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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RONY ELKIES and DANIELLE  
ALFANDARY, individually and on  
behalf of all others situated;

Plaintiffs,

vs.

JOHNSON & JOHNSON SERVICES,  
INC., a New Jersey limited liability  
company, JOHNSON & JOHNSON  
CONSUMER INC. a New Jersey  
limited liability company, and DOES 1  
through 100, inclusive,

Defendants.

Case No. CV 17-7320-GW-JEMx

**SECOND AMENDED ORDER  
GRANTING PLAINTIFFS' MOTION  
FOR APPROVAL OF CLASS NOTICE  
PLAN AND CONTENT OF NOTICE  
AND REVISING THE CLASS  
DEFINITION**

Hearing Date: January 10, 2018  
Time: 8:30 a.m.  
Courtroom: 9D  
Judge: Hon. George H. Wu

1 Plaintiffs' Motion to Approve Class Notice Plan and Content of Notice came on  
2 for regular hearing on December 20, 2018 at 8:30 a.m., before the Honorable George  
3 H. Wu of the above captioned court.

4 The Court, having reviewed the briefs and evidence submitted by the Plaintiffs  
5 Rony Elkies and Danielle Alfandary ("Plaintiffs"), and Johnson & Johnson Services,  
6 Inc. and Johnson & Johnson Consumer Inc. ("Defendants"), the oral arguments of  
7 counsel at the hearing, and all other matters on file herein, and good cause appearing,  
8 the Court hereby GRANTS Plaintiffs' Motion to Approve Class Notice Plan and  
9 Content of Notice. The Court finds Plaintiffs' proposed form of notice satisfies Fed.  
10 R. Civ. P. 23(c)(2)(B). Plaintiffs' form of notice provides the best notice practicable  
11 under the circumstances and satisfies due process requirements.

12 The Court issues the following order:

- 13 1. Kurtzman Carson Consultants ("KCC") is appointed as Administrator.
- 14 2. The Administrator will maintain a case-specific website and toll-free  
15 telephone number to provide individuals with pertinent case information.
- 16 3. The case-specific website will become operational within seven (7) business  
17 days of issuance of this order.
- 18 4. The Administrator will arrange for publication of the Publication Notice (an  
19 exemplar of which is attached hereto as Exhibit 1) and the Detailed Notice (an  
20 exemplar of which is attached hereto as Exhibit 2), to be disseminated within  
21 twenty-one days (21) of the date of this Order.
- 22 5. The Detailed Notice will appear on the case-specific website, in addition to  
23 other pertinent case documents.
- 24 6. The Publication Notice will appear once a week for four consecutive weeks in  
25 the *Los Angeles Daily News*.
- 26 7. The Administrator will arrange for Internet banner advertisements (an  
27 exemplar of which is attached hereto as Exhibit 3) that link to the case-  
28 specific website.

- 1 8. The Administrator will arrange for the issuance of the national Press Release  
2 (an exemplar of which is attached hereto as Exhibit 4) within twenty-one (21)  
3 days of the date of this Order.
- 4 9. Class members will be given ninety (90) days after first dissemination of the  
5 notice to opt-out of the class. This date is currently blank in the notice  
6 documents, but KCC shall calculate and insert the correct date before notice is  
7 disseminated.
- 8 10. For the reasons discussed at the Court’s December 20, 2018 hearing and  
9 stated in the Court’s Tentative Ruling, the Court hereby revises the Class  
10 Definition set forth in its Order certifying the Class (Dkt. 117, 118) from “All  
11 persons who purchased Infants’ Tylenol for personal use in California since  
12 October 3, 2014” to “All persons who purchased, in California, Infants’  
13 Tylenol for personal use since October 3, 2014.”

14  
15 **IT IS SO ORDERED**

16  
17 DATED: January 15, 2019



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18 GEORGE H. WU,  
19 United States District Judge

# **EXHIBIT 1**

LEGAL NOTICE

**If you purchased, in California, Infants' Tylenol anytime since October 3, 2014, your rights may be affected by a class action lawsuit.**

*Para una notificación en español, visite [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com)*

You may be affected by a class action lawsuit claiming that Johnson & Johnson Services, Inc. and Johnson & Johnson Consumer Inc. ("J&J") make false and misleading representations on their packaging for Infants' Tylenol. The lawsuit, *Elkies v. Johnson and Johnson Services, Inc.*, Case No. 2:17-cv-07320, is in the United States District Court for the Central District of California. The Court decided this lawsuit should be a class action on behalf of a group of people that may include you. There is no money available now and no guarantee that there will be.

**AM I AFFECTED?** The Class includes all persons who purchased, in California, Infants' Tylenol for personal use (*i.e.* not for resale) since October 3, 2014 ("Class members").

**WHAT IS THIS CASE ABOUT?** The lawsuit claims that representations on the front of the Infants' Tylenol packaging are likely to deceive reasonable consumers into believing Infants' Tylenol is unique/ specially formulated for infants, when in fact it is the same medicine found in Children's Tylenol. J&J denies that it misled consumers, disputes that it has done anything wrong, believes that the packaging of Infants' Tylenol is truthful and accurate and does not mislead consumers in any way and contends that Infants' Tylenol includes essential safety features for administering the medicine to infants and newborn babies that are not included in Children's Tylenol. The lawsuit seeks money, as well as attorneys' fees and costs and a Court order requiring J&J to stop its allegedly deceptive business practices. The Court has not ruled on the merits of the claims. The lawyers for the Class will have to prove their claims at a trial scheduled to begin on August 27, 2019.

**WHO REPRESENTS ME?** The Court has appointed Milstein Jackson Fairchild & Wade, LLP and Heideman Nudelman & Kalik, P.C. to represent Class Members who do not timely exclude themselves in this case. Class Members do not have to pay Class Counsel or anyone else to participate. If Class Counsel obtains money or other benefits for the Class, they may ask the Court for attorneys' fees and costs, which would be paid out of any money recovered for the Class or paid separately by J&J. If you are a Class Member, you may hire your own lawyer to represent you at your expense. Rony Elkies and Danielle Alfandary are Class members, and the Court has appointed them to serve as the "Class Representatives."

**WHAT ARE MY RIGHTS & OPTIONS?** You have a choice of whether to stay in the Class or not. If you do nothing, you are choosing to stay in the Class. This means you will be legally bound by all orders and judgments of the Court and you won't be able to sue or continue to sue J&J about the legal claims made in this case. If money or benefits are obtained, you will be notified about how to ask for a share. If you do not want to stay in the Class, you must file a request for exclusion. If you exclude yourself, and Plaintiffs succeed in proving their claims or settle this lawsuit, you will not be entitled to money or benefits from this lawsuit, but you will keep your right to separately sue J&J over the legal issues in this case. To ask to be excluded from the Class, fill out the form entitled "Exclusion Request Form" (available at [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com)) or send a letter to the address below, postmarked by **MONTH XX, XXXX**, stating you want to be excluded from *Elkies v. Johnson and Johnson Services, Inc.*, Case No. 2:17-cv-07320. Include your name, address, telephone number, and signature.

**HOW DO I GET MORE INFORMATION?** For a detailed notice and other documents about this lawsuit and your rights, go to [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com), call 1-\_\_\_\_-\_\_\_\_-\_\_\_\_, or write to Infants' Tylenol Class Action Administrator, PO Box \_\_\_\_, City, ST \_\_\_\_-\_\_\_\_.

1-\_\_\_\_-\_\_\_\_-\_\_\_\_ **[www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com)**

# **EXHIBIT 2**

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

# If you purchased, in California, Infants' Tylenol anytime since October 3, 2014, your rights may be affected by a class action lawsuit.

***Para una notificación en español, visite [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com)***

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- Consumers have sued Johnson & Johnson Services, Inc. and Johnson & Johnson Consumer Inc. ("J&J") over whether it made false and misleading statements on the front packaging of Infants' Tylenol. J&J disputes that it has done anything wrong and believes that the packaging of Infants' Tylenol is truthful and accurate and does not mislead consumers in any way. The court has not decided whether either side is right.
- You may be part of this class action if you purchased, in California, Infants' Tylenol for personal use (i.e. not for resale) anytime since October 3, 2014. Some exclusions apply, as discussed below.
- This case is currently scheduled to go to trial. There is no money available now and no guarantee there will be in the future. However, your rights are affected and you have a choice to make now.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:</b>	
<b>DO NOTHING</b>	<p><b>Stay in this lawsuit. Await the outcome of the trial. Share in possible money or benefits if Plaintiffs win at trial or settle. Give up certain rights.</b></p> <p>By doing nothing you are choosing to stay in the lawsuit. If you stay in the lawsuit, you may share in possible money or other benefits if Plaintiffs win the lawsuit at trial or settle. If you do not ask to be excluded, you will remain in the lawsuit and you will give up the right to sue J&amp;J on your own about the legal claims included in this lawsuit.</p>
<b>ASK TO BE EXCLUDED</b>	<p><b>Get out of this lawsuit. Give up potential money or benefits if Plaintiffs win at trial or settle. Keep rights to bring your own claim.</b></p> <p>If you ask to be excluded, and Plaintiffs win at trial or settle, you will not be able to share in possible money or other benefits from this lawsuit. But, you will keep the right to sue J&amp;J on your own about the legal claims included in this lawsuit.</p>

- Lawyers must prove the claims against J&J at a trial set to begin on August 27, 2019. If money or benefits are obtained from J&J, you will be able to ask for a share.
- Your rights and options are explained in this notice. To ask to be excluded, you must act by **Month XX, 2019**.

## BASIC INFORMATION

### 1. Why was this notice issued?

This notice was issued because a Court has “certified” this case as a class action lawsuit and your rights may be affected. If you purchased, in California, Infants’ Tylenol for personal use (i.e. not for resale) anytime since October 3, 2014, you may have legal rights and options in this case before the judge or a jury decides the claims being made against J&J. This notice explains all of these things.

Judge George H. Wu of the United States District Court for the Central District of California is overseeing this class action. The case is known as *Elkies v. Johnson and Johnson Services, Inc.*, Case No. 2:17-cv-07320. The people who sued are called the Plaintiffs. The companies they sued—Johnson & Johnson Services, Inc. and Johnson & Johnson Consumer Inc.—are called the Defendants or J&J.

### 2. What is a class action?

In a class action, one or more people, called Class Representatives (in this case Rony Elkies and Danielle Alfandary), are suing on behalf of all people who have similar claims. Together, these people are called a Class or Class members. One court resolves the issues for all Class members, except for those who exclude themselves from the Class.

### 3. Why is this lawsuit a class action?

The Court decided that this lawsuit could move toward trial as a class action because it meets the numerosity, commonality, typicality, and adequacy requirements of Federal Rule of Civil Procedure 23. For example, the Court ruled that the Class is so large or “numerous” that getting all Class members together is impracticable; that there are questions of law and fact that are “common” to the Class; that the claims of the Class Representatives and the defenses to those claims by J&J are “typical” to the claims of the Class and the defenses to those claims by J&J; and that the lawyers for the Class will fairly and “adequately” protect the interests of all Class members. More information about why this is a class action can be found in the Court’s Class Certification Order, which is available at [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com).

## THE CLAIMS IN THE LAWSUIT

### 4. What is the lawsuit about?

The lawsuit claims that representations on the front of the Infants’ Tylenol packaging (the text “Infants” and a picture of a mother holding her baby) are likely to deceive reasonable consumers into believing Infants’ Tylenol is unique/ specially formulated for infants, when in fact it is the same medicine in Children’s Tylenol. Specifically, the lawsuit claims that J&J violated California’s False Advertising Law, Business and Professions Code §§ 17200 and §§ 17500, and California Civil Code §§ 1750. More information can be found in the First Amended Class Action Complaint, available at [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com).

### 5. How does J&J answer?

J&J denies that it misled consumers, disputes that it has done anything wrong, believes that the packaging of Infants’ Tylenol is truthful and accurate and does not mislead consumers in any way and contends that Infants’ Tylenol includes essential safety features for administering the medicine to infants and newborn babies that are not included in Children’s Tylenol. The court has not decided whether either side is right. To see J&J’s Answer to the First Amended Class Action Complaint, go to [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com).

### 6. Has the Court decided who is right?

No. The Court has not ruled on the merits of the claims. The lawyers for the Plaintiffs will present their claims and the lawyers for J&J will argue their defenses at a trial that is set to begin on August 27, 2019.

### 7. What are the Plaintiffs asking for on behalf of the Class?

The Plaintiffs are asking for: (1) money to compensate Class members for paying a premium for Infants' Tylenol; (2) a court order requiring J&J to stop its allegedly unfair, deceptive and unlawful business practices; and (3) reasonable attorneys' fees and costs.

### 8. Is there any money available now?

No. There are no money or benefits available now because the Court has not ruled on the merits of the claims. There is no guarantee that money or benefits will ever be awarded or obtained.

## MEMBERS OF THE CLASS

### 9. How do I know if I am part of the Class?

You are included in this lawsuit if you purchased, in California, Infants' Tylenol for personal use (i.e. not for resale) anytime since October 3, 2014.

The following are not included in the Class: Defendants; Defendants' officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, successors, assigns, or other persons or entities related to or affiliated with Defendants and/or their officers and/or directors, or any of them; the Court; the Court's immediate family; and Court staff.

## YOUR RIGHTS AND OPTIONS

### 10. What happens if I do nothing at all?

If you do nothing, you are choosing to stay in the Class. If the Plaintiffs win or lose at trial, you will be legally bound by all orders and judgments of the Court, and you will not be able to sue or continue to sue J&J in a different case over the legal claims included in this lawsuit. If the Plaintiffs obtain money or other benefits from J&J at trial or as the result of a settlement, you will be able to ask for a share.

### 11. What happens if I exclude myself?

If you exclude yourself from the Class you: (1) will not be legally bound by the Court's judgments; (2) will keep any rights you may have to sue J&J for the legal claims included in this lawsuit; and (3) will not be able to get any money or benefits from this lawsuit if any are awarded or obtained as a result of the trial or any settlement.

### 12. How do I ask to be excluded?

To exclude yourself, fill out the form entitled "Exclusion Request Form" (available at [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com)) or send a letter that states you want to be excluded from *Elkies v. Johnson and Johnson Services, Inc.*, Case No. 2:17-cv-07320. Include your name, address, and signature. You must mail your exclusion request letter so that it is postmarked by **Month XX, 2019** to: Infants' Tylenol Class Action Administrator, **PO Box XXXXX, Louisville, KY 40233-XXXX**.

## THE LAWYERS REPRESENTING YOU

### 13. Do Class Members have a lawyer in this case?

Yes. The Court has appointed Gillian L. Wade, Sara D. Avila and Andrew Whitman of Milstein Jackson Fairchild & Wade, LLP and Richard D. Heideman, Noel J. Nudelman and Tracy Reichman Kalik of Heideman Nudelman & Kalik, P.C. as Class Counsel to represent Class Members who do not timely exclude themselves in this case. These lawyers have experience handling similar cases. More information about these lawyers and their law firms is available at [www.mjfwlaw.com](http://www.mjfwlaw.com) and [www.hnklaw.com](http://www.hnklaw.com).

#### 14. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is representing members of the Class who do not exclude themselves by the deadline. If you are a Class Member, and want someone other than Class Counsel to speak for you, you may hire your own lawyer at your own expense.

#### 15. How will the lawyers be paid?

If the Class prevails, Class Counsel will ask the Court for fees, costs and expenses. If the Court grants their request, the fees, costs and expenses will either be deducted from any money obtained for the Class or paid separately by J&J. You will not personally have to pay any of these fees and expenses.

### THE TRIAL

#### 16. How and when will the Court decide the case?

The case will be decided at a trial that is set to begin at 9:00 a.m. on August 27, 2019. The trial will take place in Courtroom 9D, 9th Floor of the United States District Court for the Central District of California, located at 350 West 1st Street, Los Angeles, California, 90012. The trial may be moved to a different date or time without additional notice. Check [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com) for updates.

#### 17. Do I have to come to Court?

You do not have to come to Court unless you choose to do so. Class Counsel will present the case for the Plaintiffs and the lawyers for J&J will present their defenses. You or your lawyer may appear in Court for this case at your own expense, but you do not have to.

#### 18. Will I get money after the trial?

If Class Counsel obtains money or benefits as a result of the trial or a settlement, a new notice will be issued about how to ask for a share and about any other options you may have at that time. Updated information about the case may be posted on [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com).

### GETTING MORE INFORMATION

#### 20. Is more information about the lawsuit available?

More information about the lawsuit is available by visiting [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com), calling toll-free 1-XXX-XXX-XXXX, writing to Infants' Tylenol Class Action Administrator, PO Box XXXXX, Louisville, KY 40233-XXXX, or contacting Class Counsel.

# **EXHIBIT 3**

Internet Banner Ads

**If you  
purchased, in  
California,  
Infants' Tylenol  
anytime since  
October 3, 2014,  
your rights may  
be affected by a  
class action  
lawsuit.**

**Learn More**

[www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com)

**If you purchased, in California, Infants' Tylenol  
anytime since October 3, 2014, your rights  
may be affected by a class action lawsuit.**

**Learn More**

[www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com)

**If you purchased, in California, Infants' Tylenol anytime since October 3, 2014, your rights may be affected by a class action lawsuit.**

**Learn More**

[www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com)



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# **EXHIBIT 4**

If you purchased, in California, Infants' Tylenol anytime since October 3, 2014, your rights may be affected by a class action lawsuit.

Los Angeles, Month, XX, 201\_ /PRNewswire/ - - Milstein Jackson Fairchild & Wade, LLP and Heideman Nudelman & Kalik, P.C. announce that a class action lawsuit has been filed against Johnson & Johnson Services, Inc. and Johnson & Johnson Consumer Inc. ("J&J") claiming that it made false and misleading representations on their packaging for Infants' Tylenol. The lawsuit, *Elkies v. Johnson and Johnson Services, Inc.*, Case No. 2:17-cv-07320, is in the United States District Court for the Central District of California. The Class includes all persons who purchased, in California, Infants' Tylenol for personal use since October 3, 2014 ("Class members").

The lawsuit claims that representations on the front of the Infants' Tylenol packaging are likely to deceive reasonable consumers into believing Infants' Tylenol is unique/ specially formulated for infants, when in fact it is the same medicine found in Children's Tylenol. J&J denies that it misled consumers, disputes that it has done anything wrong, believes that the packaging of Infants' Tylenol is truthful and accurate and does not mislead consumers in any way and contends that Infants' Tylenol includes essential safety features for administering the medicine to infants and newborn babies that are not included in Children's Tylenol. The lawsuit seeks money, as well as attorneys' fees and costs and a Court order requiring J&J to stop its allegedly deceptive business practices. The Court has not ruled on the merits of the claims. The lawyers for the Class will have to prove their claims at a trial scheduled to begin on August 27, 2019.

If you are a Class member and you do nothing, you are choosing to stay in the Class. You will be legally bound by all orders and judgments of the Court and you won't be able to sue or continue to sue J&J about the legal claims made in this case. If money or benefits are obtained, you will be notified about how to ask for a share. If you want to keep your right to separately sue J&J over the legal issues in this case, but not receive any possible money or benefits from this lawsuit you must exclude yourself by **MONTH XX, XXXX**.

For More information, go to [www.CaliforniaInfantTylenolClassAction.com](http://www.CaliforniaInfantTylenolClassAction.com), call 1-\_\_\_\_-\_\_\_\_-\_\_\_\_, or write to Infants' Tylenol Class Action Administrator, PO Box \_\_\_\_\_, City, ST \_\_\_\_\_-\_\_\_\_\_.