

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**IF YOU PURCHASED INFANTS' TYLENOL, YOU MAY BE ENTITLED TO A CASH PAYMENT**

THIS NOTICE AFFECTS YOUR RIGHTS.

*A Federal Court authorized this notice. This is not a solicitation from a lawyer.*

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
SUBMIT A CLAIM FORM	The only way to get a cash payment.
EXCLUDE YOURSELF	Get no settlement benefits. Remove yourself from both the settlement and the lawsuit.
OBJECT	Write to the Court about why you don't like the settlement.
DO NOTHING	Get no cash payment. Give up your rights.
GO TO A HEARING	Object to the settlement and ask the Court for permission to speak at the Final Approval Hearing about your objection.

Please read this entire Class Notice carefully.

Your rights and options – **and the deadlines to exercise them** – are explained in this notice.

**WHAT IS THIS LAWSUIT ABOUT?**

A proposed settlement has been reached in a class action lawsuit about the packaging and advertising of Infants' Tylenol. The plaintiffs in the lawsuit claim that the Infants' Tylenol packaging (the text "Infants" and a picture of a mother holding her baby) deceives consumers into believing Infants' Tylenol is unique/ specially formulated for infants, when the bottle contains liquid acetaminophen of the same concentration in Children's Tylenol, and therefore causes consumers to overpay for Infants' Tylenol. Johnson & Johnson Consumer Inc. ("JJCI") denies all the plaintiffs' allegations of deception and asserts that the safety features of Infants' Tylenol, especially the accompanying syringe for safe dosing of very young children, means Infants' and Children's are different products.

**WHO IS INCLUDED IN THE SETTLEMENT?**

You are included in the Settlement as a "Class Member" if you are in the United States and purchased Infants' Tylenol for personal or household use at any time from October 3, 2014 to January 6, 2020.

**ARE THERE EXCEPTIONS TO BEING INCLUDED IN THE SETTLEMENT?**

The following persons are excluded from the Settlement Class: (a) Defendants, (b) the officers, directors, or employees of Defendants and their immediate families, (c) any entity in which Defendants have a controlling interest, (d) any affiliate, legal representative, heir, or assign of Defendants, (e) all federal court judges who have presided over this Action and their immediate families, (f) all persons who submit a valid request for exclusion from the Class, and (g) those who purchased Infants' Tylenol for the purpose of resale or for use in a business setting.

**THE SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY**

**WHAT DOES THE SETTLEMENT PROVIDE?**

JJCI will create a fund of up to \$6.315 million. After deducting administrative costs, Class Counsel's attorneys' fees and expenses, and service awards for the named plaintiffs, the balance will be used to pay Class Member claims. Class Members may claim \$2.15 for every 1 and 2 fl. oz. bottle of Infants' Tylenol purchased. A maximum of 7 bottles or \$15.05 may be claimed without proof of purchase. An unlimited number of bottles may be claimed with proof of purchase for all Infants' Tylenol purchases.

In addition, JJCI will use reasonably diligent efforts to modify the packaging of Infants' Tylenol and commit to educating and informing consumers, in response to inquiries and complaints to JJCI's Consumer Care Center (CCC) relating to comparisons of Infant's Tylenol and Children's Tylenol, that the liquid medicine within the bottles of both Infants' Tylenol and Children's Tylenol contains the same concentration of liquid acetaminophen.

## HOW YOU GET A CASH PAYMENT – SUBMITTING A CLAIM FORM

### HOW CAN I GET A PAYMENT?

You must submit a Claim Form by **April 13, 2020** to get a cash payment. A copy of the Claim Form is included in the Notice Package. Claim Forms are also available at [www.InfantsTylenolSettlement.com](http://www.InfantsTylenolSettlement.com) or by calling 1-866-458-2108.

### HOW DO I SUBMIT A CLAIM?

Complete and submit a Claim Form online at [www.InfantsTylenolSettlement.com](http://www.InfantsTylenolSettlement.com) or complete and return the enclosed Claim Form postmarked no later than April 13, 2020. Be sure to include all of the information the Claim Form requests, as well as proof of purchase, if necessary.

### WHO DECIDES MY CLAIM?

The Claim Forms will be reviewed by an independent Claims Administrator according to criteria agreed to by the parties.

The Claims Administrator may contact you or other persons listed in your Claim Form if he or she needs additional information or otherwise want to verify information in your Claim Form.

The Claims Administrator's determination is final.

### WHEN WOULD I GET MY PAYMENT?

The Court will hold a hearing on May 11, 2020 to decide whether to approve the settlement. If the Court approves the settlement, after that there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

### WHAT IF THE FUND IS TOO SMALL? TOO LARGE?

If the total amount to be paid for claims is more than \$6.315 million after the payment of administrative costs, attorneys' fees and expenses to Class Counsel and a service award to each of the named plaintiffs, the payments to Class Members will be reduced *pro rata* such that each claimant would receive proportionally less than the amount he or she claimed.

If the Claim Fund is greater than the total amount to be paid for eligible claims, after accounting for and deducting the items described above, each Class Member's award will be proportionally increased on a *pro rata* basis up to \$6.99 for each 1 oz. bottle purchased and \$9.99 for each 2 oz. bottle purchased (this amount is based on the MSRP for each size during the Class Period). 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. If money remains in the Claim Fund Balance after the initial *pro rata* increase paid toward claims with proof of purchase, 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.

If, after everyone sends in Claim Forms, the total of all approved claims is less than \$6.315 million after the payment of administrative costs, attorneys' fees to Class Counsel, and a service award paid to each of the named plaintiffs, the remaining settlement funds will be donated to Nurse Family Partnerships.

### WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, you will not get any money from the settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Released Parties about the legal issues in this case, resolved by the Settlement and released by the Settlement Agreement.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### HOW DO I GET OUT OF THE SETTLEMENT?

If you do not wish to be included in the Class and you want to keep your right to sue the Released Parties separately, you must exclude yourself from the settlement. To do so, send a letter (1) clearly stating that you want to be excluded from this lawsuit; and (2) including your name, address, telephone number, signature, case name, and court number. Mail your exclusion request so it is postmarked no later than **April 13, 2020** to:

**Infants' Tylenol Claims Administrator  
P.O. Box 43511  
Providence, RI 02940-3511**

If you ask to be excluded, you will not get a settlement payment, and you will not be able to object to the settlement. You will not be legally bound by anything that happens in this lawsuit, and you may be able to sue (or continue to sue) the Defendants in the future.

If you have a pending lawsuit against the Defendants, speak to your lawyer immediately. You may need to exclude yourself from this lawsuit in order to continue your own lawsuit. Remember, the exclusion deadline is **April 13, 2020**.

### THE LAWYERS REPRESENTING YOU

#### DO I HAVE LAWYERS IN THIS CASE?

The Court appointed the law firms of Milstein, Jackson, Fairchild & Wade, LLP and Heideman Nudelman & Kalik, PC to represent you and other Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to award them up to \$2,083,950 in attorneys' fees and up to \$385,000 in expenses. The named plaintiffs will also ask the Court to award them a service award in an amount not to exceed \$4,000 each for their time and effort acting as plaintiffs, and for their willingness to bring this litigation and act on behalf of consumers. If approved by the Court, these amounts, as well as the costs associated with administering the settlement (up to \$516,000) will be paid from the Claim Fund.

### OBJECTING TO THE SETTLEMENT

#### HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Class Member, you can object to the settlement if you do not like any part of it and the Court will consider your views. To object, you must send a letter to the Court and the parties saying that you object to the settlement in *Elkies v. Johnson & Johnson Services, Inc.*, Case No. 2:17-cv-7320-GW(JEMx). Your objection must also include:

- (a) the name of this Action (*Elkies v. Johnson & Johnson Services, Inc.*, Case No. 2:17-cv-7320-GW(JEMx));
- (b) your full name, address, email address (if available) and signature;
- (c) the reasons why you object to the settlement, accompanied by any legal support and any supporting papers, evidence and/or documents to support your objection;
- (d) a statement that you are a Class Member, including all information required by the Claim Form;
- (e) the name and address of any counsel representing you, including any former or current counsel who may be entitled to compensation for any reason relating to the objection;
- (f) a statement confirming whether you or your counsel intends to personally appear and/or testify at the Final Approval Hearing;
- (g) a detailed list of any other objections you and/or your counsel has submitted to any class actions, in any court, in any jurisdiction within the United States in the previous five years, or a statement confirming that you or your counsel have not objected to any other class action settlement in any court in the United States in the previous five years; and
- (h) a list of persons who may be called to testify at the Final Approval Hearing in support of your objection.

Your objection must be filed with the Court at the address below no later than **April 13, 2020**. Copies of your objection must be sent to Class Counsel and Defense Counsel so they are postmarked by **April 13, 2020**.

Court	Class Counsel	Defense Counsel
Clerk of the Court, United States District Court Central District of California 350 West 1st Street Los Angeles, CA 90012	Noel J. Nudelman Tracy Reichman Kalik Heideman Nudelman & Kalik, PC 1146 19 <sup>th</sup> Street, NW, Fifth Floor Washington, DC 20036	Matthew D. Powers O'Melveny & Myers LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 – and – Joe O'Connor O'Melveny & Myers LLP 400 South Hope Street, 18th Floor Los Angeles, CA 90071-2899

You can object to the Settlement and still submit a Claim Form on or before **April 13, 2020**. The Claim Form will be processed in the same way as all other Claim Forms. You cannot receive an extension to the deadline to submit a Claim Form merely because you also submit an objection.

**WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?**

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class or the lawsuit. You cannot request exclusion and object to the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

**RELEASE OF CLASS MEMBERS' CLAIMS AND DISMISSAL OF LAWSUIT**

**WHAT AM I GIVING UP IN EXCHANGE FOR THE SETTLEMENT BENEFITS?**

If the Court approves the proposed settlement and you do not request to be excluded from the Class, you must release (give up) all claims that are subject to the Release, and the case will be dismissed on the merits and with prejudice. **If you remain in the Class, you may not assert any of those claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress.**

The text of the Release is reprinted in full at Appendix A to this notice.

**THE FINAL APPROVAL HEARING**

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

The Judge will hold a Final Approval Hearing at 8:30 a.m. on May 11, 2020 at the United States District Court for the Central District of California, 350 West 1st Street, Los Angeles, California 90012, in Courtroom 9D. At this hearing, the Judge will consider whether the settlement is fair, reasonable and adequate and whether to award Class Counsel's requests for attorneys' fees, expenses and service awards for the Class Representatives. If there are objections, the Judge will consider them. The Judge will listen to people who have asked to speak at the hearing. After the hearing, the Judge will decide whether to approve the settlement. We do not know how long this decision will take.

**DO I HAVE TO COME TO THE HEARING?**

No. Class Counsel will answer questions the Judge may have. But, you are welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you delivered your written objection on time and with all of the requisite information, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**MAY I SPEAK AT THE HEARING?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file with the Court a "Notice of Intention to Appear in *Elkies v. Johnson & Johnson Services, Inc.*, Case No. 2:17-cv-7320-GW(JEMx)." Be sure to include your name, address, telephone number, your signature and *a statement that you are a member of the Class (i.e., that you purchased Infants' Tylenol during the Class Period)*. Your Notice of Intention to Appear must be postmarked no later than **April 13, 2020**, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel at the three addresses listed above.

## GETTING MORE INFORMATION

### ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This notice summarizes the proposed settlement. More details are in the Amended Stipulation of Settlement. You can get a copy of the Amended Stipulation of Settlement by writing to Infants' Tylenol Claims Administrator, P.O. Box 43511, Providence, RI 02940-3511, or on the internet at [www.InfantsTylenolSettlement.com](http://www.InfantsTylenolSettlement.com).

If you have questions about how to complete a Claim Form, you can call the Claims Administrator at 1-866-458-2108. You can also contact attorneys for the class at [www.hnklaw.com](http://www.hnklaw.com) and [www.mjfwlaw.com](http://www.mjfwlaw.com).

### PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.

DATED: December 6, 2019

/s/ George H. Wu

BY ORDER OF THE U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

### APPENDIX A - RELEASE

The Releasing Parties agree to release all claims against the Released Parties as set forth below:

A. As of the Effective Date, in consideration of the settlement obligations set forth herein, any and all claims, demands, rights, causes of action, suits, petitions, complaints, damages of any kind, liabilities, debts, punitive or statutory damages, penalties, losses and issues of any kind or nature whatsoever, asserted or unasserted, known or unknown (including, but not limited to, any and all claims relating to or alleging deceptive or unfair business practices, false or misleading advertising, intentional or negligent misrepresentation, negligence, concealment, omission, unfair competition, promise without intent to perform, unsuitability, unjust enrichment, and any and all claims or causes of action arising under or based upon any statute, act, ordinance, or regulation governing or applying to business practices generally, including, but not limited to, any and all claims relating to or alleging violation of Cal. Bus. & Prof. Code § 17200 *et seq.*; Cal. Bus. & Prof. Code § 17500 *et seq.*; and Cal. Civ. Code § 1750 *et seq.*) arising out of or related to the Action, including the alleged false advertising at issue in the Action, that were asserted or reasonably could have been asserted in the Action by or on behalf of all Releasing Parties, whether individual, class, representative, legal, equitable, administrative, direct or indirect, or any other type or in any other capacity, against any Released Party ("Released Claims") shall be finally and irrevocably compromised, settled, released, and discharged with prejudice.

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

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

The Releasing Parties expressly acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Releasing Parties, upon the Effective Date, shall be deemed to have, and by operation of law shall have, fully, finally and forever settled, released, and discharged any and all Released Claims, known or unknown, suspected or unsuspected, whether or not concealed or hidden, that now exist or heretofore have existed upon any theory of law or equity, including, but not limited to, Released Claims based on conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Parties agree that the Released Claims constitute a specific and not a general release.

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

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

#### **DEFINED TERMS USED IN THE RELEASE**

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

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

“Class Counsel” means the attorneys of record for Plaintiffs in this Action.

“Effective Date” means the date by which the Final Settlement Order and Judgment has become final, as defined in the Stipulation of Settlement.

“Parties” means the Plaintiffs and the Defendants.

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

“Releasing Parties” means the named plaintiffs in the Action, individually and as representatives of all those similarly situated, and the Class Members.

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