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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RONY ELKIES *et al.*;

Plaintiffs,

vs.

JOHNSON & JOHNSON SERVICES,  
INC., *et al.*,

Defendants.

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) No. CV 17-7320-GW-JEMx  
) CLASS ACTION  
) ORDER PRELIMINARILY  
) APPROVING CLASS ACTION  
) SETTLEMENT,  
) CONDITIONALLY CERTIFYING  
) THE SETTLEMENT CLASS,  
) PROVIDING FOR NOTICE AND  
) SCHEDULING ORDER  
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1 WHEREAS, Plaintiffs<sup>1</sup> in the action entitled *Elkies v. Johnson & Johnson*  
2 *Services, Inc.*, filed on October 5, 2017, in the U.S. District Court for the Central  
3 District of California and assigned Case No. 2:17-cv-7320-GW(JEMx) and  
4 Defendants have entered into a Stipulation of Settlement, filed September 24, 2019  
5 (Dkt. 162), and an Amended Stipulation of Settlement, filed October 24, 2019 (Dkt.  
6 169), after arms-length settlement discussions (the “Stipulation”);

7 AND, WHEREAS, the Court has received and considered the Stipulation,  
8 including the accompanying exhibits;

9 AND, WHEREAS, the Parties have made an application for an order  
10 preliminarily approving the settlement of this Action, and for its dismissal with  
11 prejudice upon the terms and conditions set forth in the Stipulation;

12 AND, WHEREAS, the Court has reviewed the Parties’ application for such  
13 order, and has found good cause for same.

14 NOW, THEREFORE, IT IS HEREBY ORDERED:

15 **A. The Settlement Class Is Conditionally Certified**

16 1. Pursuant to Federal Rule of Civil Procedure 23, and for settlement  
17 purposes only, the Court hereby certifies the following Class:

18 All individuals in the United States who purchased Infants’ Tylenol for  
19 personal or household use since October 3, 2014 until January 6, 2020  
20 (the date notice of this Settlement to the Class is first published).  
21 Specifically excluded from the Class are (a) Defendants, (b) the officers,  
22 directors, or employees of Defendants and their immediate family, (c)  
23 any entity in which Defendants have a controlling interest, (d) any  
24 affiliate, legal representative, heir, or assign of Defendants, (e) all  
25 federal court judges who have presided over this Action and their  
26 immediate family; (f) all persons who have submitted a valid request for  
27 exclusion from the Class; and (g) those who purchased the Challenged  
28 Product for the purpose of resale or for use in a business setting.

2. With respect to the Class and for settlement purposes only, the Court  
preliminarily finds the prerequisites for a class action under Federal Rules of Civil  
Procedure 23(a) and (b)(3) have been met, including: (a) numerosity; (b)

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<sup>1</sup> All capitalized terms herein shall have the same meanings as set forth in the Stipulation unless otherwise specifically defined.

1 commonality; (c) typicality; (d) adequacy of the class representatives and Class  
2 Counsel; (e) predominance of common questions of fact and law among the Class  
3 for purposes of settlement; and (f) superiority.

4 3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby  
5 appoints the Plaintiffs in the Action, Danielle Alfandary and Rony Elkies, as the class  
6 representatives.

7 4. Having considered the factors set forth in Federal Rule of Civil  
8 Procedure 23(g)(1), the Court hereby appoints the law firms of Milstein Jackson  
9 Fairchild & Wade, LLP and Heideman Nudelman & Kalik, P.C., as Class Counsel.

10 **B. The Stipulation Is Preliminarily Approved and Final Approval**  
11 **Schedule Set**

12 5. The Court hereby preliminarily approves the Stipulation and the terms  
13 and conditions of settlement set forth therein, subject to further consideration at the  
14 Final Approval Hearing described below.

15 6. The Court has conducted a preliminary assessment of the fairness,  
16 reasonableness, and adequacy of the Stipulation, and hereby finds that the settlement  
17 falls within the range of reasonableness meriting possible final approval. The Court  
18 therefore preliminarily approves the proposed settlement as set forth in the  
19 Stipulation.

20 7. Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold a  
21 Final Approval Hearing on a day that is at least 148 days after entry of this Order.  
22 Accordingly, the Final Approval Hearing will take place on May 11, 2020 at 8:30  
23 a.m., in the Courtroom of the Honorable George H. Wu, United States District Court  
24 for the Central District of California, 350 West 1st Street, Los Angeles, California  
25 90012, Courtroom 9D, for the following purposes:

26 (a) finally determining whether the Class meets all applicable  
27 requirements of Federal Rule of Civil Procedure 23 and, thus, the Class should be  
28 certified for purposes of effectuating the settlement;

1 (b) determining whether the proposed settlement of the Action on the  
2 terms and conditions provided for in the Stipulation is fair, reasonable and adequate  
3 and should be approved by the Court;

4 (c) considering the application of Class Counsel for an award of  
5 attorneys' fees and reimbursement of expenses, as provided for under the Stipulation;

6 (d) considering the applications of Plaintiffs for class representative  
7 service awards, as provided for under the Stipulation;

8 (e) considering whether the Court should enter the [Proposed] Final  
9 Settlement Order and Judgment;

10 (f) considering whether the release of the Released Claims as set  
11 forth in the Stipulation should be provided; and

12 (g) ruling upon such other matters as the Court may deem just and  
13 appropriate.

14 8. The Court may continue or adjourn the Final Approval Hearing and later  
15 reconvene such hearing without further notice to Class Members.

16 9. The Parties may further modify the Stipulation prior to the Final  
17 Approval Hearing so long as such modifications do not materially change the terms  
18 of the settlement provided thereunder. The Court may approve the Stipulation with  
19 such modifications as may be agreed to by the Parties, if appropriate, without further  
20 notice to Class Members.

21 10. Plaintiffs' applications for attorneys' fees, costs and incentive awards  
22 must be filed no later than 21 days before the deadline for Class Members to object,  
23 opt out or make claims under the Stipulation. All further papers in support of the  
24 settlement and any application for an award of attorneys' fees and expenses and/or  
25 class representative incentive awards must be filed with the Court and served at least  
26 seven days prior to the Final Approval Hearing.

27 **C. The Court Approves the Form and Method of Class Notice**

28 11. The Court approves, as to form and content, the proposed Publication

1 Notice and Class Notice (collectively the “Notice”), which are Exhibits C and E,  
2 respectively, to the Amended Stipulation of Settlement. The Court further approves,  
3 as to form and content, the Claim Form attached as Exhibit F to the Amended  
4 Stipulation of Settlement. The Court further approves, as to form and content, the  
5 Press Release, attached as Exhibit 1 to the Parties Joint Report filed on November 4,  
6 2019 (Dkt. 170).

7 12. The Court finds that the distribution of Notice substantially in the  
8 manner and form set forth in the Stipulation meets the requirements of Federal Rule  
9 of Civil Procedure 23 and due process, is the best notice practicable under the  
10 circumstances, and shall constitute due and sufficient notice to all persons entitled  
11 thereto.

12 13. The Court approves the designation of Kurtzman Carson Consultants  
13 LLC (“KCC”) to serve as the Court-appointed Claim Administrator for the  
14 settlement. The Claim Administrator shall cause the Publication Notice to be  
15 published, disseminate Class Notice, and supervise and carry out the notice  
16 procedure, the processing of claims, and other administrative functions, and shall  
17 respond to Class Member inquiries, as set forth in the Stipulation and this Order under  
18 the direction and supervision of the Court.

19 14. The Court directs the Claim Administrator to establish a Settlement  
20 Website, making available copies of this Order, Class Notice, Claim Forms that may  
21 be downloaded and submitted online, by mail, or by facsimile, the Stipulation and all  
22 Exhibits thereto, a toll-free hotline, and such other information as may be of  
23 assistance to Class Members or required under the Stipulation. The Class Notice and  
24 Claim Forms shall be made available to Class Members through the Settlement  
25 Website on the date notice is first published and continuously thereafter through the  
26 Effective Date (and on the websites of Class Counsel at their option during the same  
27 period).

28 15. The Claim Administrator is ordered to complete publication of the

1 Publication Notice no later than 30 days after Preliminary Approval.

2 16. The costs of Notice, processing of claims of Class Members, creating  
3 and maintaining the Settlement Website, and all other Claim Administrator and  
4 Notice expenses shall be paid by JJCI in accordance with the applicable provisions  
5 of the Stipulation.

6 **D. Procedure for Class Members to Participate in the Settlement**

7 17. The Court approves the Parties' proposed Claim Form. Any Class  
8 Member who wishes to participate in the settlement shall complete a Claim Form in  
9 accordance with the instructions contained therein and submit it to the Claim  
10 Administrator during the Claim Submission Period set forth in the Stipulation, which  
11 date will be specifically identified in the Claim Form. Such deadline may be further  
12 extended without notice to the Class by written agreement of the Parties.

13 18. The Claim Administrator shall have the authority to accept or reject  
14 claims in accordance with the Stipulation, including the Claims Administration  
15 Protocols.

16 19. Any Class Member may enter an appearance in the Action, at his or her  
17 own expense, individually or through counsel who is qualified to appear in the  
18 jurisdiction. All Class Members who do not enter an appearance will be represented  
19 by Class Counsel.

20 **E. Procedure for Requesting Exclusion from the Class**

21 20. All Class Members who do not timely exclude themselves from the  
22 Class shall be bound by all determinations and judgments in the Action concerning  
23 the settlement, whether favorable or unfavorable to the Class.

24 21. Any person or entity falling within the definition of the Class may, upon  
25 his, her or its request, be excluded from the Class. Any such person or entity must  
26 submit a request for exclusion to the Clerk of the Court c/o the Class Action  
27 Administrator, postmarked or delivered no later than 28 calendar days prior to the  
28 date of the Final Approval Hearing, the date for which will be specifically identified

1 in the Publication Notice and Class Notice. Requests for exclusion purportedly filed  
2 on behalf of groups of persons/or entities are prohibited and will be deemed to be  
3 void.

4 22. Any Class Member who does not send a signed request for exclusion  
5 postmarked or delivered on or before the time period described above will be deemed  
6 to be a Class Member for all purposes and will be bound by all judgments and further  
7 orders of this Court related to the settlement of this Action and by the terms of the  
8 settlement, if finally approved by the Court. The written request for exclusion must  
9 request exclusion from the Class, must be signed by the potential Class Member and  
10 include a statement indicating that the person or entity is a member of the Class. All  
11 persons or entities who submit valid and timely requests for exclusion in the manner  
12 set forth in the Stipulation shall have no rights under the Stipulation and shall not be  
13 bound by the Stipulation or the Final Judgment and Order.

14 23. A list reflecting all requests for exclusion shall be filed with the Court  
15 by Class Counsel at or before the Final Approval Hearing.

16 **F. Procedure for Objecting to the Settlement**

17 24. Any Class Member wishing to object to or oppose the approval of this  
18 Settlement, the motion for the service award to Plaintiffs and/or the Fee and Cost  
19 Applications shall file with the Court a written objection no later than twenty-eight  
20 (28) days before the date of the Final Approval Hearing. The objecting Class Member  
21 must send a copy of the written objection and supporting documents to the counsel  
22 listed in ¶X(M) of this Stipulation. The objection must contain:

23 (a) The name of this Action;

24  
25 (b) The objecting Class Member's full name, address, email address (if  
26 available) and signature (a Class Member's attorney's signature is not sufficient);

27 (c) A written statement containing all grounds for the objection,  
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1 accompanied by any legal support known to the objecting Class Member or his or  
2 her counsel and any supporting papers, evidence and/or documents;

3 (d) A statement of the objecting Class Member's membership in the Class,  
4 including all information required by the Claim Form;

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6 (e) The identity of all counsel who represent the objecting Class Member,  
7 including any former or current counsel who may be entitled to compensation for any  
8 reason relating to the objection;

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10 (f) A statement confirming whether the objecting Class Member or any  
11 counsel representing the objecting Class Member intends to personally appear and/or  
12 testify at the Final Approval Hearing;

13 (g) A detailed list of any other objections submitted by the objecting Class  
14 Member and/or his/her counsel, to any class actions submitted in any court in any  
15 jurisdiction within the United States in the previous five (5) years. If the Class  
16 Member or his/her counsel has not objected to any other class action settlement in  
17 any court in the United States in the previous five (5) years, he/she shall affirmatively  
18 state so in the written materials provided in connection with the written objection to  
19 this Settlement; and,

20 (h) A list of persons who may be called to testify at the Final Approval  
21 Hearing in support of the objection.  
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23 Any Class Member who fails to timely file and serve a written Objection  
24 containing all of the information listed in (a) through (h) of the previous paragraph  
25 shall not be permitted to object to the Settlement and shall be foreclosed from seeking  
26 any review of the Settlement or the terms of the Agreement by any means, including  
27 but not limited to an appeal.  
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1           25. If any objection is received by the Settlement Administrator, but not  
2 filed with the Court, the Settlement Administrator shall forward the Objection and  
3 all supporting documentation to Class Counsel and Counsel for Defendants. The  
4 failure of the Class Member to file the written objection with the Court shall be  
5 grounds for striking and/or overruling the objection, even if the objection is submitted  
6 to the Settlement Administrator.

7           26. A Class Member who objects to the settlement may also submit a Claim  
8 Form on or before the deadline to do so, which shall be processed in the same way  
9 as all other Claim Forms. A Class Member shall not be entitled to an extension to the  
10 deadline to submit a Claim Form merely because the Class Member has also  
11 submitted an objection.

12           27. Class Counsel will file with the Court his briefs in support of Final  
13 Approval, the requested service awards for Plaintiffs and an application for attorneys'  
14 fees and costs no later than twenty-one (21) days before the deadline for Class  
15 Members to object to the Settlement.

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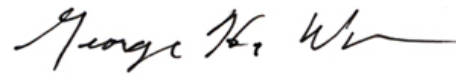
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25           28. Class Counsel and/or Defendants have the right, but not the obligation,  
26 to respond to any objection no later than seven (7) days prior to the Final Approval  
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1 Hearing. The party so responding shall file a copy of the response with the Court,  
2 and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting  
3 member of the Class or to the individually-hired attorney for the objecting member  
4 of the Settlement Class; to Class Counsel; and to Defendants' Counsel.

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8 IT IS SO ORDERED

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10 DATED: December 6, 2019



11 THE HONORABLE GEORGE H. WU  
12 UNITED STATES DISTRICT JUDGE  
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