

**Annexure 1 to Notification Orders**  
**Opt out notice**

**This notice is important**

1. Representative plaintiffs have started a representative proceeding in the High Court of New Zealand against Johnson & Johnson (New Zealand) Limited, JNTL Consumer Health (New Zealand) Limited and Johnson & Johnson Pacific Pty Ltd (the **Defendants**).
2. The action is by and on behalf of all persons who have purchased in New Zealand (including on New Zealand-hosted websites:
  - a the products listed in **Schedule 1** to the amended statement of claim at any time between 13 February 2011 and 13 February 2025; and/or
  - b products listed at **lines 1 and 7 of Schedule 1** to the amended statement of claim at any time between 31 March 2005 and 13 February 2025; and
  - c but are not:
    - i a defendant or a related company - as defined in s 2 of the Companies Act 1993 - of a defendant; or
    - ii a Chief Justice, Justice or Associate Judge of the High Court of New Zealand; or
    - iii a person who purchased the Products for the purpose of re-selling or re-supplying them in trade.
- c. (**Class Members** or individually, **Class Member**).
3. The action brings claims under the Consumer Guarantees Act 1993 in respect of all of the products listed in Schedule 1 to the amended statement of claim (**Products**), and under the Fair Trading Act 1986 in respect of two of the Products ('Sudafed PE Nasal Decongestant' and 'Codral Decongestant').
4. This notice is published to provide information to persons who might be Class Members and therefore may be affected by the representative action. **This notice contains important information regarding your legal rights and we encourage you to read it carefully.** If you have any questions or concerns, you should seek legal advice.

**What is a representative action?**

5. A representative action is an action brought by one or more persons (representative plaintiffs) on his or her own behalf and on behalf of a class of persons (Class Members) against a defendant or defendants where the representative plaintiffs and the Class Members have the same interest in the subject matter of the proceeding.

6. Class members who have not opted out of the representative action are “bound” by the outcome in the legal proceedings. A binding outcome can occur in two ways: (i) either the High Court can issue a judgment following a trial; or (ii) the parties can agree a settlement at any time. If there is a judgment or settlement of a representative action, Class Members will not be able to pursue the same claim and may not be able to pursue similar claims against the defendant(s) in other legal proceedings.

**The representative action against the Defendants**

7. The representative plaintiffs allege that the Defendants:
- (a) breached the Fair Trading Act 1986 by making representations about the efficacy of two of the Products which were false and/or misleading or likely to mislead or deceive, by misleading the public as to the suitability of the products for their advertised purpose, or by making unsubstantiated representations about the Products;
  - (b) breached the Consumer Guarantees Act 1993, in that the Products were not of acceptable quality and did not correspond with the description provided.
8. The representative plaintiffs allege that the active ingredient in the Products, phenylephrine, either on its own or in combination with other ingredients, is no more effective than a placebo in relieving nasal congestion.
9. The representative plaintiffs seek damages, or other relief as the Court sees fit.
10. The defendants deny the allegations. They say that the Products did provide clinically significant relief for nasal congestion, to a significant proportion of the target population, and when used under adequate directions for use and warnings provided on the relevant Product packaging. The defendants also say that they made qualifications around the use of the Products, including that:
- (a) the relevant Product is for the temporary relief of a range of listed symptoms;
  - (b) if symptoms persist or worsen, or new symptoms appear, the consumer should discontinue use and see their doctor;
  - (c) the consumer should ask their doctor before using the Product if they have medical conditions; and
  - (d) the consumer should stop using the Product after a specified period of time.

**This is an opt out representative action, but you can proactively register your interest**

11. The Court has made an order that this representative action proceed on an “opt out” basis. That means that if you are a Class Member because you purchased at least one of the Products, you will be bound by the outcome of the legal proceedings unless you elect to opt out of the representative action.
12. If you wish to opt out of the representative action you must fill in the opt out election form, which can also be downloaded from <https://portal.omnibridgeway.com/jandjnz> and send it to, either:
  - (a) JGA Saddler C/- BDO Auckland, Level 10, 19 Como Street, Takapuna, Auckland 0622;
  - (b) Omni Bridgeway at GPO Box Z5106 St George’s Terrace Perth Western Australia 6831; or
  - (c) by email, to [nzpeclassaction@omnibridgeway.com](mailto:nzpeclassaction@omnibridgeway.com).
13. You must send your opt out election form by 5pm on Wednesday 12 August 2026.
14. Although it is not necessary for you to take any action to remain a Class Member and be bound by the outcome of the legal proceeding, you can choose to register your interest in the representative action by registering at <https://portal.omnibridgeway.com/jandjnz>. If you do register your interest, you will receive regular updates as to the progression of the representative action.

**What happens if you do not opt out of the representative action**

15. If you do not opt out of the representative action, you will remain a Class Member and will be bound by (and if successful, benefit from) any judgment on the representative action, or by any settlement reached at any time.
16. You will not be liable to contribute to the legal costs of the proceeding unless it is successful. The mechanism for contributing to legal costs is by way of a “Common Fund Order” described separately below.
17. In no circumstances will you be liable for any adverse costs awards made against the representative plaintiffs.
18. Under the Funding Agreement with the representative plaintiffs, litigation funder Omni Bridgeway will provide funding of the legal and other costs of the representative action, subject to certain conditions being satisfied.
19. The representative plaintiffs anticipate that this representative action will proceed in two stages:
  - (a) In the first stage, the issues of whether the Defendants are liable to the representative plaintiffs will be decided, and

any common issues between class members, including whether damages will be assessed and ordered on an “aggregate” basis (on the basis of economic loss/loss in value), rather than by reference to any individual plaintiff’s or class member’s loss;

- (b) The second stage will only proceed if the representative plaintiffs are successful in stage one. In stage two, all issues not addressed in stage one will be tried and determined. If you do not opt out, at stage two, some input may be needed from you in order to advance particular aspects of your claim.

- 20. The manner in which the representative action proceeds is subject to any order made by the Court about how the representative action ought to be heard and decided and it may therefore proceed in a different manner or stages to those set out in paragraph 18 above.
- 21. If the representative action is ultimately successful, you may be entitled to share in the benefit of any order, judgment, or settlement in favour of the representative plaintiffs and Class Members, after deduction of the amounts owing to the litigation funder pursuant to the Common Fund Orders made by the Court.

**Common Fund Orders: meaning**

- 22. The Common Fund Orders require that in the event the class action is successful, all Class Members are to contribute to the costs of the action. The mechanism for that contribution is that sums due under the Funding Agreement between the representative plaintiffs and Omni Bridgeway are to be paid out of the total, gross amount payable or credited (by whatever means whatsoever) by the Defendants to the Class Members (**Resolution Sum**). Those sums are:
  - (a) Those Project Costs due under clause 5.1.1 of the Funding Agreement and as defined in the Funding Agreement;
  - (b) Those amounts due as a percentage of the Resolution Sum (the **Fees**), as contained in the table at clause 5.1.3 of the Funding Agreement (reproduced below);
  - (c) Any additional amounts due on account of GST further to clause 5.1.2 of the Funding Agreement; and
  - (d) Any applicable increase on amounts due under clause 5.1 of the Funding Agreement, as provided for by clauses 5.2, 6 and 7.
- 23. The Fees due to Omni Bridgeway shall be a sum calculated on the basis set out in the table immediately below, or such other fee as the court considers reasonable at the time:

| <b>Time to Resolution</b>   | <b>Percentage of Resolution Sum</b> |
|---|-------------------------------------|
| For each Resolution which occurs before 12 months from the Commencement Date:                           | 20%                                 |
| For each Resolution which occurs on or after 12 months and before 24 months from the Commencement Date: | 25%                                 |
| For each Resolution which occurs on or after 24 months and before 36 months from the Commencement Date: | 30%                                 |
| For each Resolution which occurs on or after 36 months from the Commencement Date:                      | 35%                                 |

24. The Common Fund Orders are available at <https://portal.omnibridgeway.com/jandjnz>. It is highly recommended that you view and consider them before deciding whether or not to opt out. If you do not understand the effect of the Common Fund Orders, please seek independent legal advice.
25. In short, if the representative action is successful, you may recover compensation.
26. If the representative action is unsuccessful, you will not be able to pursue the same claims, and you may not be able to pursue related claims, against the defendants in other legal proceedings, but you will not be liable for any sums to the defendants, including costs that may be due to the defendants.
27. Class Members should note that:
- (a) In a judgment following a trial, the High Court will decide various factual and legal issues in respect of the claims made by the representative plaintiffs on behalf of the Class Members. Unless those decisions are successfully appealed, they will bind the representative plaintiffs, the Class Members, and the defendants. That means that if there are other proceedings between a Class Member and any of the Defendants, it is likely that neither side will be able to raise arguments in that proceeding that are inconsistent with the factual or legal issues decided in the representative action.
  - (b) In a settlement of a representative action, the settlement process is likely to extinguish all rights to compensation which a Class Member might have against a defendant which arise in any way out of the events to which the representative action relates.
28. If you consider that you have claims against the defendants which are based on your individual circumstances or are otherwise additional to the claims raised in the representative action, then it is important you

seek independent legal advice about the potential binding effects of the representative action before deciding whether or not to opt out.

### **What happens if you choose to opt out of the representative action**

29. If you opt out of the proceeding, you will not be bound by any order, judgment or settlement in the representative action. You will not be entitled to share in the benefit of any order, judgment, or settlement in the representative action, including receiving any compensation to which you might be entitled.
30. However, you will be free to bring your own claim against the defendants, provided you file proceedings within the time limit applicable to your claim. If you are thinking about bringing your own proceeding, you should seek legal advice prior to opting out of the representative action, not least because time limits may run out for filing new claims.

### **Are you a Class Member?**

31. You are a Class Member if, in New Zealand (including on New Zealand-hosted websites), you purchased (a) any of the products listed in Schedule 1 to the amended statement of claim between 13 February 2011 and 13 February 2025, and/or (b) the products listed at lines 1 and 7 of Schedule 1 to the amended statement of claim between 31 March 2005 and 13 February 2025.

### **Next steps**

32. If you are a Class Member and you wish to be bound by the outcome of the representative action, you do not need to do anything. However, if you would like to register your interest and receive regular updates, you need to complete the online registration process at <https://portal.omnibridgeway.com/jandjnz>.
33. If you are a Class Member and do not wish to be bound by the outcome of the representative action, you need to fill in an opt out election form and return it to any of the addresses at paragraph 10 above by Wednesday 12 August 2026. It is important that you return the opt out election form by the due date, otherwise it will not be effective.

**Relevant documents can be downloaded from <https://portal.omnibridgeway.com/jandjnz>**

34. The following documents relevant to the representative action can be downloaded from <https://portal.omnibridgeway.com/jandjnz>:
  - (a) The amended statement of claim filed on 27 June 2025;
  - (b) The amended statement of defence filed 8 August 2025;
  - (c) Judgment of Fitzgerald J delivered on 26 March 2026;
  - (d) The Representative Orders; and

(e) The Common Fund Orders.

35. If you think you are or may be a Class Member, it is recommended that you read these documents as they will assist you to understand the representative action and the orders that have been sought and made by the Court to date.
36. Please consider the above matters carefully. If you are unsure about any aspect of the information provided in this notice, you should visit <https://portal.omnibridgeway.com/jandjnz>, or seek your own independent legal advice.

**REPRESENTATIVE ACTION AGAINST JOHNSON & JOHNSON (NEW ZEALAND) LIMITED, JNTL CONSUMER HEALTH (NEW ZEALAND) LIMITED, AND JOHNSON & JOHNSON PACIFIC PTY LTD**

**OPT OUT ELECTION FORM**

**In the High Court of New Zealand (Auckland Registry)**

***Gielen & Anor v Johnson & Johnson (New Zealand) Limited & Ors (CIV 2025-404-354)***

TO: JGA Saddler

**Full Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Email:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

I am a group member of the class represented by the plaintiffs in the above named proceeding, and I give notice that I am opting out of the representative proceeding.

Date:

\_\_\_\_\_ [signature]

\_\_\_\_\_ [print name]

Class member / lawyer for the class member