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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MELANIE BARBER, KI BURKE, and  
JOSEPH GREGORIO on Behalf of  
Themselves and all Others Similarly  
Situated,  
  
Plaintiffs,  
  
v.  
  
JOHNSON & JOHNSON, MCNEIL-  
PPC, INC., JOHNSON & JOHNSON  
CONSUMER, INC., and RANIR LLC  
  
Defendants.

Case No. 8:16-cv-1954-JLS-JCG  
**JOINT STIPULATION FOR  
DISMISSAL WITH PREJUDICE**

1 Plaintiffs Melanie Barber, Ki Burke, and Joseph Gregorio and Defendants  
2 Johnson & Johnson, McNeil-PPC, Inc., Johnson & Johnson Consumer, Inc., and  
3 Ranir LLC (collectively, “the parties”), through their respective counsel of record,  
4 hereby stipulate and agree as follows:

5 1. This action was commenced on October 26, 2016. The proposed class  
6 has not been certified. The parties resolved this putative class action on an  
7 individual basis under the terms and conditions set forth in the Settlement  
8 Agreement. *See* ECF No. 61.

9 2. “To determine whether pre-certification settlement or dismissal is  
10 appropriate, the Court must assess potential prejudice to the absent putative class  
11 members from: (1) ‘possible reliance on the filing of the action if they are likely to  
12 know of it either because of publicity or other circumstances’; (2) ‘lack of adequate  
13 time for class members to file other actions, because of a rapidly approaching statute  
14 of limitations’; and (3) ‘any settlement or concession of class interests made by the  
15 class representative or counsel in order to further their own interests.’” *Tomblin v.*  
16 *Wells Fargo Bank, N.A.*, No. 13-cv-04567-JD, 2014 WL 5140048, at \*2 (N.D. Cal.  
17 Oct. 10, 2014) (quoting *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1408  
18 (9th Cir. 1989)) (recognizing that, based on 2003 amendments to Fed. R. Civ. P. 23,  
19 there is “‘some uncertainty’ about the continued application of Rule 23(e) to  
20 precertification settlement proposals”). The purpose of analyzing these so-called  
21 *Diaz* factors “is to ‘determine whether the proposed settlement and dismissal are  
22 tainted by collusion or will prejudice absent putative members.’” *Id.* (quoting *Lyons*  
23 *v. Bank of America, NA*, No. C 11-1232 CW, 2012 WL 5940846, at \*1 (N.D. Cal.  
24 Nov. 27, 2012)).

25 3. As to the first *Diaz* factor, the parties represent that they know of no  
26 absent putative class members who are relying on the pendency of this putative class  
27 action. Media attention regarding the action has been sparse. Other than legal  
28

1 publications, the parties are not aware of any major publications, journals, or  
2 newspapers that have reported on or mentioned the pendency of this action.

3 4. As to the second *Diaz* factor, the pendency of this putative class action  
4 tolled the statute of limitations applicable to any individual or class claims based on  
5 the same facts and circumstances. *See, e.g., Resh v. China Agritech, Inc.*, 857 F.3d  
6 994, 1005 (9th Cir. 2017). Thus, should the Court approve this Stipulation of  
7 Dismissal, the unnamed putative class members will be in the same position as they  
8 were at the time of commencement.

9 5. As to the third *Diaz* factor, the Settlement Agreement does not resolve  
10 or concede any class interest nor demonstrate collusion to the detriment of the  
11 putative class. The settlement is structured as an individual resolution of plaintiffs’  
12 claims. The terms and conditions of the Settlement Agreement did not release  
13 claims of unnamed putative class members nor prejudice their rights.

14 6. Based on the *Diaz* factors, as described above, the terms and conditions  
15 of the Settlement Agreement, the absence of any collusion, and the lack of prejudice  
16 to unnamed putative class members, the parties do not believe that it is necessary to  
17 notify any such class members of the settlement.

18 WHEREFORE, the parties request that the Court enter the attached order (1)  
19 dismissing plaintiffs’ individual claims with prejudice; and (2) dismissing plaintiffs’  
20 class claims without prejudice.  
21

22 Dated: June 1, 2018

Respectfully submitted,

**BURSOR & FISHER, P.A.**

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25 Yeremey Krivoshey

26 L. Timothy Fisher (State Bar No. 191626)  
27 Joel D. Smith (State Bar No. 244902)  
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*Counsel for Plaintiffs*

Dated: June 1, 2018

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15 *Counsel for Plaintiffs*

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19 MELANIE BARBER, KI BURKE, and  
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 26 PPC, INC., JOHNSON & JOHNSON  
 CONSUMER, INC., and RANIR LLC

27 Defendants.

Case No. 8:16-cv-1954-JLS-JCG

**[PROPOSED] ORDER**

1           Having reviewed the Settlement Agreement and the parties' Stipulation, the  
2 Court does not find any evidence that the Settlement Agreement is collusive or  
3 prejudicial to the class. As such, the Court ORDERS that (1) the individual claims  
4 of Plaintiffs Melanie Barber, Ki Burke, and Joseph Gregorio are dismissed WITH  
5 prejudice, and (2) all class claims that have or could have been alleged in this suit are  
6 dismissed WITHOUT prejudice.  
7

8 IT IS SO ORDERED.  
9

10 Dated:

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11 The Honorable Josephine L. Staton  
12 United States District Judge  
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