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HIGH COURT OF AMERICAN SAMOA
Clerk's Office

File Time: 10:44am

9/2/22
Terry S. Fielding, CLERK OF COURTS

**IN THE HIGH COURT OF AMERICAN SAMOA
TRIAL DIVISION**

<p>AMERICAN SAMOA GOVERNMENT</p> <p>Plaintiff,</p> <p>v.</p> <p>JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS, INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC.; and JANSSEN PHARMACEUTICA, INC.,</p> <p>Defendants.</p>	<p>HCCA No. <u>25-22</u></p> <p>FINAL CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE</p>
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FINAL CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE

The Territory of American Samoa ("*Territory*") and Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, "*Janssen*" or "*Defendants*") (together with the Territory, the "*Parties*," and each a "*Party*") have entered into a consensual resolution of the above-captioned litigation (the "*Action*") pursuant to a settlement agreement entitled Janssen Settlement Agreement, dated as of July 21, 2021 (as subsequently updated) (the "*Agreement*"), a copy of which is attached hereto as Exhibit A. The Agreement shall become effective by its terms upon the entry of this Final Consent Judgment (the "*Judgment*") by the Court without

ASG v JOHNSON & JOHNSON et al. Consent Judgment

1 trial or adjudication of any contested issue of fact or law, and without finding or admission of
2 wrongdoing or liability of any kind.

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4 **RECITALS:**

- 5 1. Each Party warrants and represents that it engaged in arm's-length negotiations in
6 good faith. In hereby executing the Agreement, the Parties intend to effect a good-
7 faith settlement.
- 8 2. The Territory has determined that the Agreement is in the public interest.
- 9 3. Janssen denies the allegations against it and that it has any liability whatsoever to
10 the Territory, its Subdivisions, and/or (a) any of the Territory's or Subdivisions'
11 departments, agencies, divisions, boards, commissions, districts, instrumentalities of
12 any kind and attorneys, including its Attorney General and any person in his or her
13 official capacity whether elected or appointed to serve any of the foregoing and any
14 agency, person, or other entity claiming by or through any of the foregoing, (b) any
15 public entities, public instrumentalities, public educational institutions,
16 unincorporated districts, fire districts, irrigation districts, and other Special Districts,
17 and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign,
18 private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on
19 behalf of or generally applicable to the general public.
- 20 4. The Parties recognize that the outcome of the Action is uncertain and a final
21 resolution through the adversarial process likely will require protracted litigation.
- 22 5. The Parties agree to the entry of the injunctive relief terms pursuant to Exhibit P of
23 the Agreement.
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1 6. Therefore, without any admission of liability or wrongdoing by Janssen or any other
2 Released Entities (as defined in the Agreement), the Parties now mutually consent
3 to the entry of this Judgment and agree to dismissal of the claims with prejudice
4 pursuant to the terms of the Agreement to avoid the delay, expense, inconvenience,
5 and uncertainty of protracted litigation.
6

7 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

8 In consideration of the mutual promises, terms, and conditions set forth in the
9 Agreement, the adequacy of which is hereby acknowledged by all Parties, it is agreed by and
10 between Defendants and the Territory, and adjudicated by the Court, as follows:

11 1. The foregoing Recitals are incorporated herein and constitute an express term of
12 this Judgment.

13 2. The Parties have entered into a full and final settlement of all Released Claims of
14 Releasers against Janssen (including but not limited to the Territory) and the Released Entities
15 pursuant to the terms and conditions set forth in the Agreement.
16

17 3. The “Definitions” set forth in Section I of the Agreement are incorporated by reference
18 into this Judgment. The Territory is a “Settling State” within the meaning of the Agreement.
19 Unless otherwise defined herein, capitalized terms in this Judgment shall have the same meaning
20 given to them in the Agreement.

21 4. The Parties agree that the Court has jurisdiction over the subject matter of the Action and
22 over the Parties with respect to the Action and this Judgment. This Judgment shall not be
23 construed or used as a waiver of any jurisdictional defense Janssen or any other Released Entity
24 may raise in any other proceeding.
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26 5. The Court finds that the Agreement was entered into in good faith.
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1 6. The Court finds that entry of this Judgment is in the public interest and reflects a
2 negotiated settlement agreed to by the Parties. The Action is dismissed with prejudice, subject to
3 a retention of jurisdiction by the Court as provided herein and in the Agreement.

4 7. By this Judgment, the Agreement is hereby approved by the Court, and the Court hereby
5 adopts the Agreement's terms as its own determination of this matter and the Parties' respective
6 rights and obligations.

7 8. The Court shall have authority to resolve disputes identified in Section XII.F.2 of the
8 Agreement, governed by the rules and procedures of the Court.

9 9. The Parties have satisfied the Condition to Effectiveness of Agreement set forth in
10 Section VIII of the Agreement and the Release set forth in Sections IV.A, D, and E of the
11 Agreement, as follows:

12 a. The Attorney General of the Territory exercised the fullest extent of his or her powers to
13 release Janssen and all other Released Entities from all Released Claims pursuant to the release
14 attached hereto as Exhibit B (the "*Release*").

15 b. Janssen has determined that there is sufficient Territorial participation and sufficient
16 resolution of the Claims of the Litigating Subdivisions in the Settling States to proceed with the
17 Agreement.

18 c. The Settlement Participation Form for each Initial Participating Subdivision in the
19 Territory has been delivered to Janssen. As stated in the Settlement Participation Form, and for
20 the avoidance of doubt, nothing in the Settlement Participation Form executed by the
21 Participating Subdivisions is intended to modify in any way the terms of the Agreement to which
22 the Participating Subdivisions agree. As stated in the Settlement Participation Form, to the
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1 extent the executed version of the Settlement Participation Form differs from the Agreement in
2 any respect, the Agreement controls.

3 d. Pursuant to the Settlement Participation Form, each Participating Subdivision in the
4 Territory is dismissing with prejudice any Released Claims that it has filed against Janssen and
5 the Released Entities.

6
7 10. Release. The Parties acknowledge that the Release, which is incorporated by reference
8 herein, is an integral part of this Judgment. Pursuant to the Agreement and the Release and
9 without limitation and to the maximum extent of the power of the Territory's Attorney General,
10 Janssen and the other Released Entities are, as of the Effective Date, hereby released from any
11 and all Released Claims of (a) the Territory and its Participating Subdivisions and any of their
12 departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities
13 of any kind and attorneys, including the Territory's Attorney General, and any person in his or
14 her official capacity whether elected or appointed to serve any of the foregoing, and any agency,
15 person, or other entity claiming by or through any of the foregoing, (b) any public entities, public
16 instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation
17 districts, water districts, law enforcement districts, emergency services districts, school districts,
18 hospital districts and other Special Districts in the Territory, and (c) any person or entity acting
19 in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or
20 other capacity seeking relief on behalf of or generally applicable to the general public with
21 respect to the Territory or any Subdivision in the Territory, whether or not any of them
22 participate in the Agreement. Pursuant to the Agreement and the Release and to the maximum
23 extent of the Territory's power, Janssen and the other Released Entities are, as of the Effective
24 Date, hereby released from any and all Released Claims of (1) the Territory, (2) all past and
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1 present executive departments, territorial agencies, divisions, boards, commissions and
2 instrumentalities with the regulatory authority to enforce territorial and federal controlled
3 substances acts, (3) any of the Territory's past and present executive departments, agencies,
4 divisions, boards, commissions and instrumentalities that have the authority to bring Claims
5 related to Covered Conduct seeking money (including abatement and/or remediation) or
6 revocation of a pharmaceutical distribution license, and (4) any Participating Subdivision. For
7 the purposes of clause (3) above, executive departments, agencies, divisions, boards,
8 commissions, and instrumentalities are those that are under the executive authority or direct
9 control of the Territory's Governor. Further, the provisions set forth in Section IV of the
10 Agreement are incorporated by reference into this Judgment as if fully set forth herein. The
11 Parties acknowledge, and the Court finds, that those provisions are an integral part of the
12 Agreement and this Judgment, and shall govern the rights and obligations of all participants in
13 the settlement. Any modification of those rights and obligations may be made based only on a
14 writing signed by all affected parties and approved by the Court.
15

16
17 11. Release of Unknown Claims. The Territory expressly waives, releases, and forever
18 discharges any and all provisions, rights, and benefits conferred by any law of any state or
19 territory of the United States or other jurisdiction, or principle of common law, which is similar,
20 comparable, or equivalent to § 1542 of the California Civil Code, which reads:

21
22 **General Release; extent.** A general release does not
23 extend to claims that the creditor or releasing party does not
24 know or suspect to exist in his or her favor at the time of
executing the release that, if known by him or her, would
have materially affected his or her settlement with the
debtor or released party.

25 12. The Territory may hereafter discover facts other than or different from those which it
26 knows, believes, or assumes to be true with respect to the Released Claims, but the Territory
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1 expressly waived and fully, finally, and forever settled, released and discharged, through the
2 Agreement and Release, any and all Released Claims that may exist as of the Effective Date but
3 which the Territory does not know or suspect to exist, whether through ignorance, oversight,
4 error, negligence or through no fault whatsoever, and which, if known, would have materially
5 affected the Territory's decision to enter into the Agreement.
6

7 13. Costs and Fees. The Parties will bear their own costs and attorneys' fees except as
8 otherwise provided in the Agreement.

9 14. No Admission of Liability. Defendants are consenting to this Judgment solely for the
10 purpose of effectuating the Agreement, and nothing contained herein may be taken as or
11 construed to be an admission or concession of any violation of law, rule, or regulation, or of any
12 other matter of fact or law, or of any liability or wrongdoing, all of which Defendants expressly
13 deny. No Defendant or Released Entity admits that it caused or contributed to any public
14 nuisance, and no Defendant or Released Entity admits any wrongdoing that was or could have
15 been alleged by the Territory, its Participating Subdivisions and/or Participating Special
16 Districts, or any other person or entity. No part of this Judgment shall constitute evidence of any
17 liability, fault, or wrongdoing by Defendants or any other Released Entity. The Parties
18 acknowledge that payments made under the Agreement are not a fine, penalty, or payment in lieu
19 thereof and are properly characterized as described in Section VI.F of the Agreement.
20

21 15. No Waiver. This Judgment is entered based on the Agreement without trial or
22 adjudication of any contested issue of fact or law or finding of liability of any kind. This
23 Judgment shall not be construed or used as a waiver of Janssen's right, or any other Released
24 Entity's right, to defend itself from, or make any arguments in, any other regulatory,
25 governmental, private individual, or class claims or suits relating to the subject matter or terms of
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1 this Judgment. Notwithstanding the foregoing, the Territory may enforce the terms of this
2 Judgment as expressly provided in the Agreement.

3 16. No Private Right of Action. This Judgment is not intended for use by any third party for
4 any purpose, including submission to any court for any purpose, except pursuant to Section
5 XII.A of the Agreement. Except as expressly provided in the Agreement, no portion of the
6 Agreement or this Judgment shall provide any rights to, or be enforceable by, any person or
7 entity that is not a Settling State or Released Entity. The Territory shall allow Participating
8 Subdivisions in the Territory to notify it of any perceived violations of the Agreement or this
9 Judgment. No Settling State, including the Territory, may assign or otherwise convey any right
10 to enforce any provision of the Agreement.

11
12 17. Admissibility. It is the intent of the Parties that this Judgment not be admissible in other
13 cases against Defendants or binding on Defendants in any respect other than in connection with
14 the enforcement of this Judgment or the Agreement. For the avoidance of doubt, nothing herein
15 shall prohibit Defendants from entering this Judgment or the Agreement into evidence in any
16 litigation or arbitration concerning (1) Defendants' right to coverage under an insurance contract
17 or (2) the enforcement of the releases provided for by the Agreement and this Judgment.

18
19 18. Preservation of Privilege. Nothing contained in the Agreement or this Judgment, and no
20 act required to be performed pursuant to the Agreement or this Judgment, is intended to
21 constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work
22 product protection, or common interest/joint defense privilege, and each Party agrees that it shall
23 not make or cause to be made in any forum any assertion to the contrary.

24
25 19. Mutual Interpretation. The Parties agree and stipulate that the Agreement was negotiated
26 on an arm's-length basis between parties of equal bargaining power and was drafted jointly by
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1 counsel for each Party. Accordingly, the Agreement is incorporated herein by reference and
2 shall be mutually interpreted and not construed in favor of or against any Party, except as
3 expressly provided for in the Agreement.

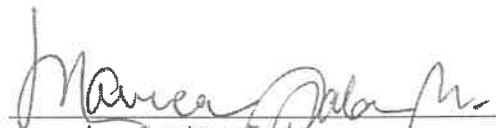
4 20. Retention of Jurisdiction. The Court shall retain jurisdiction of the Parties for the limited
5 purpose of the resolution of disputes identified in Section XII.F.2 of the Agreement. The Court
6 shall have jurisdiction over Participating Subdivisions in the Territory for the limited purposes
7 identified in the Agreement.


8 21. Successors and Assigns. This Judgment is binding on Defendants' successors and
9 assigns.

10 22. Modification. This Judgment shall not be modified (by the Court, by any other court, or
11 by any other means) without the consent of the Territory and Defendants, or as provided for in
12 Section XIII.S of the Agreement.
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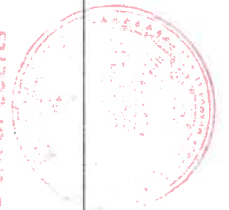
14 So ORDERED this 13th day of Sept., 2022.

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18 F. MICHAEL KRUSE FITI A. SUNIA
~~Chief Justice~~ Associate Justice

19
20 
21 Associate Justice Judge

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24 Associate Justice Judge

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27 Certified to be a true copy of the original
on file in the Office of the Clerk of Courts




Terry S. Fitching
CLERK OF COURTS

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APPROVED, AGREED TO AND PRESENTED BY:



FAINU'ULELEI FALEFATU ALA'ILIMA-UTU
Attorney General
Attorney for Plaintiff
AMERICAN SAMOA GOVERNMENT



THOMAS B. JONES
JONES & ASSOCIATES
Attorney for Defendants
JOHNSON & JOHNSON;
JANSSEN PHARMACEUTICALS, INC.;
ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC.; and
JANSSEN PHARMACEUTICA, INC.

[Johnson & Johnson and McKesson Corporations Final
Consent Exhibits]

EXHIBIT A

Please see the 3-ring binder attached.

[Johnson & Johnson and McKesson Corporations Final
Consent Exhibits]

EXHIBIT B

**Attorney General's Release of Opioid-Related Claims Pursuant to the Distributors
Settlement Agreement**

WHEREAS the Distributors' Settlement Agreement dated July 21, 2021 (the "Agreement") provides in Section XI.A that, as of the Effective Date of the Agreement, the Settling Distributors and the related Released Entities will be released and forever discharged from all of the Releasers' Released Claims;¹ and

WHEREAS the Agreement provides in Section I.III that Releasers (as defined in the Agreement) who are releasing claims under Section XI.A include without limitation and to the maximum extent of the power of each Settling State's Attorney General to release Claims (a) the Settling State's and Participating Subdivision's departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Special Districts in a Settling State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to a Settling State or Subdivision in a Settling State, whether or not any of them participate in this Agreement; and

WHEREAS the Agreement provides in Section XI.G that each Settling State's Attorney General expressly represents and warrants that he or she has, or has obtained, the authority to settle and release, to the maximum extent of the State's power, all Released Claims of (1) his or her respective Settling State, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, and (3) any of his or her respective Settling State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor; and

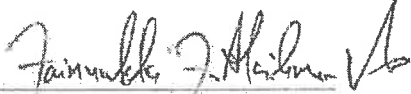
WHEREAS the Agreement provides in Section XI.G that a release from a Settling State's Governor is sufficient to demonstrate that the appropriate releases have been obtained for the purposes of clause (3) of Section XI.G, and the Governor of the Territory of American Samoa has provided a release;

THEREFORE, pursuant to the foregoing provisions of the Agreement and without limitation and to the maximum extent of the power of the Attorney General, the Settling Distributors and the other Released Entities are, as of the Effective Date, hereby released from any and all Released

¹ Capitalized terms used herein and defined in the Agreement have the meanings given to them in the Agreement.

Claims of (a) the Territory of American Samoa and its Participating Subdivision's departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Special Districts in the Territory of American Samoa, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the Territory of American Samoa or Subdivision in the Territory of American Samoa, whether or not any of them participate in the Agreement; and

THEREFORE, pursuant to the foregoing provisions of the Agreement and to the maximum extent of the Territory of American Samoa's power, the Settling Distributors and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (1) the Territory of American Samoa, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, and (3) any of the Territory of American Samoa's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the Territory of American Samoa's Governor.



Fainu'u'ulelei F. Ala'ilima-Utu
Attorney General of the Territory of American Samoa

Date: 2/18/22

Governor's Release of Opioid-Related Claims Pursuant to the Distributors and Janssen Settlement Agreements

I, LEMANU P. S. MAUGA, Governor of the Territory of AMERICAN SAMOA, hereby authorize Attorney General FAINU'ULELEI FALEFATU ALA'ILIMA-UTU to settle and release, to the maximum extent of my power as Governor, all Released Claims of (1) all of AMERICAN SAMOA's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities with regulatory authority to enforce state and federal controlled substances acts and (2) all of AMERICAN SAMOA's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license. The foregoing authorization is given in connection with each of (a) Section XI.G of that certain settlement agreement dated as of July 21, 2021 setting forth the terms of settlement between and among McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation, on the one hand, and certain Settling States and certain Participating Subdivisions on the other hand and (b) Section IV.E of that certain settlement agreement dated as of July 21, 2021 setting forth the terms of settlement between and among Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., on the one hand, and certain Settling States and certain Participating Subdivisions on the other hand. This release is intended to be a "release from a State's Governor" as contemplated in each such section. Capitalized terms used herein and defined in either of such settlement agreements have the meanings given to them in each respective settlement agreement.



Lemani P. S. Mauga
Governor of the Territory of American Samoa

Date: 2/27/22