programmatic Relief through the removal or correction of the Challenged Language from the labels of the Products (the "Injunctive Relief").

III. MATERIAL TERMS OF THE SETTLEMENT

The key terms of the Settlement Agreement are detailed below.

A. Definitions

1. Section II. (2.51) of the Settlement Agreement defines the "Settlement Class" as: All residents of the United States who purchased in the United States the Products during the Class Period (June 24, 2016 through date of Preliminary Approval) for personal and household use and not for resale. Excluded from the Settlement Class are the following: (a) Persons who purchased or acquired any Products for resale; (b) the Released

Parties; (c) all Persons who file a timely and valid Opt-Out; (d) Plaintiff's Counsel, their employees and counsel, as well as the household members of Plaintiff's employees and counsel; (e) Defendant's Counsel, their employees and counsel, as well as the household members of Defendant's employees and counsel; (f) federal, state, and local governments, political subdivisions or agencies of federal, state and local governments; and (g) the judicial officers, courtroom staff, and members of their households overseeing the Action.

2. Paragraph XII. (12.2) of the Settlement Agreement defines "Released Claims" and provides that:

The Releasing Parties hereby fully release and forever discharge the Released Parties from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, asserted or unasserted, claims, demands, liabilities, rights, debts, obligations, liens, contracts, agreements, judgments, actions, suits, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, penalties, fees, attorneys' fees, and/or obligations of any nature whatsoever (including "Unknown Claims" as defined below), whether at law or in equity, accrued or unaccrued, whether previously existing, existing now or arising in the future, whether direct, individual, representative, or class, of every nature, kind and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, relating in any way to any conduct prior to the date of the Preliminary Approval Order and that: (a) is or are based on any act, omission, inadequacy, misstatement, representation

(express or implied), harm, matter, cause, or event related to any Product; (b) involves legal claims related to the Products that have been asserted in the Action or could have been asserted in the Action; or (c) involves the advertising, marketing, promotion, purchase, sale, distribution, design, testing, manufacture, application, use, performance, warranting, packaging or Labeling of the Products (collectively, the “Released Claims”). The Parties acknowledge and agree that personal injury claims are not part of any of the facts alleged by Class Representatives and that personal injury claims are not included within the Released Claims. The Parties further acknowledge and agree that alleged claims for personal injury and economic loss related to the recall of powdered infant formula products from Abbott’s Sturgis, MI facility, as set forth in the August 5, 2022 Transfer Order in the In re Abbott Infant Formula Products Liability Litigation, MDL No. 3037, are not part of any of the facts alleged by Class Representatives and that recall-related purchase price reimbursement claims are not included within the Released Claims.

3. Paragraph II. (2.47) of the Settlement Agreement defines “Released Parties” and provides that:

Released Parties means, but is not limited to, all manufacturers, distributors, retailers, sellers, and resellers of any Products, including Abbott Laboratories, together with each of the foregoing Parties’ direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, divisions, holding entities, past and present affiliates and banners, franchisees, distributors, wholesalers, retailers, advertising and production

agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, and other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns who sold the Products prior to the date of the Preliminary Approval Order, or any other party to whom any released party would owe a contractual or legal duty of indemnification (or similar obligation) for damages arising from the conduct released hereby.

B. The Requested Settlement Class

The Parties stipulate to and request the certification of the Settlement Class as defined in the Settlement Agreement, for settlement purposes only, pursuant to Rules 52.08(a), (b)(2) and (b)(3) of the Missouri Rules of Civil Procedure. “Among current applications of Rule 23(b)(3), the ‘settlement only’ class has become a stock device.” *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 377 (Mo. Ct. App. 1997), quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). *Amchem* specifically approved of the use of a temporary settlement class in order to facilitate settlement. *Id.*

C. Monetary Relief

The Settlement Agreement provides that Defendant will pay or cause to be paid, by cash benefits, all Valid Claims based on one of the two tiers the Settlement Class Member elects. The monetary relief shall be administered by the Settlement Administrator.

D. Non-Monetary Relief

In addition to the payments described above, and as described in detail in the Settlement Agreement (Section V), for a period (the “Restricted Period”) beginning on the six-month

anniversary of the date of entry by the Court of the Final Approval Order (the “FAO Date”) and ending on the 3-year anniversary of the FAO Date, Defendant shall either: (1) remove the Challenged Language from the Labeling of the Products (referred to herein as “Option 1”); or (2) revise the Challenged Language such that the representations regarding the number of bottles of formula that each Product can deliver shall be based on the number of bottles that can be made from the powder contents of the Product when following the instructions printed on the Product’s Labels for preparation of an individual bottle. However, in accord with Paragraph V. (5.1), the Released Parties shall be permitted to exhaust remaining Product inventory and sell existing Product inventory in the ordinary course of business, and are not required to withdraw, destroy, or recall any Products.

E. Notice

The Settlement Agreement provides for a Settlement Notice, Publication Notice, a Settlement Website, and telephonic support of the notice campaign. In addition, the Parties agree that Defendant will provide e-mail addresses, where identifiable and available, for consumers who purchased relevant Product in the three years preceding the Settlement Agreement in order to provide those identified consumers with direct e-mail notice. The full cost of notice and administration and effectuation of the Settlement Agreement shall be paid by Defendant, from the \$19,500,000 Maximum Settlement Amount.

F. Opt-Outs and Objectors

The Settlement Agreement provides mechanisms by which members of the Class may Opt-Out of, or Object to, the proposed Settlement. Any Settlement Class Member who intends to Object to the Settlement must do so within 60 days after the Notice date (the “Objection Deadline”). In order to Object, the Settlement Class Member must file with the Court, and provide a copy to the

Settlement Administrator, Lead Class Counsel, and Defendant's counsel, a document that includes all the following:

1. The case name and number, *Ramsey-Standage v. Abbott Laboratories*, Case No. 22PH-CV00853 (Phelps County Circuit Court, MO);
2. The name, address, telephone number, and, if available, the email address of the Person objecting;
3. The name and address of the lawyer(s), if any, who is representing the Person objecting in making the Objection or who may be entitled to compensation in connection with the Objection;
4. A detailed statement of Objection(s), including the grounds for Objection(s);
5. Copies of any papers, briefs, or other documents upon which the Objection is based;
6. A statement of whether the Person objecting intends to appear at the Final Approval Hearing, either with or without counsel;
7. The identity of all counsel (if any) who will appear on behalf of the Person objecting at the Final Approval Hearing and all Persons (if any) who will be called to testify in support of the Objection;
8. A statement of their membership in the Settlement Class, including all information required by the Claim Form;
9. The signature of the Person objecting, in addition to the signature of any attorney representing the Person objecting in connection with the Objection; and
10. A detailed list of any other objections by the Settlement Class Member, or their counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or their counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. This information is requested in order to assist the Court in determining whether the Objection is made by a professional objector seeking financial consideration for their efforts. Failing to provide this information will not effect the validity of the Objection, but may result in the Court presuming that the Objection is made by a professional objector.

A Settlement Class Member who wishes to Opt-Out of the Settlement Class must do so within 60 days after the Notice Date (the "Opt-Out Deadline"). In order to Opt-Out, a Settlement

Class Member must complete and mail to the Settlement Administrator, Lead Class Counsel and Defendant's Counsel a Request for Exclusion that is received no later than the Opt-Out Deadline.

G. Service Award

Lead Class Counsel shall submit to the Court an application seeking leave to pay Plaintiff, as well as Rita De Lao and Kara Rutenbar Hatmaker, as Class Representatives, a Service Award in the maximum amount of \$20,000 in the aggregate (which shall be apportioned equally among the Class Representatives (up to a maximum amount of \$6,500 per Class Representative) to compensate each of the Class Representatives for their efforts in bringing the Action and achieving the benefits of this Agreement on behalf of the Settlement Class.

H. Attorneys' Fees

Lead Class Counsel will submit to the Court an application seeking an Attorney's Fees and Costs Award that is less than or equal to \$5,850,000 in the aggregate. Defendant agrees that it will not object to the amount of Lead Class Counsel's Application for an Attorneys' Fees and Costs Award up to this amount and agree that it will, pay the amounts approved by the Court, in accord with Paragraph VII. (7.4).

I. Release

Upon the entry of a final order approving this Settlement and following the expiration of the time for appeal or the entry of a decision on such appeal, the Class Representatives and each and every member of the Settlement Class who has not timely filed a request to be excluded (Opt-Out) from the Settlement Class will release and forever discharge the Released Parties as further explained in the Settlement Agreement.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks that the Court grant preliminary approval of the proposed Settlement and enter the proposed order separately submitted herewith (a copy of which is attached as Exhibit D to the Settlement Agreement) and grant such further relief as the Court deems reasonable and just.

Dated: September 21, 2022

Respectfully submitted,

HANNAH RAMSEY-STANDAGE, Plaintiff, individually,
and on behalf of a Class of similarly situated individuals

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered on this September 21, 2022, via the Missouri Court System's Electronic Filing System to all counsel of record.

By: /s/ Bryce C. Crowley
Bryce C. Crowley