

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If you purchased these Metagenics products labelled as a “Medical Food,” you could receive a cash payment as part of a class action settlement: UltraMeal Plus, UltraMeal Plus 360, UltraGlycemX and UltraClear

A federal court authorized this Notice. This is not a solicitation by a lawyer.

READ THIS ENTIRE NOTICE CAREFULLY
Your legal rights will be affected if you are a member of the class of persons defined in this Notice.

- A proposed settlement has been reached in a class action lawsuit. A purchaser of certain Metagenics Medical Food products has sued Metagenics (“Defendant”), alleging that Defendant made false and misleading statements about those products and that they should not have been labelled as “Medical Food.” Defendant denies the Plaintiff’s allegations and any wrongdoing.
- The Proposed Settlement creates a \$1.3 million settlement fund from which to pay Class Member claims and other costs and expenses related to the litigation and settlement as detailed below.
- You are a Class Member if you purchased any of the following Metagenics products labelled as “Medical Food” in the United States from November 9, 2011 through present: UltraMeal Plus, UltraMeal Plus 360, UltraGlycemX, and UltraClear (the “Products”).
- If you are eligible to participate in this proposed settlement because you purchased one or more of the Products in the United States since November 9, 2011, you can submit a claim for a cash payment from the settlement fund.

1. Why did I get this Notice?

If you purchased one or more of the Products in the United States since November 9, 2011, as described above, you have a right to know about a proposed settlement of a class action lawsuit and your options. If the Court approves the proposed settlement, and after objections and appeals are resolved, an administrator approved by the Court (the “Settlement Administrator”) will oversee the distribution of the settlement benefits that the proposed settlement allows. You will be informed of the progress of the proposed settlement.

2. What is this Lawsuit about and why is there a settlement?

This lawsuit is about whether Defendant made false and misleading representations about its Products and whether it was appropriate to call their products “Medical Food.” You can read Plaintiff’s First Amended Complaint at www.medicalfoodsettlement.com.

Defendant denies any wrongdoing and denies the Plaintiff’s allegations. The Court has not made any ruling on Defendant’s liability, if any. Defendant is settling to avoid the expense, inconvenience, and inherent risk of litigation, as well as the related disruption of its business operations. Plaintiff and his attorneys assert that the proposed settlement is in the best interests of the Class, because it provides an appropriate recovery now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

3. What is a class action?

A class action is a lawsuit in which the claims and rights of many people are decided in a single lawsuit. One or more representative plaintiffs, also known as the “class representatives,” file a lawsuit asserting claims on behalf of themselves and all other similarly situated persons. The “similarly situated persons” are called the “class” or “class members.” The class representatives hire attorneys to handle the lawsuit, and, if the court approves the class as proposed by the class representatives’ attorneys, those attorneys (called the “class counsel”) represent the rights and interests of the class representatives as well as all members of the class. This means that the actions of class counsel are binding upon all class members, even though most class members may never meet or even speak with class counsel.

As a general rule, the class members are not responsible for paying the class counsel’s legal fees or expenses out of their own pockets. However, as is applicable in this lawsuit, class counsel are sometimes paid, and reimbursed, if at all, from a money judgment obtained for the class by class counsel as a result of the lawsuit or from a settlement fund agreed to by the parties. (See the response to Question 11, below, regarding the basic terms of the settlement including how attorneys’ fees are handled in this case.)

The final result of a class action, subject to certain limited exceptions not applicable under the terms of the proposed settlement in this Lawsuit, is legally binding on certain rights and claims of every individual member of the class as finally defined by the court. This is true whether a class action is finally resolved by a trial in which a final judgment is entered by the court, or by a settlement agreement.

4. What is the purpose of this Notice?

The Court has ordered that this Notice be published to reach those who may be a member of the Class on whose behalf the Class Representatives brought this Lawsuit. If you do qualify as such a Class Member, it is important that you understand how the proposed settlement will affect your rights. Accordingly, the purpose of this Notice is to inform you, among other things, about:

- (a) the nature of the claims in the Lawsuit,
- (b) the definition of “Class” that determines if you will be affected by the Proposed Settlement,
- (c) the terms of the proposed settlement, including how the terms affect you legally,
- (d) your right to opt out or object to the proposed settlement, if you so wish,
- (e) the procedures and deadlines for opting out or asserting any objections you may have, and
- (f) if you are eligible for a cash payment, how to submit the required claim for payment.

5. Who is included as a Member of the Class?

You are a member of the class if you, at any time since November 9, 2011, purchased one or more of the following Metagenics products labelled as “Medical Food:” UltraMeal Plus, UltraMeal Plus 360, UltraglycemX, and Ultra Clear.

Everyone who fits this definition is a Class Member for purposes of the proposed settlement. If you are still not sure whether you are included in the Class, you may consult an attorney of your own choosing and at your own expense, or contact one of the attorneys listed as Class Counsel in the response to Question 13 below. DO NOT contact the Court, Defendants, or Counsel for the Defendants with questions about the Lawsuit or the proposed settlement.

6. How do I exclude myself from the Settlement?

If you want to, you can exclude yourself from the settlement, which is sometimes called “opting-out” of the Class. You must send a letter by mail saying that you want to be excluded from this lawsuit. To exclude yourself from the Class, you must postmark a written Request for Exclusion to Metagenics Medical Foods Class Action, c/o ILYM Group, Inc., P.O. Box 2031, Tustin, CA 92781. The written Request for Exclusion must be postmarked no later than March 17, 2019.

Your written Request for Exclusion must contain: (1) the name of this lawsuit, *Grivas v. Metagenics, Inc.*, Case no. 15-cv-01838-CJC-DFM; (2) your full name and current address; (3) a clear statement of intention to exclude yourself such as “I wish to be excluded from the Class;” and (4) your signature.

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not get any settlement money, and you cannot object to the proposed settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendant in the future.

If you do *not* exclude yourself from the settlement, and it is finally approved, you will be deemed to be a member of the Class and you will be bound by the terms of the proposed settlement. You will not be able to sue Defendant for the same things later. If you have a pending lawsuit against Defendant, speak to your lawyer in that lawsuit immediately. You might have to exclude yourself from *this* Class to continue your own lawsuit.

7. If I am opposed to the terms of the Proposed Settlement, what can I do?

A Fairness Hearing, also known as a Final Approval Hearing, will be held **on April 22, 2019 at 1:30 p.m.** before the Honorable Cormac J. Carney, District Judge, United States District Court for the Central District of California, at the following address: 350 W. 1st Street, Courtroom 7C, Los Angeles, CA 90012.

At the Fairness Hearing, Judge Carney will review the terms of the proposed settlement, as well as hear or otherwise review objections, if any, to the proposed settlement. If Judge Carney determines the proposed settlement is fair, reasonable, and adequate, at some point after the hearing he will enter a Final Approval Order and dismiss the Lawsuit, including all claims asserted in the Lawsuit, with prejudice. **THE FINAL APPROVAL ORDER WILL ALSO TERMINATE THE LEGAL RIGHTS OF EACH CLASS MEMBER TO BRING HIS OR HER OWN LAWSUIT TO ASSERT CLAIMS AGAINST METAGENICS SIMILAR TO THOSE ASSERTED IN THE LAWSUIT, AS WELL AS CERTAIN OTHER CLAIMS.**

If you are a Class Member, you can tell the Court that you do not agree with (in other words, that you “object” to) the proposed settlement or any part of it. **To object, you must provide a letter or other written document (called an “Objection Notice”) containing the following information:**

- (a) a statement that you object to the proposed settlement in *Grivas v. Metagenics, Inc.*, Case no. 15-cv-01838-CJC-DFM,
- (b) a full explanation of all reasons you object to the Proposed Settlement, that is, why you think it is unfair, unreasonable, or inadequate,
- (c) your name, mailing address, and telephone number,

- (d) whether you wish to be allowed to speak at the Fairness Hearing, either personally or through your own attorney you have hired to present your objection, and
- (e) if you have hired an attorney to represent you regarding this Proposed Settlement, that attorney's name, mailing address, and telephone number.

You **must** mail your objection via first-class mail, **post-marked no later than March 17, 2019**, postage paid, addressed to Alex Tomasevic, of the law firm of Nicholas and Tomasevic LLP at the address provided in the response to Question 13.

Mr. Tomasevic will file copies of all Objection Notices received by the above deadline with the Court prior to the Fairness Hearing. He also will provide copies to Counsel for the Defendants.

PLEASE NOTE: IF THE COURT DISAGREES WITH YOUR OBJECTION, THE FACT THAT YOU SUBMITTED AN OBJECTION WILL NOT PREVENT THE COURT FROM APPROVING THE PROPOSED SETTLEMENT.

8. Do I have to come to the Fairness Hearing?

You are not required to attend the Fairness Hearing in order for the Court to consider your Objection Notice, although you may attend if you so wish. As long as you mail in a timely, written objection, it will be part of the record considered by the Court when the Court evaluates whether to approve the proposed settlement as fair, reasonable, and adequate. You also may pay your own attorney to attend the Fairness Hearing, if you wish, but such attendance is not required, even if you hire an attorney to submit your Objection Notice.

9. May I speak at the Fairness Hearing?

If you are a Class Member, you may ask the Court to permit you, or your own attorney, to speak at the Fairness Hearing. To do so, you must include your request to speak in an Objection Notice. (See the response to Question 7.)

Please note that, while you must file an Objection Notice requesting permission to speak at the Fairness Hearing, filing such an Objection Notice does not necessarily mean the Court will allow you, or your attorney, to speak. In deciding whether to allow you to speak, the Court will take into consideration the number of persons who have requested the chance to speak, the nature of your objection, and the time available at the hearing, among other considerations.

10. What if I do nothing?

If you do nothing, you will get no money from this proposed 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 Defendant about the subject matter of this lawsuit.

11. What are the basic terms of the Proposed Settlement?

Summaries of the primary terms of the proposed settlement are set out below. If you have any objection to any of these – or any other – settlement terms, please refer to the response to Question 7 above.

A. The Class Member Payout and the Mandatory Claims Process

Subject to Court approval, the parties have agreed to a settlement under which Defendant will pay \$1.3 million in cash (the “Settlement Fund”). In addition to paying Class Member claims, the \$1.3 million Settlement Fund will be used to pay: (i) notice and claims administration costs, (ii) attorneys’ fees, (iii) litigation costs and expenses, and (iv) an incentive award to the Class Representative.

Each class member who wants to receive money must submit a claim form, either electronically through the settlement website www.medicalfoodsettlement.com or by requesting one be sent to you via mail or email, and then returning it by April 26, 2019. In the claim form, class members must verify under penalty of perjury that they are a member of the Class and attest to how many products or product units they purchased since November 9, 2011.

You can submit an electronic Claim Form quickly and easily on the Internet at www.medicalfoodsettlement.com. Read the instructions carefully, and submit it on or before April 26, 2019. Alternatively, you may also submit a hard copy Claim Form by mailing it to the following address: Metagenics Medical Foods Class Action, c/o ILYM Group, Inc., P.O. Box 2031, Tustin, CA 92781. It must be postmarked no later than April 26, 2019. You may access a printable Claim Form at www.medicalfoodsettlement.com or you can request that one be mailed or emailed to you.

TO BE VALID, ALL CLAIMS MUST BE POSTMARKED OR SUBMITTED ONLINE NO LATER THAN APRIL 26, 2019

In general, the more class products a class member purchased, the more they will receive under the settlement. Class members can claim to have purchased up to five class products, and be paid the corresponding amount, *without* submitting proof of purchase. Class members who purchased more than five products will be paid in accordance with their claimed purchases, but will need to provide proof of purchase showing more than five purchases.

Ultimately, the Settlement Administrator will pay claims on a pro-rata basis as follows. First, the Settlement Administrator will calculate the “Net Settlement Fund,” meaning the money left over after deducting approved attorney’s fees and costs (including case costs, the settlement notice and administration costs, and any enhancement award). Then the Settlement Administrator will calculate individual awards by taking the Net Settlement Fund and dividing by the total number of products that all participating settlement class members have validly claimed, in their claim forms, to have purchased throughout the class period. That result will then be multiplied by the number of products each individual participating settlement class member has claimed. In short, the Settlement Administrator will first calculate a per-product award using the information from the claim forms. Then each participating class member will get, via check, that per-product amount multiplied by each product or unit of product that the participating class member has validly claimed.

We cannot know, yet, how much money individuals will receive under the settlement until after all of the claim forms have been submitted and analyzed. However, by way of example only, let’s assume that the Net Settlement Fund turns out to be \$715,000 (assuming \$585,000 was deducted from the original \$1.3 million for fees, costs, and an incentive award for the named representative). And let’s also assume that the total number of all products purchased by all class members submitting claim forms (as indicated on the claim forms) is 50,000 units. Then the calculated per-product award will be \$14.30 per product (\$715,000 divided by 50,000). In that case, a class member who submitted a claim for one product will receive a check for \$14.30. A class member who submitted a claim for six products (who would have also included the proof of purchase required for all claims above five products), would receive a check for \$85.80 (\$14.30 multiplied by six).

Again, because we do not know, yet, how many total products will be claimed, we do not know precisely how much everyone will get. The actual amount you receive under the settlement could be more or less than this example, depending on the number of claims received and the number of products validly claimed on the claim forms.

B. Named Plaintiff Incentive Award.

It is common in class actions for the class representatives to request a special “Incentive Award” in compensation for taking leading roles in the litigation and devoting their time and energy to the case for the benefit of the class members. Mr. Grivas intends to ask the Court for an award of \$5,000 for his services to the class.

The Court is not required to approve the proposed Incentive Award, and is free to award any, or no, amount as an Incentive Award. The Court’s denial or reduction of the amount of the Incentive Award is not grounds for the Settlement Agreement to be terminated.

C. Attorneys’ Fees and Litigation Expenses.

Plaintiffs’ counsel will request an award of case expenses and attorneys’ fees not to exceed 25% of the settlement fund (25% of \$1.3 million, or \$325,000), to be paid out of the settlement fund. The Court’s denial or reduction of the amount of the attorneys’ fees and/or expenses requested is not grounds for the Settlement Agreement to be terminated.

D. Payment of Settlement Notice and Administration Costs.

Subject to Court approval, the Settlement Administrator shall pay to itself all reasonable Settlement Administration Expenses from the Settlement Fund to provide Class notice and fully administer this Settlement Agreement. We do not know, yet, exactly how much this will be, but we have received a preliminary estimate that it could cost about \$110,000.

12. What rights and claims do the Class Members release under the terms of the Proposed Settlement?

The purpose of any class action lawsuit is to resolve the legal claims of a large number of people in one lawsuit. Accordingly, whether by judgment or a settlement, certain results of a class action lawsuit are binding on all members of the Class. In the proposed settlement for this Lawsuit, as with almost any class action settlement, certain Class Members receive money, some Class Members do not, and all Class Members are legally barred from taking certain future legal actions associated with claims that the Class Representative has agreed shall be released (waived) by the terms of the Settlement Agreement in return for Defendant’s agreement to pay the money. This means that, if the proposed settlement is finally approved, the Court will enter an order dismissing with prejudice all claims in the Lawsuit against the Defendant. A dismissal with prejudice means the same claims cannot be refiled in any court. As a result of the order of dismissal and the terms of the proposed settlement, assuming it is approved by the Court, each Class Member will have legally released (waived) any and all of his or her claims against the Defendant, whether known or unknown, and whether asserted under any other federal, state, or local law of any type or description, that he or she has or may have against the Defendant that were or, under the allegations of the Complaint, could have been asserted but were not.

The above explanations mean, among other things, that no Class Member, or group of Class Members, may bring any future lawsuits against Defendant for mislabeling or deceptive marketing practices with respect to the four Products at issue, or any lawsuits based upon any claims or facts

asserted in the current Lawsuit, or based upon any other claims that could have been asserted in this Lawsuit, but were not – even claims that were not known to such Class Member or that he or she did not even suspect existed as of the date the proposed settlement is approved by the Court. This release of claims applies to the **entire Class**, not just to the subset of the Class who submit claims and/or receive money under the proposed settlement.

13. Do I have a lawyer in this Lawsuit?

As a Class Member, your interests are represented by the Class Counsel, whose names and contact information are provided below. You are free to retain your own independent counsel for advice regarding the proposed settlement, if you wish, at your own expense.

Alex Tomasevic
Nicholas and Tomasevic LLP
225 Broadway, 19th Floor San Diego, CA 92101
Tel: (619)325-0492
Fax: (619)325-0496
Email: alex@nicholaslaw.org

14. Who are the attorneys representing the Defendants in this Lawsuit?

The names and addresses of the attorneys representing the Defendants in this Lawsuit are:

Morrison & Foerster LLP
425 Market Street, Floor 32
San Francisco, CA 94105

PLEASE NOTE: DO NOT CONTACT ANY OF THE ATTORNEYS FOR DEFENDANTS WITH QUESTIONS ABOUT THE LITIGATION OR THE PROPOSED SETTLEMENT. YOU MAY CONTACT COUNSEL FOR PLAINTIFF WITH SUCH QUESTIONS OR CONSULT YOUR OWN ATTORNEY, WHICH YOU MUST RETAIN AT YOUR OWN EXPENSE.

15. Are there more details about the Proposed Settlement?

Yes. This Notice is only intended to provide a summary of the Proposed Settlement. You may obtain the complete text of the settlement agreement at www.medicalfoodsettlement.com, by writing to the Settlement Administrator (at Metagenics Medical Foods Class Action, c/o ILYM Group, Inc., P.O. Box 2031, Tustin, CA 92781), or from the court file, which is available for your inspection during regular business hours at the Office of the Clerk of the United States District Court for the Central District of California, 255 East Temple Street, Suite 180, Los Angeles, CA 90012-4701.

Visit the website at www.medicalfoodsettlement.com where you will find the Plaintiff's Complaint, the Settlement Agreement and other documents related to the settlement, and a Claim Form. You may also contact Class Counsel by email at alex@nicholaslaw.org.