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5 *Attorneys for Defendant*
Johnson & Johnson Consumer Inc.
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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 LOUISA GUTIERREZ, an individual,
12 DEBBIE LUNA, an individual, on
behalf of themselves and all persons
13 similarly situated,

14 Plaintiffs,

15 v.

16 JOHNSON & JOHNSON, JOHNSON
& JOHNSON CONSUMER INC.,
17 BAUSCH HEALTH US, LLC, f/k/a
VALEANT PHARMACEUTICALS
18 NORTH AMERICA LLC, AND DOES
1-25, inclusive,

19 Defendants.
20

Case No. '19CV1345 DMS AGS

**NOTICE OF REMOVAL OF
LAWSUIT PENDING IN STATE
COURT TO DISTRICT COURT,
SOUTHERN DISTRICT (28 U.S.C.
§§ 1332(d)(2)(A), 1446, and 1453)**

Trial Date: None

Date Action Filed: May 20, 2019

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1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

2 PLEASE TAKE NOTICE that defendant Johnson & Johnson Consumer Inc.
3 (“JJCI”) hereby removes this civil action captioned as Louisa Gutierrez, Debbie
4 Luna v. Johnson & Johnson, Johnson & Johnson Consumer, Inc., Bausch Health
5 US, LLC, f/k/a Valeant Pharmaceuticals North America LLC, Case No. 37-2019-
6 00025810-CU-CTL (the “Action”), from the Superior Court of California in and for
7 the County of San Diego to the United States District Court for the Southern
8 District of California. This removal is timely taken pursuant to 28 U.S.C.
9 §§ 1332(d)(2)(A), 1446, and 1453, based on the following grounds:¹

10 **I. Pleadings and Process**

- 11 1. On May 20, 2019, Louisa Gutierrez and Debbie Luna (“Plaintiffs”)
12 electronically filed the Complaint in the Superior Court of California in and
13 for the County of San Diego. A copy of the Complaint is attached hereto as
14 **Exhibit A**.
- 15 2. On June 4, 2019, Plaintiffs electronically filed the First Amended Complaint
16 (“FAC”) in the same action. On July 8, 2019, Plaintiffs served JJCI with the
17 FAC. A copy of the FAC is attached hereto as **Exhibit B** along with the
18 Notice of Service of Process on JJCI and a Summons.
- 19 3. On June 28, 2019, Plaintiffs served Bausch Health US, LLC, f/k/a Valeant
20 Pharmaceuticals North America LLC (“Bausch”) with the FAC. Plaintiffs
21 also served on Bausch a Notice of Service of Process and a Summons, all
22 attached hereto as **Exhibit C**.
- 23 4. Defendant Johnson & Johnson has not been served with a summons or
24 complaint in this action.

25
26 ¹ A removing defendant is only required to provide a “short and plain statement” of the bases for
27 removal and need not present or plead evidentiary detail. *Dart Cherokee Basin Operating Co.,*
28 *LLC v. Owens*, 135 S. Ct. 547, 551 (2014); *see also Janis v. Health Net, Inc.*, 472 F. App’x 533,
534 (9th Cir. 2012) (“Nothing in 28 U.S.C. § 1446 requires a removing defendant to attach
evidence of the federal court’s jurisdiction to its notice of removal. Section 1446(a) requires
merely a ‘short and plain statement of the grounds for removal.’”).

1 5. Together, Exhibits A through C constitute all pleadings and process in the
2 Action. *See* 28 U.S.C. §§ 1446 and 1453.

3 **II. Timeliness of Removal**

4 6. No defendant was served with the FAC more than 30 days before filing of
5 this Notice of Removal, which, accordingly, is filed within the time provided
6 by 28 U.S.C. § 1446(b)(1).

7 **III. Jurisdiction Pursuant to 28 U.S.C. § 1332(d)(B)**

8 7. Bausch, the only other defendant to have been joined and served, consents to
9 the filing of this Notice of Removal. However, consent is not required for
10 removal of a class action, pursuant to 28 U.S.C. § 1453(b).

11 8. The Court has original jurisdiction over this action pursuant to 28 U.S.C.
12 § 1332 and the Action may be removed to this Court pursuant to 28 U.S.C.
13 §§ 1446 and 1453(b). The Action concerns a putative class action in which:
14 (1) the proposed class contains at least 100 members; (2) no defendant is a
15 state, state official, or other governmental entity; (3) there is diversity
16 between at least one putative class member and one defendant; and (4) the
17 total amount in controversy for all putative class members exceeds the sum
18 of \$5,000,000 in the aggregate, exclusive of interest and costs.

19 9. There are 100 or more proposed class members, as is evidenced by the FAC,
20 which states the class is “Plaintiffs and all persons who purchased the
21 Talcum Products within the state of California at any time from four years
22 prior to the filing of this complaint” Ex. B at ¶ 6.

23 10. No defendant is a state, state official, or other governmental entity.

24 11. Diversity of citizenship exists in that:

25 a. Plaintiffs are citizens of the State of California. Ex. B. at ¶¶ 8-10.

26 b. Defendant Johnson & Johnson is a corporation incorporated under the
27 laws of the State of New Jersey and having its principal place of
28 business in the State of New Jersey. Ex. B. at ¶ 11.

- 1 c. Defendant JJCI is a corporation incorporated under the laws of the
2 State of New Jersey and having its principal place of business in New
3 Jersey. Ex. B. at ¶ 16.
- 4 d. Defendant Bausch is a limited liability company incorporated under
5 the laws of the State of Delaware and having its principal place of
6 business in New Jersey.
- 7 e. The citizenship of the unnamed (“Doe”) defendants is not relevant for
8 the purposes of determining diversity jurisdiction. 28 U.S.C.
9 § 1441(b)(1).

10 12. A notice of removal “need include only a plausible allegation that the amount
11 in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*,
12 135 S. Ct. at 554. A sum stated in a complaint generally is “deemed to be the
13 amount in controversy.” *Id.* at 551; *see also Richmond v. Allstate Ins. Co.*,
14 897 F. Supp. 447, 449 (S.D. Cal. 1995); *Pachinger v. MGM Grand Hotel-Las*
15 *Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir. 1986) (“The amount in controversy
16 is normally determined from the face of the pleadings.”). The calculation of
17 the amount in controversy takes into account claims for “general” damages,
18 “special” damages, punitive damages if recoverable as a matter of law, and
19 attorneys’ fees recoverable by statute. *See Pachinger*, 802 F.2d at 363.

20 13. In this case, it is plain from the face of the Complaint that Plaintiffs seek
21 more than \$5,000,000. Plaintiffs allege that, among other things, they seek
22 restitution in the amount of “hundreds of millions of dollars” related to
23 talcum powder product sales, as well as attorneys’ fees. *See Ex. B, ¶¶ 107,*
24 *114, 129.*

25 **IV. Venue**

26 14. Plaintiffs originally brought this action in the Superior Court for the State of
27 California, County of San Diego. Pursuant to 28 U.S.C. § 84(d) the removal
28 venue for this case is the United States District Court for the Southern

1 District of California. Pursuant to 28 U.S.C. § 1404(a), JJCI will seek a
2 permissive transfer of venue to the Central District of California.

3 **V. Notice to Plaintiffs**

4 15. Contemporaneously with the filing of this Notice of Removal in the United
5 States District Court for the Southern District of California, Defendant JJCI
6 will give written notice of such filing to all adverse parties — specifically,
7 Plaintiffs’ counsel of record:

8 **Mark D. Potter and James M. Treglio**
9 Potter Handy LLP
10 9845 Erma Road
11 Suite 300
12 San Diego, CA 92131

13 16. Defendant JJCI will file a copy of the Notice of Removal with the Clerk of
14 the Court for the Superior Court of the County of San Diego, California,
15 pursuant to 28 U.S.C. § 1446(d).

16 17. Because this Court has original jurisdiction of the Action, because diversity
17 of citizenship exists, and because the amount in controversy exceeds \$5
18 million, Defendant hereby removes the Action to this Court.

18 Dated: July 18, 2019

19 STACY W. HARRISON
20 ORRICK, HERRINGTON &
21 SUTCLIFFE LLP

22 By: /s/ Stacy W. Harrison
23 STACY W. HARRISON
24 Attorneys for Defendant
25 Johnson & Johnson Consumer Inc.
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Louisa Gutierrez, an individual, Debbie Luna, an individual, on behalf of themselves and all persons similarly situated

(b) County of Residence of First Listed Plaintiff Riverside County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

Johnson & Johnson Consumer, Johnson & Johnson Consumer, Inc., Bausch Health US, LLC, f/k/a Valeant Pharmaceuticals North America LLC, and DOES 1-100, inclusive

County of Residence of First Listed Defendant Middlesex County, NJ (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

See attachment '19CV1345 DMS AGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC § 1332(d)(2)(a), 1446, and 1453. Brief description of cause: Diversity action alleging violations of Cal. Civ. Code §1750 & Business & Professions Code §§ 17200 and 17500

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. George H. Wu DOCKET NUMBER 2:18-cv-04830-GW(KSx)

DATE 07/18/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Stacy W. Harrison

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

I. (c) Attorneys

For Plaintiffs:

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