

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

TREVOR WHITE; TERRENCE CORRIGAN,  
SR.; SARAH M. SERABIAN; and ASTORRIA  
SASSANO; individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

PBM NUTRITIONALS, LLC, a Delaware  
limited liability company,

Defendant.

Case No. 22PH-CV00931

**PLAINTIFFS' SUGGESTIONS IN SUPPORT OF PLAINTIFFS' UNOPPOSED  
MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

Plaintiffs Trevor White, Terrence Corrigan, Sr., Sarah M. Serabian, and Astorria Sassano (“Plaintiffs”), Individually and as Class Representatives on Behalf of All Similarly Situated Persons and a proposed Settlement Class, respectfully request 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 Plaintiffs 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.<sup>1</sup>

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 Plaintiffs’ allegations that Defendant PBM Nutritionals, LLC (“Defendant”) deceptively and unlawfully packaged, marketed and labeled its powder baby and infant formulas under the following brands: Well Beginnings, Meijer Bay, Little Journey, Wesley Farms, Burt’s Bees Baby, Berkley Jensen, Parent’s Choice, Earth’s Best Organic, Comforts, Up & Up, Babies “R” Us, Member’s Mark, and Bobbie Baby, which are sold in a variety of sizes, and collectively referred to herein as “Products” or a “Product.” Specifically, Plaintiffs allege that Defendant represented that the Products make a certain number of fluid-ounce bottles of formula; however, contrary to these representations, the Products contain nowhere near enough powder formula to make the represented number of bottles of liquid formula when following the “Instructions for Preparation & Use” on the side labels of the Products.

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

Plaintiffs' Petition and Jury Demand – Class Action was filed on July 11, 2022 and includes claims for violations of the Missouri Merchandising Practices Act (“MMPA”), Unjust Enrichment, Breach of Express Warranty, and Breach of Implied Warranty.

This Settlement is a product of engagement between the Parties, which was preceded by intensive case investigation by Plaintiffs. Since shortly after delivery of a demand letter and an exchange of initial telephone conversations between the Parties, the Parties have been engaged in intensive settlement discussions for over five months. Those settlement efforts included: an initial settlement demand; provision of Plaintiffs' laboratory test results to Defendant; informal discovery from Defendant to Plaintiffs; informal settlement discussions between the parties; a half-day mediation with a neutral mediator, the Hon. Wayne Andersen (Ret.) of JAMS; and additional follow-up negotiations after the mediation, which ultimately resulted in the Settlement Agreement.

## **II. NATURE OF THE SETTLEMENT**

As explained in the proposed Settlement Agreement, 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 \$10.00 per Household to Settlement Class Members who do not have a valid Proof of Purchase and a maximum of \$30.00 per Household to Settlement Class Members who provide a valid Proof of Purchase. Defendant will provide a Maximum Settlement Amount of US \$2,000,000 in the aggregate. The Maximum Settlement Amount will not include (a) the amount awarded to Class Counsel for attorney's fees and costs/expenses; (b) the amount awarded to Settlement Class Representatives for incentive payments; (c) reasonable

and necessary claims administration costs; nor (d) costs related to the Programmatic Relief. In addition, Defendant will provide Programmatic Relief through the removal 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 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) Plaintiffs' Counsel, their employees, and counsel as well as the household members of Plaintiffs’ employees and counsel; (e) Defendant’s Counsel, their employees, and counsel as well as the household members of Defendant’s employees and counsel; (e) federal, state, and local governments, political subdivisions or agencies of federal, state and local governments; and (f) 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. Section II (2.47) of the Settlement Agreement defines "Released Parties" to mean all manufacturers, distributors, retailers, sellers and resellers of any Products, including Defendant PBM Nutritionals, LLC, 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.

#### **B. The Requested Settlement Class**

The Parties stipulate to and request the certification of the 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, beginning no later than nine (9) months after the date of the Preliminary Approval Order and ending on the three (3) year anniversary of the entry of the Preliminary Approval Order (“Restricted Period”), 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, the Released Parties shall be permitted to sell existing Product inventory and Products manufactured prior to the Restricted Period in the ordinary course of business and 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. The full cost of notice and administration and effectuation of the Settlement Agreement shall be paid by Defendant.

#### **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, *Trevor White, et al. v. PBM Nutritionals, LLC.*, Case No. 22PH-CV00931 (Phelps 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 his/her 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 his/her 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 his/her 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 postmarked no later than the Opt-Out Deadline.

#### **G. Service Award**

Lead Class Counsel shall submit to the Court an application seeking leave to pay Plaintiffs, as Class Representatives, a Service Award in the maximum amount of \$17,500 in the aggregate, 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 \$600,000 in the aggregate (exclusive of claims administration costs that will be paid directly by Defendant). Defendant agrees that it will not object to the amount of Lead Class Counsel's Application for a Fee Award up to this amount and agree that it will, contingent on entry of the Final Approval Order, pay the amounts approved by the Court.

## 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 attached Settlement Agreement.

## IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask that the Court grant preliminary approval of the proposed Settlement Agreement 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: July 21, 2022

Respectfully submitted,

Trevor White, Terrence Corrigan, Sr., Sarah M. Serabian,  
and Astorria Sassano, Individually, and on Behalf of a Class  
of Similarly Situated Individuals, Plaintiffs

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*Attorneys for Plaintiffs and the Putative Class*

**CERTIFICATE OF SERVICE**

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

/s/ Bryce C. Crowley

By: \_\_\_\_\_  
Bryce Crowley



ADMINISTRATION ESTIMATE

Case name: Corrigan v PBM Neutrals LLC

Date: July 7, 2022

Submitted by: James Prutsman, MBA

Email: james.pruitsman@kroll.com

Case type: Consumer

Phone: 405-751-7057

I.	<b>Case Setup</b> Case Setup: Develop class list and import (one time fee)
II.	<b>Notification/Correspondence Fees &amp; Costs</b> <b>(1) Document Formatting</b> Set up, format and proof the notice & claim form
	<b>(2) Processing Notice Request and Correspondence</b> Receive and respond to requests for notice (print & mail - includes data entry) (per assumptions) Form letter correspondence Email correspondence Processing change of address requests (covers staff time)
III.	<b>Creation and maintenance of a website</b> Set-up website with online claim filing capability Monthly maintenance, including hosting (per month) Modifications to post-production website
IV.	<b>Call Center</b> Set-up and design - IVR "IVR" Operating system
V.	<b>Media Campaign</b> Standard Size publications: 71% Reach Plan
VI.	<b>Process Opt Out Form</b> Review and process opt-out forms received, logging
VII.	<b>Process Claim Forms, Deficiencies and Rejections</b> Hard copy opt-in or claim forms - includes mail pick up, sorting & entering in system (from assumptions below) Online opt-in or claim forms (from assumptions below)
VIII.	<b>Dispute Resolutions / Validation of Claims</b> Review of claims filed - blended rate Top claim review (Sr Project Manager or Partner)
IX.	<b>Distribution Services</b> Generate distribution list Processing and printing distribution checks to class members - conventional checks Electronic payments Correspondence based on checks issued (10% of checks issued) Process checks returned as undeliverable (includes data entry) All work on reissuance of checks Print and mail reissues - check reissues
X.	<b>TAX REPORTING</b> Recording and reconciling SFA activity during the year Preparation of Qualified Settlement Fund Annual Federal Form 1120-SF
XI.	<b>Fees</b> Executive Management Senior Director Project Management (includes managers and domain leaders) - blended rates Staff - blended rates Clerical or Data Entry (includes time working on broker requests and responses) - blended rates Technical Consulting - blended rates
XII.	<b>Mail Handling, Scanning &amp; Data/Image Storing</b> Scanning set-up charges Scanning/images of documents (mail list, claims, correspondence, returns - include all pages and envelopes) Mail handling charges Data/Image storage including electronic claims received Technology charge PO Box Fee
XIII.	<b>Out-of-Pocket Costs</b> Cost estimates
XIV.	<b>Expenses**</b> Postage - Letters Postage - Distribution



**ADMINISTRATION ESTIMATE**

**Case name:** Corrigan v PBM Neutrials LLC  
**Date:** July 7, 2022  
**Submitted by:** James Prutsman, MBA  
**Email:** james.prutsman@kroll.com

**Case type:** Consumer  
**Phone:** 405-751-7057

\*\*Postage cost is an estimate; actual costs will be based on postage rates in effect at the time of mailing and the will be a direct pass through

ESTIMATED FEES & EXPENSES 257,845  
Each Additional Claim \$4.75 to \$.78

**KEY ASSUMPTIONS USED TO PREPARE THIS PROPOSAL**

Class Size	Unknown
Estimated claim/opt-in forms filed by paper	1,000
Estimated claim/opt-in forms filed electronically	50,000