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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RONY ELKIES, DANIELLE  
ALFANDARY, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

JOHNSON & JOHNSON SERVICES,  
INC.; JOHNSON & JOHNSON  
CONSUMER INC.,

Defendants.

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Case No. CV 17-7320-GW-JEMx

CLASS ACTION

**FINAL SETTLEMENT  
ORDER AND JUDGEMENT**

1 IT IS HEREBY ADJUDGED AND DECREED THAT:

2 1. This Judgment incorporates by reference the definitions in the Amended  
3 Stipulation of Settlement dated October 18, 2019 ("Amended Stipulation") (Dkt.  
4 169-1), attached hereto as Exhibit A, and all capitalized terms used herein shall have  
5 the same meanings as set forth in the Amended Stipulation unless set forth differently  
6 herein. The terms of the Amended Stipulation are fully incorporated in this Judgment  
7 as if set forth fully here.

8 2. The Court has jurisdiction over the subject matter of this action and all  
9 Parties to the action, including all Class Members who do not timely exclude  
10 themselves from the Class. The list of excluded Class Members was filed with the  
11 Court on May 4, 2020 and is attached as Exhibit B.

12 3. Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court hereby  
13 certifies the following Class:

14 All individuals in the United States who purchased Infants' Tylenol  
15 for personal or household use since October 3, 2014 until January 6,  
16 2020. (the date notice of this Settlement to the Class was first  
17 published). Specifically excluded from the Class are (a) Defendants,  
18 (b) the officers, directors, or employees of Defendants and their  
19 immediate family, (c) any entity in which Defendants have a  
20 controlling interest, (d) any affiliate, legal representative, heir, or  
21 assign of Defendants, (e) all federal court judges who have presided  
22 over this Action and their immediate family; (f) all persons who  
23 have submitted a valid request for exclusion from the Class; and (g)  
24 those who purchased the Challenged Product for the purpose of  
25 resale or for use in a business setting.

26 4. Pursuant to Federal Rule of Civil Procedure 23(c)(3), all such persons  
27 or entities who satisfy the Class definition above, except those Class Members who  
28 timely and validly excluded themselves from the Class, are Class Members bound by  
this Judgment.

26 5. For settlement purposes only, the Court finds:

27 (a) Pursuant to Federal Rule of Civil Procedure 23(a), Rony Elkies  
28

1 and Danielle Alfandary are members of the Class, their claims are typical of the  
2 Class, and they fairly and adequately protected the interests of the Class throughout  
3 the proceedings in the Action. Accordingly, the Court hereby appoints Rony Elkies  
4 and Danielle Alfandary as class representatives;

5 (b) The Class meets all of the requirements of Federal Rules of Civil  
6 Procedure 23(a) and (b)(3) for certification of the class claims alleged in the First  
7 Amended Complaint, including: (a) numerosity; (b) commonality; (c) typicality; (d)  
8 adequacy of the class representative and Class Counsel; (e) predominance of  
9 common questions of fact and law among the Class for purposes of settlement; and  
10 (f) superiority; and

11 (c) Having considered the factors set forth in Rule 23(g)(1) of the  
12 Federal Rules of Civil Procedure, Class Counsel have fairly and adequately  
13 represented the Class for purposes of entering into and implementing the settlement.  
14 Accordingly, the Court hereby appoints Class Counsel as counsel to represent Class  
15 Members.

16 6. Persons or entities who filed timely exclusion requests are not bound by  
17 this Judgment or the terms of the Amended Stipulation and may pursue their own  
18 individual remedies against Defendants. However, such excluded parties are not  
19 entitled to any rights or benefits provided to Class Members by the terms of the  
20 Amended Stipulation. The list of persons and entities excluded from the Class  
21 because they filed timely and valid requests for exclusion is attached hereto as  
22 Exhibit B.

23 7. The Court directed that notice be given to Class members by publication  
24 and other means pursuant to the notice program proposed by the Parties in the  
25 Amended Stipulation and approved by the Court. (Dkt. 172 ¶¶ 11–16.) The  
26 declaration from Kurtzman Carson Consulting (KCC), attesting to the dissemination  
27 of the notice to the Class, demonstrates compliance with this Court’s Preliminary  
28 Approval Order, Dkt. 172. The Class Notice advised Class members of the terms of

1 the settlement; the Final Approval Hearing and their right to appear at such hearing;  
2 their rights to remain in or opt out of the Class and to object to the settlement; the  
3 procedures for exercising such rights; and the binding effect of this Judgment,  
4 whether favorable or unfavorable, to the Class.

5 8. The distribution of the notice to the Class constituted the best notice  
6 practicable under the circumstances, and fully satisfied the requirements of Federal  
7 Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and  
8 any other applicable law.

9 9. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court finds  
10 after a hearing and based upon all submissions of the Parties and other persons that  
11 the settlement proposed by the Parties is fair, reasonable, and adequate. The terms  
12 and provisions of the Amended Stipulation are the product of arms-length  
13 negotiations conducted in good faith and with the assistance of an experienced  
14 mediator, Honorable Charles W. “Tim” McCoy (retired). The Court has considered  
15 any timely objections to the Settlement and finds that such objections are without  
16 merit and should be overruled. Approval of the Amended Stipulation will result in  
17 substantial savings of time, money and effort to the Court and the Parties, and will  
18 further the interests of justice.

19 10. Upon the Effective Date, the named Plaintiffs and each Class Member  
20 other than those listed on Exhibit B shall be deemed to have, and by operation of this  
21 Final Settlement Order and Judgment shall have released, waived and discharged  
22 with prejudice Defendants from any and all claims, demands, rights, causes of action,  
23 suits, petitions, complaints, damages of any kind, liabilities, debts, punitive or  
24 statutory damages, penalties, losses and issues of any kind or nature whatsoever,  
25 asserted or unasserted, known or unknown (including, but not limited to, any and all  
26 claims relating to or alleging deceptive or unfair business practices, false or  
27 misleading advertising, intentional or negligent misrepresentation, negligence,  
28 concealment, omission, unfair competition, promise without intent to perform,

1 unsuitability, unjust enrichment, and any and all claims or causes of action arising  
2 under or based upon any statute, act, ordinance, or regulation governing or applying  
3 to business practices generally, including, but not limited to, any and all claims  
4 relating to or alleging violation of Cal. Bus. & Prof. Code § 17200 et seq.; Cal. Bus.  
5 & Prof. Code § 17500 et seq.; Cal. Civ. Code § 1750 et seq., arising out of or related  
6 to the Action, including the alleged false advertising at issue in the Action, that were  
7 asserted or reasonably could have been asserted in the Action by or on behalf of all  
8 Releasing Parties, whether individual, class, representative, legal, equitable,  
9 administrative, direct or indirect, or any other type or in any other capacity, against  
10 any Released Party (the “Released Claims”).

11 11. All Class Members who have not timely and validly submitted requests  
12 for exclusion are bound by this Judgment and by the terms of the Amended  
13 Stipulation.

14 12. The Plaintiffs in the Action initiated this lawsuit, acted to protect the  
15 Class, and assisted their counsel. Their efforts have produced the Amended  
16 Stipulation entered into in good faith that provides a fair, reasonable, adequate and  
17 certain result for the Class. Plaintiff Elkies is entitled to a service award of \$4,000.  
18 Plaintiff Alfandary is entitled to a service award of \$4,000. Class Counsel is entitled  
19 to reasonable attorneys’ fees, which the Court finds to be \$2,083,950, and expenses  
20 in the amount of \$357,917. Claims administrator Kurtzman Carson Consultants,  
21 LLC is entitled to \$516,000 for settlement administration costs.

22 13. The Court hereby dismisses with prejudice the Action, and the Released  
23 Parties are hereby released from all further liability for the Released Claims.

24 14. Without affecting the finality of this Judgment, the Court reserves  
25 jurisdiction over the implementation, administration and enforcement of this  
26 Judgment and the Amended Stipulation, and all matters ancillary thereto.

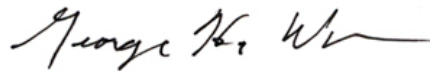
27 15. The Court finding that no reason exists for delay in ordering final  
28 judgment pursuant to Federal Rule of Civil Procedure 54(b), the clerk is hereby

1 directed to enter this Judgment forthwith.

2 16. The Parties are hereby authorized without needing further approval from  
3 the Court to agree to and adopt such modifications and expansions of the Amended  
4 Stipulation, including without limitation the claim review procedure, that are  
5 consistent with this Judgment and do not limit the rights of Class Members under the  
6 Amended Stipulation.

7  
8 IT IS SO ORDERED.

9  
10 DATED: June 22, 2020



11 HON. GEORGE H. WU,  
12 UNITED STATES DISTRICT JUDGE  
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# EXHIBIT A

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7 Attorneys for Defendant

8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 RONY ELKIES *et al.*,

12  
13 Plaintiff,

14 v.  
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16 JOHNSON & JOHNSON SERVICES,  
INC., *et al.*,

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18 Defendant.  
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Case No. 2:17-cv-7320-GW(JEMx)

CLASS ACTION

**AMENDED STIPULATION OF  
SETTLEMENT**



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1 This Stipulation of Settlement is made and entered into by plaintiffs Rony  
2 Elkies and Danielle Alfandary on behalf of themselves and all others similarly  
3 situated, and defendants Johnson & Johnson Consumer Inc. and Johnson & Johnson  
4 Services, Inc.

5 **I. DEFINITIONS**

6 A. As used in this Stipulation, the following capitalized terms have the  
7 meanings specified below:

8 1. “Action” means the case entitled *Elkies v. Johnson & Johnson*  
9 *Services, Inc.*, filed on October 5, 2017, in the U.S. District Court for the Central  
10 District of California and assigned Case No. 2:17-cv-7320-GW(JEMx).

11 2. “Approved Claim(s)” means the claims approved by the Claim  
12 Administrator according to the claims criteria in Exhibit A.

13 3. “Claim Administrator” means the independent company agreed  
14 upon by the Parties to provide the Class and Publication Notice and administer the  
15 claims process. The Parties agree that the Kurtzman Carson Consultants LLC  
16 (“KCC”) will be retained as the Claim Administrator.

17 4. “Claims Cost Estimate” is the Claim Administrator’s good faith  
18 best estimate of all the expenses to be incurred in the claims process.

19 5. “Claim Form” means the form that is substantially in the form of  
20 Exhibit F hereto.

21 6. “Claim Fund” means the fund for payment of Class Members’  
22 claims, attorneys’ fees and expenses in an amount to be approved by the Court, a  
23 service award to the named plaintiffs in an amount to be approved by the Court, if  
24 any, certain notice and administration costs, and Claim Fund Expenses, if any.

25 7. “Claim Fund Balance” means the balance, if any, at the end of  
26 the Claim Review Period, consisting of the Settlement Amount paid into the Claim  
27 Fund minus: (i) the total amount paid to Class Members who submit Approved  
28 Claims; (ii) the total amount, up to \$516,000, paid to the Claim Administrator

1 toward Settlement Administration Expenses, including CAFA notice; (iii) Claim  
2 Fund Expenses; (iv) attorneys' fees and expenses in an amount to be approved by  
3 the Court; and (v) service awards to the named plaintiffs, if any, in an amount to be  
4 approved by the Court.

5 8. "Claim Fund Expenses" are expenses associated with  
6 maintaining the Claim Fund (including taxes that may be owed by the Claim Fund).

7 9. "Claim Review Period" means the three-month period beginning  
8 no later than 30 days after the Preliminary Approval Order.

9 10. "Claim Submission Period" means the period beginning on the  
10 date notice to the Class is first published, and continuing until 120 days after the  
11 date of the Preliminary Approval Order.

12 11. "Class" and/or "Class Members" means all individuals in the  
13 United States who purchased Infants' Tylenol (the "Challenged Product") within  
14 the Class Period for personal or household use. Specifically excluded from the  
15 Class are (a) Defendants, (b) the officers, directors, or employees of Defendants and  
16 their immediate family members, (c) any entity in which Defendants have a  
17 controlling interest, (d) any affiliate, legal representative, heir, or assign of  
18 Defendants, (e) all federal court judges who have presided over this Action and  
19 their immediate family members; (f) all persons who submit a valid request for  
20 exclusion from the Class; and (g) those who purchased the Challenged Product for  
21 the purpose of resale or for use in a business setting.

22 12. "Class Counsel" means the attorneys of record for Plaintiffs in  
23 this Action.

24 13. "Class Notice" means the "Notice of Class Action Settlement"  
25 substantially in the same form as Exhibit E attached hereto.

26 14. "Class Notice Package" means the information as approved in  
27 form and content by Class Counsel and Defendants' Counsel and to be approved by  
28 the Court. Class Notice Packages will include (a) the Class Notice, and (b) the

1 Claim Form. The Class Notice Package will be available in English and in Spanish.

2 15. "Class Period" is from October 3, 2014 to the date notice to the  
3 Class is first published.

4 16. "Court" means the U.S. District Court for the Central District of  
5 California.

6 17. "Defendants" means Johnson & Johnson Consumer Inc., also  
7 referred to herein as "JJCI," and Johnson & Johnson Services, Inc., also referred to  
8 herein as "JJSI."

9 18. "Defendants' Counsel" means the law firm of O'Melveny &  
10 Myers LLP.

11 19. "Distribution Plan" means a written final accounting and plan of  
12 distribution prepared by the Claim Administrator, identifying (a) each claimant  
13 whose claim was approved, including the dollar amount of the payment awarded to  
14 each such claimant, and the dollar amount of any pro rata reduction or increase  
15 required by ¶ III.B.2(e); (b) each claimant whose claim was rejected; (c) the dollar  
16 amount of the Claim Fund Balance to be disbursed to the recipient(s) selected by  
17 the Court as provided in ¶ III.B.2(f); and (d) a final accounting of all administration  
18 fees and expenses incurred by the Claim Administrator.

19 20. "Effective Date" means the date described in ¶ VII.A.

20 21. "Final Approval Hearing" means the hearing to be held by the  
21 Court to consider and determine whether the proposed settlement of the Action as  
22 contained in this Stipulation should be approved as fair, reasonable, and adequate,  
23 and whether the Final Settlement Order and Judgment approving the Settlement  
24 contained in this Stipulation should be entered.

25 22. "Final Settlement Order and Judgment" means an order and  
26 judgment entered by the Court:

27 (a) Giving final approval to the terms of this Stipulation as  
28 fair, adequate, and reasonable;

1 (b) Providing for the orderly performance and enforcement of  
2 the terms and conditions of the Stipulation;

3 (c) Dismissing the Action with prejudice;

4 (d) Discharging the Released Parties of and from all further  
5 liability for the Released Claims to the Releasing Parties; and

6 (e) Permanently barring and enjoining the Releasing Parties  
7 from instituting, filing, commencing, prosecuting, maintaining, continuing to  
8 prosecute, directly or indirectly, as an individual or collectively, representatively,  
9 derivatively, or on behalf of them, or in any other capacity of any kind whatsoever,  
10 any action in the California Superior Courts, any other state court, any federal  
11 court, before any regulatory authority, or in any other tribunal, forum, or  
12 proceeding of any kind, against the Released Parties that asserts any Released  
13 Claims that would be released and discharged upon final approval of the Settlement  
14 as provided in ¶¶ IV.A and B of this Stipulation.

15 (f) The actual form of the Final Settlement Order and  
16 Judgment entered by the Court may include additional provisions as the Court may  
17 direct that are not inconsistent with this Stipulation, and will be substantially in the  
18 form attached hereto as Exhibit G.

19 23. “Notice Plan” or “Notice Program” means the plan for  
20 dissemination of the Publication Notice and Class Notice Package as described in ¶  
21 VI.

22 24. “Fund Institution” means a third-party institution which the  
23 Parties will approve and to which JJCI shall pay the Settlement Amount in trust to a  
24 fund to be administered by the Claim Administrator as described herein.

25 25. “Parties” means the Plaintiffs and the Defendants.

26 26. “Plaintiff” or “Plaintiffs” means Rony Elkies and Danielle  
27 Alfandary.

28 27. “Preliminary Approval Order” means the “Order re:

1 Preliminary Approval of Class Action Settlement,” substantially in the form of  
2 Exhibit B.

3 28. “Publication Notice” means information as approved in form  
4 and content by Class Counsel and Defendant’s Counsel and to be approved by the  
5 Court, substantially in the same form as Exhibit C attached hereto. The Publication  
6 Notice will be translated into Spanish for dissemination pursuant to the Notice Plan.

7 29. “Rejected Claims” means all claims rejected according to the  
8 claims criteria in Exhibit A.

9 30. “Released Claims” means those claims released pursuant to ¶¶  
10 IV.A and B of this Stipulation.

11 31. “Released Parties” means Defendants and each of its parent,  
12 affiliated and subsidiary corporations and all of their agents, employees, partners,  
13 predecessors, successors, assigns, insurers, attorneys, officers and directors.

14 32. “Releasing Parties” means the Plaintiffs, individually and as  
15 representatives of all those similarly situated, and the Class Members who do not  
16 exclude themselves pursuant to ¶VI.D.

17 33. “Settlement Amount” means the amount of \$6.315 million.

18 34. “Settlement Administration Expenses” means the costs and  
19 expenses associated with notifying the Class of this proposed settlement and  
20 administration of the claim process.

21 35. “Settlement Website” means the website established by the  
22 Claim Administrator that will contain documents relevant to the settlement,  
23 including the Class Notice Package in English and Spanish. Claim Forms may be  
24 submitted by Class Members via the Settlement Website.

25 36. “Stipulation of Settlement” and/or “Stipulation” means this  
26 Stipulation of Settlement, including its attached exhibits (which are incorporated  
27 herein by reference), duly executed by Plaintiffs, Class Counsel, Defendants and  
28 Defendants’ Counsel.

1 B. Capitalized terms used in this Stipulation, but not defined above, shall  
2 have the meaning ascribed to them in this Stipulation and the exhibits attached  
3 hereto.

4 **II. RECITALS**

5 A. On October 5, 2017, Plaintiffs Rony Elkies and Danielle Alfandary  
6 filed a complaint against Defendants in the U.S. District Court for the Central  
7 District of California. The complaint alleged (1) violations of California's Unfair  
8 Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*; California's  
9 False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500 *et seq.*; and  
10 California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et*  
11 *seq.*; (2) negligent and intentional misrepresentation; and (3) breach of the implied  
12 warranties of merchantability and fitness for a particular purpose with regard to  
13 Infants' Tylenol. The complaint sought certification of a nationwide class of "All  
14 persons who purchased Infants' Tylenol for personal use in the United States since  
15 October 5, 2014." The complaint also sought certification of a California sub-class  
16 of "All persons who purchased Infants' Tylenol for personal use in California since  
17 October 5, 2014." Class Counsel confirm that before commencing the Action, they  
18 conducted an examination and evaluation of the relevant law and facts to assess the  
19 merits of the claims and to determine how to best serve the interests of the members  
20 of the proposed classes.

21 B. On November 21, 2017, Plaintiffs filed a First Amended Complaint  
22 alleging only violations of (1) the UCL, (2) FAL, and (3) CLRA.

23 C. The First Amended Complaint alleged that Defendants engaged in a  
24 false and misleading advertising campaign related to Infants' Tylenol. Plaintiffs  
25 alleged that because the label of Infants' Tylenol includes the name "Infants'" and  
26 an image of a mother holding her baby, the Challenged Product communicates to  
27 consumers that the product is specially formulated for infants, when another  
28 product manufactured by JJCI—Children's Tylenol—contains the same medicine



1 with the same concentration of the active ingredient, acetaminophen. The First  
2 Amended Complaint sought certification of a nationwide class of “All persons who  
3 purchased Infants’ Tylenol for personal use in the United States since October 5,  
4 2014.” The First Amended Complaint also sought certification of a California  
5 subclass of “All persons who purchased Infants’ Tylenol for personal use in  
6 California since October 5, 2014.” The First Amended Complaint sought monetary  
7 damages, restitution, and injunctive relief.

8 D. After the Parties engaged in extensive discovery over the course of  
9 more than a year into the marketing and sale of Infants’ Tylenol throughout the  
10 United States, on October 19, 2018, the Court granted Plaintiffs’ Motion for Class  
11 Certification, and certified a class of all persons who purchased Infants’ Tylenol for  
12 personal use in California since October 3, 2014. On January 15, 2019, the Court  
13 slightly revised the class definition to “All persons who purchased, in California,  
14 Infants’ Tylenol for personal use since October 3, 2014.”

15 E. On April 4, 2019, Class Counsel, Defendants, and Defendants’  
16 Counsel participated in a settlement mediation with the Honorable Charles W.  
17 “Tim” McCoy (Ret.). A settlement was not reached during the mediation, but the  
18 parties continued to discuss the possibility of settlement, facilitated by Judge  
19 McCoy. Based upon Plaintiffs’ investigation, the discovery exchanged during the  
20 litigation, and evaluation of the facts and law relating to the matters alleged in the  
21 pleadings, Plaintiffs and Class Counsel agreed to settle the Action pursuant to the  
22 provisions of this Stipulation after considering, among other things: (1) the  
23 substantial benefits available to the Class under the terms of this Stipulation; (2) the  
24 attendant risks and uncertainty of litigation, especially in complex actions such as  
25 this, as well as the difficulties and delays inherent in such litigation; and (3) the  
26 desirability of consummating this Stipulation promptly to provide effective relief to  
27 Plaintiffs and the Class.

28 F. Defendants have denied and continue to deny each and all of the



1 claims and contentions alleged by Plaintiffs. Defendants have expressly denied and  
2 continue to deny all charges of wrongdoing or liability against them arising out of  
3 any of the conduct, statements, acts or omissions alleged, or that could have been  
4 alleged, in the Action and state that their advertising and marketing of the  
5 Challenged Product are not false or misleading, and that the safety benefits of the  
6 dosing device that accompanies Infants' Tylenol—a device that is more expensive  
7 to manufacture and is materially safer for children under the age of 2 and other  
8 children who cannot safely drink from a cup— renders Infants' a different product  
9 from Children's Tylenol.

10 G. Nonetheless, Defendants have concluded that further defense of the  
11 Action would be protracted and expensive and have also have taken into account  
12 the uncertainty and risks inherent in any litigation. Defendants, therefore, have  
13 determined that it is desirable and beneficial to them that the Action be settled in  
14 the manner and upon the terms and conditions set forth in the Stipulation.

### 15 **III. SETTLEMENT RELIEF**

16 In consideration of the covenants set forth herein, the Parties agree as  
17 follows:

#### 18 **A. Injunctive Relief**

19 1. By the later of (i) 180 days following the Effective Date or (ii)  
20 December 31, 2019 ("the Injunctive Relief Effective Date"), whichever is later,  
21 JJCI agrees that, for a period of 2 years, it will:

- 22 (a) use reasonably diligent efforts under the circumstances to  
23 modify the Challenged Product's current packaging so that the child  
24 depicted shall be at least two years of age to reflect the age of the child  
25 for which dosing instructions are provided (excluding packaging of  
26 Infants' Tylenol seen on retailer websites and/or other channels outside  
27 of JJCI's control); provided however, that if the FDA approves placing  
28 dosing instructions for children two years and younger on over-the

1 counter pediatric acetaminophen products, JJCI may use an image on  
2 the packaging of Infants' Tylenol to reflect the age of the child for  
3 whom dosing instructions are provided on the label of Infants'  
4 Tylenol;

5 (b) add text on the appropriate JJCI controlled websites to the effect  
6 that the liquid medicine within the bottles of both Infants' Tylenol and  
7 Children's Tylenol contains the same concentration of liquid  
8 acetaminophen;

9 (c) commit to educating and informing consumers, in response to  
10 inquiries and complaints to JJCI's Consumer Care Center (CCC)  
11 relating to comparisons of Infant's Tylenol and Children's Tylenol,  
12 that the liquid medicine within the bottles of both Infants' Tylenol and  
13 Children's Tylenol contains the same concentration of liquid  
14 acetaminophen; and

15 (d) continue to include language on dosing charts that JJCI provides  
16 to healthcare providers to the effect that the liquid medicine within the  
17 bottles of both Infants' Tylenol and Children's Tylenol contains the  
18 same concentration of liquid acetaminophen.

19 2. Sales of Infants' Tylenol manufactured prior to the Injunctive  
20 Relief Effective Date, or during the time JJCI is using reasonably diligent efforts  
21 under the circumstances to modify its current packaging as described in ¶  
22 III.A.(1)(a) above, shall not constitute a violation of this Stipulation.

23 B. Monetary Relief

24 JJCI primarily sells Infants' Tylenol to retailers, not directly to consumers,  
25 and thus has no way to identify all individual Class Members. Additionally, an  
26 individual Class Member's recovery may be too small to make traditional methods  
27 of proof economically feasible. To assure that Class Members have access to the  
28 proceeds of this settlement, a Claim Fund will be established and administered as

1 follows:

2 1. JJCI shall pay the Settlement Amount to the Fund Institution to  
3 establish the Claim Fund for payment of Class Member claims for alleged  
4 misrepresentations, for attorneys' fees and costs in an amount to be approved by the  
5 Court, for a service award to the named plaintiffs in an amount to be approved by  
6 the court, if any, and for the payment of certain notice and administration costs and  
7 expenses (including CAFA notice), as follows:

8 (a) Not more than 30 days after the Court's order granting  
9 Preliminary Approval, JJCI shall pay \$516,000 to the Fund Institution to cover the  
10 Settlement Administration Expenses.

11 (b) Within 30 days after the Effective Date, JJCI shall pay the  
12 remaining \$5,799,000 in trust to the Fund Institution.

13 2. The Claim Fund shall be applied as follows in the following  
14 order:

15 (a) To reimburse or pay up to, but not to exceed, \$516,000 of  
16 the total costs reasonably and actually incurred by the Claim Administrator in  
17 connection with providing notice to and administering claims submitted by the  
18 Class and to pay for Claim Fund Expenses;

19 (b) To the payment of attorneys' fees in the amount approved  
20 by the Court;

21 (c) To the payment of costs and expenses in the amount  
22 approved by the Court;

23 (d) To the payment of the class representative service awards  
24 in an amount as approved by the Court; and

25 (e) To distribute to Class Members who submit Approved  
26 Claims to the Claim Administrator as follows:

27 1. With Proof of Purchase:

28 Class Members who have a proof of purchase for all of their Infants' Tylenol

1 purchases during the Class Period will be entitled to a refund of \$2.15 for every 1 fl  
2 oz. bottle of Infants' Tylenol and 2 fl oz. bottle of Infants' Tylenol for which they  
3 have a valid proof of purchase, for each and every bottle without limitation. A  
4 valid proof of purchase means a receipt or other documentation, produced by a  
5 third-party commercial source, that reasonably establishes the fact and date of  
6 purchase of Infants' Tylenol during the Class Period in the United States. Class  
7 Members will be restricted to 1 claim per household. For purposes of this  
8 Settlement and calculating cash refunds, a 2-pack (e.g. "club" size) of Infants'  
9 Tylenol is the same as 2 bottles.

10 2. Without Proof of Purchase:

11 Class Members who do not have a proof of purchase for all of their Infants'  
12 Tylenol purchase(s) during the Class Period will be entitled to a refund of \$2.15 for  
13 every 1 fl oz and 2 fl oz bottle of Infants' Tylenol for a maximum of 7 units, i.e., a  
14 total of up to \$15.05 per household. For purposes of this Settlement and calculating  
15 cash refunds, a 2-pack (e.g. "club" size) of Infants' Tylenol is the same as 2 bottles.  
16 Class Members will be restricted to 1 claim per household. For the sake of clarity,  
17 Class Members may not receive reimbursement for any bottle over 7 bottles unless  
18 the Class Member has a proof of purchase for every bottle, including the bottles  
19 over the 7 bottle cap.

20 (f) If the total amount to be paid for eligible claims pursuant  
21 to ¶¶ III.B(2)(e) above exceeds the Claim Fund Balance after accounting for and  
22 deducting the items described in ¶¶ III.B(2)(a) through (d) above, then each Class  
23 Member's award shall be proportionately reduced on a pro rata basis.

24 (g) If the Claim Fund Balance is greater than the total amount  
25 to be paid for eligible claims pursuant to ¶¶ III.B(2)(a) above, after accounting for  
26 and deducting the items described in ¶¶ III.B(2)(a) through (d) above, then each  
27 Class Member's award shall be proportionately increased on a pro rata basis up to  
28 \$6.99 for a 1 oz. bottle and \$9.99 for a 2 oz. bottle (such amount being based on the

MSRP during the majority of the class period) in the following sequence:

(1) first, all claims with proofs of purchase will be reimbursed up to \$6.99 for a 1 oz. bottle and \$9.99 for a 2 oz. bottle;

(2) if there remains money in the Claim Fund Balance after the initial pro rata increase described in ¶ III.B.2.(g)(1) has been accounted for, the remaining claims for bottles without proofs of purchase will be increased up to \$6.99 for a 1 oz. bottle and \$9.99 for a 2 oz. bottle.

(h) If after the pro rata increases described in ¶¶ III.B.2.(g)(1)&(2) above, the Claim Fund Balance is greater than the total amount to be paid for eligible claims, then the remainder of the Claim Fund Balance shall be donated to Nurse Family Partnerships.

(i) If, after all eligible claims are paid, checks sent to eligible claimants remain unclaimed or otherwise not redeemed after 180 days from the date of the check, then the total amount of those unclaimed checks shall be donated to Nurse Family Partnerships.

3. Class Members shall have the opportunity to submit a claim to the Claim Administrator during the Claim Submission Period. Class Members must fill out a Claim Form substantially in the form of Exhibit F and submit it as described in Exhibits C and F attached hereto. Class Members will submit the Claim Form under penalty of perjury and must specify the approximate purchase date(s), and the number of the Challenged Products purchased.

4. The claim process will be administered by a Claim Administrator, according to the criteria set forth in Exhibit A, and neither Class Counsel nor Defendants shall participate in resolution of such claims.

5. All expenses of the Claim Administrator shall be paid as provided in ¶ III.B.2(a).

6. The Claim Administrator shall approve or reject all claims according to the claims criteria in Exhibit A. The determination of claims shall

1 occur during the Claim Review Period. The decision of the Claim Administrator  
2 shall be final and binding on Defendants and all Class Members submitting Claims,  
3 and neither Defendants nor such Class Members shall have the right to challenge or  
4 appeal the Claim Administrator's decision.

5           7. Within 30 days after conclusion of the Claim Review Period, the  
6 Claim Administrator shall provide to JJCI and Class Counsel a written final  
7 accounting and Distribution Plan identifying (a) each claimant whose claim was  
8 approved, including the dollar amount of the payment awarded to each such  
9 claimant, and the dollar amount of any pro rata reduction or increase required by ¶¶  
10 III.B.2(g); (b) each claimant whose claim was rejected; and (c) a final accounting of  
11 all administration fees and expenses incurred by the Claim Administrator. No  
12 sooner than 20 days, but not later than 45 days after delivering the Distribution  
13 Plan, the Claim Administrator shall disburse the remaining amounts in the Claim  
14 Fund according to the Distribution Plan and mail and/or email letters to all  
15 claimants with Rejected Claims explaining the rejection. In no event shall a Class  
16 Member's claim be paid until the conclusion of the Claim Review Period.

17           8. If any distribution payments delivered to Class Members are  
18 returned as non-deliverable, or are not cashed within 180 days, or are otherwise not  
19 payable, any such funds shall be disbursed as provided in ¶ III.B.2(i).

#### 20 **IV. RELEASES**

21           A. As of the Effective Date, in consideration of the settlement obligations  
22 set forth herein, any and all claims, demands, rights, causes of action, suits,  
23 petitions, complaints, damages of any kind, liabilities, debts, punitive or statutory  
24 damages, penalties, losses and issues of any kind or nature whatsoever, asserted or  
25 unasserted, known or unknown (including, but not limited to, any and all claims  
26 relating to or alleging deceptive or unfair business practices, false or misleading  
27 advertising, intentional or negligent misrepresentation, negligence, concealment,  
28 omission, unfair competition, promise without intent to perform, unsuitability,

1 unjust enrichment, and any and all claims or causes of action arising under or based  
2 upon any statute, act, ordinance, or regulation governing or applying to business  
3 practices generally, including, but not limited to, any and all claims relating to or  
4 alleging violation of Cal. Bus. & Prof. Code § 17200 *et seq.*; Cal. Bus. & Prof.  
5 Code § 17500 *et seq.*; and Cal. Civ. Code § 1750 *et seq.*, arising out of or related to  
6 the Action, including the alleged false advertising at issue in the Action, that were  
7 asserted or reasonably could have been asserted in the Action by or on behalf of all  
8 Releasing Parties, whether individual, class, representative, legal, equitable,  
9 administrative, direct or indirect, or any other type or in any other capacity, against  
10 any Released Party (“Released Claims”) shall be finally and irrevocably  
11 compromised, settled, released, and discharged with prejudice.

12 B. Each of the Releasing Parties hereby waives any and all rights and  
13 benefits arising out of the facts alleged in the Action by virtue of the provisions of  
14 Civil Code § 1542, or any other provision in the law of the United States, or any  
15 state or territory of the United States, or principle of common law or equity that is  
16 similar, comparable or equivalent to Civil Code § 1542, with respect to this release.  
17 The Releasing Parties are aware that Civil Code § 1542 provides as follows:

18 ***A general release does not extend to claims which the***  
19 ***creditor does not know or suspect to exist in his favor at***  
20 ***the time of executing the release, which if known by him***  
***must have materially affected his settlement with the***  
***debtor.***

21 The Releasing Parties expressly acknowledge that they may hereafter discover facts  
22 in addition to or different from those which they now know or believe to be true  
23 with respect to the subject matter of the Released Claims, but the Releasing Parties,  
24 upon the Effective Date, shall be deemed to have, and by operation of law shall  
25 have, fully, finally and forever settled, released, and discharged any and all  
26 Released Claims, known or unknown, suspected or unsuspected, whether or not  
27 concealed or hidden, that now exist or heretofore have existed upon any theory of  
28 law or equity, including, but not limited to, Released Claims based on conduct that



1 is negligent, reckless, intentional, with or without malice, or a breach of any duty,  
2 law or rule, without regard to the subsequent discovery or existence of such  
3 different or additional facts. The Parties agree that the Released Claims constitute a  
4 specific and not a general release.

5 C. The Releasing Parties shall be deemed to have agreed that the release  
6 set forth in ¶¶ IV.A and B (the “Release”) will be and may be raised as a complete  
7 defense to and will preclude any action or proceeding based on the Released  
8 Claims. The Releasing Parties agree that any members of the current Class are  
9 barred from bringing a future claim against JJCI on the same theory alleged in the  
10 Complaint based on any purchase of Infants’ Tylenol after the Class Period.

11 D. As of the Effective Date, by operation of entry of judgment, the  
12 Released Parties shall be deemed to have fully released and forever discharged  
13 Plaintiffs, all other Class Members and Class Counsel from any and all claims of  
14 abuse of process, malicious prosecution, or any other claims arising out of the  
15 initiation, prosecution or resolution of the Action, including, but not limited to,  
16 claims for attorneys’ fees, costs of suit or sanctions of any kind, or any claims  
17 arising out of the allocation or distribution of any of the consideration distributed  
18 pursuant to this Stipulation of Settlement.

19 **V. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

20 Solely for the purposes of the settlement of this Action, the Parties agree to  
21 the certification of a Class of all persons who purchased, in the United States,  
22 Infants’ Tylenol for personal use since October 3, 2014 to the date notice to the  
23 Class is published. Plaintiffs shall make this request for certification to the U.S.  
24 District Court for the Central District of California, currently assigned to the  
25 Honorable George H. Wu; and Class Counsel shall request the Court to enter an  
26 order, which, among other things, certifies the Class for settlement purposes, as set  
27 forth in this paragraph. Defendants contend that certification of the alleged class  
28 (other than on a settlement basis) would not be possible absent this settlement



1 because individual issues would predominate.

2 In the event this Stipulation of Settlement and the settlement proposed herein  
3 is not finally approved, or is terminated, canceled, or fails to become effective for  
4 any reason whatsoever, this class certification, to which the parties have stipulated  
5 solely for the purpose of the settlement of the Action, shall be null and void and the  
6 Parties will revert to their respective positions immediately prior to the execution of  
7 this Stipulation of Settlement. Under no circumstances may this Stipulation of  
8 Settlement be used as an admission or as evidence concerning the appropriateness  
9 of class certification in these or any other actions against Defendants.

10 **VI. CLASS NOTICE AND COURT APPROVAL**

11 A. Notice Order; Preliminary Approval

12 Within 30 days after the execution of the Stipulation of Settlement, the  
13 Parties shall apply to the Court for a Preliminary Approval Order substantially in  
14 the form and content of Exhibit B, conditionally certifying the Class for settlement  
15 purposes as defined in ¶ V, for preliminary approval of the settlement, for  
16 scheduling a final approval hearing, and for approving the contents and method of  
17 dissemination of the proposed Publication Notice and Class Notice Package.

18 B. The Notice Program

19 The notice program shall consist of notice by publication (the Publication  
20 Notice, attached hereto as Exhibit C) which generally describes the settlement and  
21 directs all interested parties to a detailed Class Notice available on the Settlement  
22 Website and, at the request of interested parties, by U.S. Mail. Class Counsel shall  
23 also place a link to the Settlement Website on the websites of Milstein Jackson  
24 Fairchild & Wade, LLP and Heideman Nudelman & Kalik, P.C. for a period  
25 starting from the date the Publication Notice is published, and continuing no longer  
26 than the end of the Claim Submission Period. The cost associated with the  
27 Publication Notice and Class Notice Package shall be paid from the Claim Fund as  
28 described in ¶III.B.1.(a), except those costs associated with posting and maintaining

1 notice on Class Counsel's Internet websites.

2 1. Publication Notice

3 Commencing at least 90 days before the Final Approval Hearing or some  
4 other date as set by the Court, the Claim Administrator shall cause to be published  
5 the Publication Notice substantially in the form and content of Exhibit C pursuant  
6 to the Notice Plan described in Exhibit D. The Notice Plan shall include  
7 dissemination of the Publication Notice translated into Spanish.

8 2. Class Notice Package

9 The Class Notice Package shall be available in electronic format on the  
10 Settlement Website and mailed as a hard copy or emailed by the Claim  
11 Administrator upon request. The Parties are not currently aware of any other  
12 litigation involving the same claims as the Action. However, should the parties  
13 become aware, within the Claim Submission Period, of pending litigation that  
14 concerns false advertising claims related to the Challenged Products, they will  
15 notify JJCI and JJCI shall direct the Claim Administrator to mail or email the Class  
16 Notice Package to counsel for the plaintiff(s) in such pending litigation.

17 Each Class Notice Package shall contain a Class Notice substantially in the  
18 form of Exhibit E and the Claim Form substantially in the form of Exhibit F.

19 3. Notice of Deadlines

20 Both the Publication Notice and the Class Notice shall inform Class  
21 Members of the dates by which they must file any objections, requests for  
22 exclusions, and submit a Claim Form. Class Members must file any objections,  
23 notices of intent to appear at the Final Approval Hearing, or to submit exclusion  
24 requests no later than 120 days after the date of the Preliminary Approval Order and  
25 28 days prior to the Final Approval Hearing. Class Members will have the  
26 opportunity to submit a Claim Form during the period beginning on the date notice  
27 to the Class is first published, and continuing until 120 days after the date of the  
28 Preliminary Approval Order and 28 days prior to the Final Approval Hearing.

1 C. Final Approval Hearing

2 Not later than twenty-one (21) days prior to the deadline to object to the  
3 Settlement (described in ¶ VI(E)), Class Counsel shall move for entry of an order of  
4 a Final Settlement Order and Judgment granting final approval of this Settlement  
5 and holding this Agreement to be final, fair, reasonable and adequate, and ordering  
6 that the settlement relief be provided as set forth in ¶ III, ordering the releases as set  
7 forth in ¶ IV, and entering judgment in this case. The Parties shall request that after  
8 notice is given, the Court hold a Final Approval Hearing for the purpose of  
9 determining whether final approval of the settlement of the Action as set forth  
10 herein is fair, adequate, and reasonable to the Class Members, and enter a Final  
11 Settlement Order and Judgment dismissing the Action with prejudice substantially  
12 in the form and content of Exhibit G.

13 D. Requests for Exclusion

14 1. Members of the Class shall have the right to elect to exclude  
15 themselves, or “opt out,” of the monetary portion of this Agreement, relinquishing  
16 their rights to cash compensation under this Stipulation and preserving their claims  
17 for damages that accrued during the Class Period, pursuant to this paragraph :

18 (a) A member of the Class wishing to opt out of this  
19 Stipulation must send to the Claim Administrator by U.S. Mail a personally signed  
20 letter including his or her name and address, and providing a clear statement  
21 communicating that he or she elects to be excluded from the Class. The request for  
22 exclusion must be personally signed by the member of the Class wishing to opt out.  
23 A member of the Class cannot opt out on behalf of anyone other than himself or  
24 herself.

25 (b) Any request for exclusion must be postmarked on or  
26 before the opt-out deadline specified in the Preliminary Approval Order, which  
27 shall be no later than twenty-eight (28) calendar days before the Final Approval  
28 Hearing. The date of the postmark on the return-mailing envelope shall be the

1 exclusive means used to determine whether a request for exclusion has been timely  
2 submitted.

3 2. Any member of the Class who does not file a timely request for  
4 exclusion as provided in the preceding ¶ VI(D)(1) shall be bound by all subsequent  
5 proceedings, orders, and judgments, including, but not limited to, the Release in  
6 this Action.

7 3. If the number of putative Class Members who timely request  
8 exclusion from the class in accordance with the provisions of the Preliminary  
9 Approval Order exceeds 250, Defendants shall have the right, but not the  
10 obligation, to terminate this Stipulation of Settlement or to seek appropriate  
11 modifications to this Stipulation of Settlement that adequately protect the Parties.

12 4. Copies of all Requests for Exclusion received by the Claim  
13 Administrator, together with copies of all written revocations of Requests for  
14 Exclusion received, shall be delivered to the Parties' counsel no later than 8 days  
15 after the Class Members' deadline to submit such exclusion requests, or at such  
16 other time as the Parties may mutually agree in writing.

17 E. Objections to Settlement

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

- 24 (a) The name of this Action;
- 25 (b) The objecting Class Member's full name, address, email  
26 address (if available) and signature (a Class Member's attorney's signature is not  
27 sufficient);
- 28 (c) A written statement containing all grounds for the

1 objection, accompanied by any legal support known to the objecting Class Member  
2 or his or her counsel and any supporting papers, evidence and/or documents;

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

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

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

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

18 (h) A list of persons who may be called to testify at the Final  
19 Approval Hearing in support of the objection.

20 Any Class Member who fails to timely file and serve a written Objection  
21 containing all of the information listed in (a) through (h) of the previous paragraph  
22 shall not be permitted to object to the Settlement and shall be foreclosed from  
23 seeking any review of the Settlement or the terms of the Agreement by any means,  
24 including but not limited to an appeal.

25 2. If any objection is received by the Settlement Administrator, but  
26 not filed with the Court, the Settlement Administrator shall forward the Objection  
27 and all supporting documentation to Class Counsel and Counsel for Defendants.  
28 The failure of the Class Member to file the written objection with the Court shall be

1 grounds for striking and/or overruling the objection, even if the objection is  
2 submitted to the Settlement Administrator.

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

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

12 5. Class Counsel and/or Defendants have the right, but not the  
13 obligation, to respond to any objection no later than seven (7) days prior to the  
14 Final Approval Hearing. The party so responding shall file a copy of the response  
15 with the Court, and shall serve a copy, by regular mail, hand or overnight delivery,  
16 to the objecting member of the Class or to the individually-hired attorney for the  
17 objecting member of the Settlement Class; to Class Counsel; and to Defendants'  
18 Counsel.

19 F. Parties' Duty to Defend

20 From the date of execution of this Stipulation, the Parties, via Class Counsel  
21 and Defendants' Counsel, shall take all reasonable steps to defend the terms of this  
22 Stipulation as fair, reasonable, and adequate, shall defend the proposed Class as  
23 meeting the requirements of Federal Rule of Civil Procedure 23 as applied to  
24 proposed settlement class, and shall defend the notice program set forth in the  
25 Stipulation as meeting the requirements of Federal Rule of Civil Procedure 23 and  
26 giving the best and most reasonable notice practicable under the circumstances.

27 **VII. CONDITIONS; TERMINATION**

28 A. This Settlement shall become final on the first date after which all of

1 the following events and conditions have been met or have occurred (the “Effective  
2 Date”):

3 1. The Court has entered a Final Settlement Order and Judgment in  
4 the Action; and

5 2. One of the following has occurred:

6 (a) The time to appeal from such order has expired and no  
7 appeals have been timely filed;

8 (b) If any such appeal has been filed, it has finally been  
9 resolved and the appeal has resulted in an affirmation of the Final Settlement Order  
10 and Judgment; or

11 (c) The Court, following the resolution of all appeals, has  
12 entered a further order or orders approving the Settlement of the Action on the  
13 terms set forth in this Stipulation of Settlement.

14 B. If the Settlement is not made final (per the provisions of ¶ VII.A), this  
15 entire Stipulation shall become null and void as set forth in ¶ V of this Stipulation,  
16 except that the Parties shall have the option to agree in writing to waive the event or  
17 condition and proceed with this settlement, in which event the Stipulation of  
18 Settlement shall be deemed to have become final on the date of such written  
19 agreement.

## 20 **VIII. COSTS, FEES AND EXPENSES**

### 21 **A. Attorneys’ Fees and Expenses**

22 1. The Parties agree that an award of attorneys’ fees and expenses  
23 to Class Counsel, in an amount to be approved by the Court and which will be  
24 drawn from the Settlement Fund, will be in addition to the consideration to  
25 Plaintiffs, the Class Members and the general public, and shall in no way reduce the  
26 settlement consideration.

27 2. No later than twenty-one (21) days prior to the deadline for  
28 Class Members to make an objection to the Settlement, Class Counsel shall make,



1 an application for an award of attorneys' fees and expenses. Class Counsel  
2 acknowledges that the amount of attorneys' fees and expenses remains in the  
3 discretion of the Court.

4 3. In the application described in ¶ VIII(A)(2), Class Counsel will  
5 seek an award of attorneys' fees in an amount not to exceed \$2,083,950.

6 4. In the application described in ¶ VIII(A)(2), Class Counsel will  
7 seek reimbursement of litigation costs and expenses, estimated to be approximately  
8 \$385,000. This amount includes the cost of the class notice disseminated at the time  
9 the California class was certified, as described in § II(D) above, but does not  
10 include the Settlement Administration Expenses. The Claims Administrator shall  
11 pay from the Claim Fund the award of Class Counsels' fees and expenses within 10  
12 days after the Effective Date.

13 5. In the event the amount of the attorney's fees requested is  
14 decreased or denied by the Court, such denial or decrease in the requested fees shall  
15 have no effect on this Stipulation and shall not invalidate the settlement agreed to  
16 herein.

17 6. Class Counsel, in their sole discretion, shall allocate and  
18 distribute the award of attorneys' fees and expenses among Class Counsel. In the  
19 event that any Class Members object to any aspect of this Stipulation of Settlement,  
20 JJCI shall under no circumstances be obligated or required to pay attorneys' fees or  
21 costs claimed by or associated with such objectors (if any).

22 B. Class Representative Awards

23 Defendants agree not to oppose an application for class representative service  
24 awards to be paid out of the Claim Fund to Plaintiffs in an amount not to exceed  
25 \$4,000 for Plaintiff Alfandary and \$4,000 for Plaintiff Elkies. Such awards shall be  
26 paid within 30 days after the Effective Date or within 30 days after the issuance of  
27 an order awarding such amount, whichever is later. In the event that a Class  
28 Member appeals the award of attorneys' fees and costs, or the class representative



1 service awards, Defendants shall not take a position contrary to this Stipulation.

2 C. Claim Administration Costs and Costs of Class Notice

3 The Settlement Administration Expenses shall be paid from the Claim Fund  
4 as described in ¶III.

5 **IX. COVENANTS AND WARRANTIES**

6 A. Authority to Enter Agreement

7 Plaintiffs and Defendants each covenant and warrant that they have the full  
8 power and authority to enter into this Stipulation of Settlement and to carry out its  
9 terms, and that they have not previously assigned, sold, or otherwise pledged or  
10 encumbered any right, title or interest in the claims released herein or their right,  
11 power and authority to enter into this Stipulation of Settlement. Any person signing  
12 this Stipulation of Settlement on behalf of any other person or entity represents and  
13 warrants that he or she has full power and authority to do so and that said other  
14 person or entity is bound hereby.

15 B. Represented by Counsel

16 In entering into this Stipulation of Settlement, the Parties represent they have  
17 relied upon the advice of attorneys, who are the attorneys of their own choice,  
18 concerning the legal consequences of this Stipulation of Settlement; that the terms  
19 of this Stipulation of Settlement have been explained to them by their attorneys;  
20 and that the terms of this Stipulation of Settlement are fully understood and  
21 voluntarily accepted by the Parties.

22 C. No Other Actions

23 As of the date of executing this Stipulation, Plaintiffs and Class Counsel  
24 represent and warrant that they are not aware of any action or potential action other  
25 than the Action that (1) raises allegations similar to those asserted in the Action,  
26 and (2) is pending or is expected to be filed in any forum by any person or entity  
27 against Defendants. Until the Effective Date, Plaintiffs and Class Counsel shall  
28 have a continuing duty to notify Defendants if Plaintiffs or Class Counsel become

1 aware of any such action.

2 **X. MISCELLANEOUS**

3 A. Governing Law

4 The interpretation and construction of this Stipulation of Settlement shall be  
5 governed by the laws of the State of California.

6 B. Counterparts

7 This Stipulation of Settlement may be executed in counterparts. All  
8 counterparts so executed shall constitute one agreement binding on all of the Parties  
9 hereto, notwithstanding that all Parties are not signatories to the original or the  
10 same counterpart.

11 C. No Drafting Party

12 Any statute or rule of construction that ambiguities are to be resolved against  
13 the drafting party shall not be employed in the interpretation of this Stipulation of  
14 Settlement, and the Parties agree that the drafting of this Stipulation has been a  
15 mutual undertaking.

16 D. Entire Agreement

17 All agreements, covenants, representations and warranties, express or  
18 implied, written or oral, of the Parties hereto concerning the subject matter hereof  
19 are contained in this Stipulation of Settlement and the exhibits hereto. Any and all  
20 prior or contemporaneous conversations, negotiations, drafts, terms sheets, possible  
21 or alleged agreements, covenants, representations and warranties concerning the  
22 subject matter of this Stipulation of Settlement are waived, merged herein and  
23 superseded hereby.

24 E. Retained Jurisdiction

25 The Court shall retain jurisdiction with respect to the implementation and  
26 enforcement of the terms of this Stipulation, and all Parties hereto submit to the  
27 jurisdiction of the Court for purposes of implementing and enforcing the settlement  
28 embodied in this Stipulation.

1 F. Cooperation

2 Each of the Parties hereto shall execute such additional pleadings and other  
3 documents and take such additional actions as are reasonably necessary to  
4 effectuate the purposes of this Stipulation of Settlement.

5 G. Amendments in Writing

6 This Stipulation of Settlement may only be amended in writing signed by  
7 Class Counsel and Defendant's Counsel.

8 H. Binding Effect; Successors and Assigns

9 This Stipulation of Settlement shall inure to the benefit of, and shall be  
10 binding upon, the Parties hereto as well as the legal successors and assigns of the  
11 Parties hereto and each of them.

12 I. Construction

13 As used in this Stipulation of Settlement, the terms "herein" and "hereof"  
14 shall refer to this Stipulation in its entirety, including all exhibits and attachments,  
15 and not limited to any specific sections. Whenever appropriate in this Stipulation  
16 of Settlement, the singular shall be deemed to refer to the plural, and the plural to  
17 the singular, and pronouns of any gender shall be deemed to include both genders.

18 J. Waiver in Writing

19 No waiver of any right under this Stipulation of Settlement shall be valid  
20 unless in writing.

21 K. Computation of Time

22 All time periods set forth herein shall be computed in business days, if seven  
23 days or fewer, and calendar days, if eight days or more, unless otherwise expressly  
24 provided. In computing any period of time prescribed or allowed by this  
25 Stipulation or by order of the Court, the day of the act, event or default from which  
26 the designated period of time begins to run shall not be included. The last day of  
27 the period so computed shall be included, unless it is a Saturday, a Sunday, or a  
28 legal or court holiday, or, when the act to be done is the filing of a paper in Court, a

1 day in which weather or other conditions have made the office of the clerk of the  
2 Court inaccessible, in which event the period shall run until the end of the next day  
3 as not one of the aforementioned days. As used in this subsection, “legal or court  
4 holiday” includes New Year’s Day, Martin Luther King Day, Presidents’ Day,  
5 Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day,  
6 Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the  
7 President or the Congress of the United States or by the State of California.

8 L. No Admission of Liability

9 Each of the Parties understands and agrees that he, she or it has entered into  
10 this Stipulation of Settlement for purpose of purchasing peace and preventing the  
11 risks and costs of any further litigation or dispute. This settlement involves  
12 disputed claims; specifically, Defendants deny any wrongdoing, and the Parties  
13 understand and agree that neither this Stipulation of Settlement, nor the fact of this  
14 settlement, may be used as evidence or admission of any wrongdoing by  
15 Defendants.

16 M. Notice

17 Any notice to the Parties required by this Stipulation of Settlement shall be  
18 given in writing by first-class U.S. Mail and e-mail to:

19 For Plaintiff:

20 Noel J. Nudelman  
21 Tracy Reichman Kalik  
22 Heideman Nudelman & Kalik, PC  
23 1146 19th Street, NW, Fifth Floor  
24 Washington, DC 20036  
25 njnudelman@hnklaw.com  
26 trkalik@hnklaw.com

27 For Defendants:

28 Matthew D. Powers  
O’Melveny & Myers LLP  
Two Embarcadero Center, 28th Floor  
San Francisco, CA 94111  
Telephone: (415) 984-8700  
mpowers@omm.com

1 Joe O'Connor  
2 O'Melveny & Myers LLP  
3 400 South Hope Street  
4 Los Angeles, California 90071-2899  
5 Telephone: 1 (213) 430-8365  
6 joconnor@omm.com

7 IN WITNESS WHEREOF, the parties hereto have executed this Stipulation  
8 of Settlement as of the dates set forth below.

9 DATED: 10/17/2019

/s/

DANIELLE ALFANDARY

10 DATED:

/s/

RONY ELKIES

11 DATED:

JOHNSON & JOHNSON CONSUMER INC.

/s/

12 BY:

13 TITLE:

14 DATED:

JOHNSON & JOHNSON SERVICES, INC.

/s/


15 BY:

16 TITLE:

Joe O'Connor  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, California 90071-2899  
Telephone: 1 (213) 430-8365  
joconnor@omm.com

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation  
of Settlement as of the dates set forth below.

DATED: /s/ DANIELLE ALFANDARY

DATED: 10/18/2019 /s/  RONY ELKIES

DATED: JOHNSON & JOHNSON CONSUMER INC.  
/s/  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

DATED: JOHNSON & JOHNSON SERVICES, INC.  
/s/  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

1 DATED:

MILSTEIN JACKSON  
FAIRCHILD & WADE, LLP  
GILLIAN L. WADE

2  
3 /s/

*G. Wade*

GILLIAN L. WADE

4 10250 Constellation Blvd., Ste. 1400  
5 Los Angeles, CA 90067  
6 Telephone: (310) 396-9600

7 HEIDEMAN NUDELMAN &  
8 KALIK, P.C.  
9 NOEL J. NUDELMAN

10 /s/

11 NOEL J. NUDELMAN

12 1146 19th Street, NW 5th Floor  
13 Washington, DC 20036  
14 Telephone: (202)463-1818

15 Attorneys for Plaintiff

16 DATED:

O'MELVENY & MYERS LLP  
MATTHEW D. POWERS

17 /s/

18 MATTHEW D. POWERS

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20 San Francisco, CA 94111  
21 Telephone: (415) 984-8700

22 Attorneys for Defendants  
23  
24  
25  
26  
27  
28

10/18/19



1 DATED:

MILSTEIN JACKSON  
FAIRCHILD & WADE, LLP  
GILLIAN L. WADE

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HEIDEMAN NUDELMAN &  
KALIK, P.C.  
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9 /s/

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Attorneys for Plaintiff

13 DATED: 10/18/19

O'MELVENY & MYERS LLP  
MATTHEW D. POWERS

15 /s/

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Attorneys for Defendants