

NOTICE OF SETTLEMENT APPROVAL HEARING AND OPT-OUT DEADLINE IN THE MATTER OF CHILDREN'S COUGH AND COLD MEDICINE CLASS

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.

TO: All persons who purchased Children's Cough Medicine (as described below) between December 24, 1997 to December 21, 2011 for a child or children under the age of six years at the time of purchase and were resident in British Columbia at the time of such purchase (the "Settlement Class").

Children's Cough Medicine means cough medicine supplied, offered, manufactured, produced, advertised, marketed, sold or promoted by the Defendants for use by children under the age of six years old containing one or more of the following group of drugs:

- (a) Antihistamines such as brompheniramine maleate, chlorpheniramine maleate, dexbrompheniramine maleate, clemastine hydrogen fumarate, diphenhydramine hydrochloride, diphenylpyraline hydrochloride, doxylamine succinate, pheniramine maleate, phenyltoloxamine citrate, promethazine hydrochloride, pyrillamine maleate, and triprolidine hydrochloride;
- (b) Antitussives such as dextromethorphan, dextromethorphan hydrobromide, and diphenhydramine hydrochloride;
- (c) Expectorants such as guaifenesin; and/or
- (d) Decongestants such as ephedrine hydrochloride/sulfate, phenylephrine hydrochloride/sulphate and pseudoephedrine hydrochloride/sulphate.

The Settling Defendants are: Trillium Health Care Products Inc. ("Trillium"), Vita Health Products Inc. ("Vita") and Procter & Gamble Inc. ("P&G").

Trillium sold Children's Cough Medicine under the following product names: Exact, Biomedic, Option+, Reserve, Life, Personnelle, Selection, Equate, Pharmasave, Safeway, Our Best and Teddy's Choice.

Vita sold Children's Cough Medicine under various brand names, through Walmart, Pharmasave, London Drugs, Overwaitea Foods, Peoples, Army & Navy, Kimberley Drug Mart, Medicine Shoppe and Howe Sound Pharmacy.

P&G sold Children's Cough Medicine under the Vicks and Nyquil brands.

I. THE PURPOSE OF THIS NOTICE

A class action lawsuit was brought by Lana Wakelam in the Supreme Court of British Columbia against a number of manufacturers of Children's Cough Medicine, alleging contraventions of the *BC Business Practices and Consumer Protection Act*, the *Competition Act*, waiver of tort, unjust enrichment and constructive trust in the marketing of these products and seeking restitution and damages. Please note that this lawsuit does not involve claims for personal injury.

The class action was certified by the Court on December 22, 2011. An appeal of the certification order was filed by the Defendants.

Class action settlements have been reached with Trillium Health Care Products Inc. ("Trillium"), Vita Health Products Inc. ("Vita") and Procter & Gamble ("P&G"). As part of these settlements, Trillium, Vita and P&G have consented to certification of the class actions for settlement purposes and have abandoned the appeal.

Trillium, Vita and P&G have entered into Settlement Agreements that will resolve the allegations and litigation against them and their related entities. Trillium, Vita and P&G deny any wrongdoing or liability, and the settlements represent a resolution of the disputed claims.

The litigation including the appeal is continuing against the remaining Defendants, Johnson & Johnson, Johnson & Johnson Inc., McNeil Consumer Healthcare Canada, Novartis Consumer Health Canada Inc./Novartis Sante Familiale Canada Inc., Wyeth Consumer Healthcare/Wyeth Soins De Sante Inc. and Pfizer Canada Inc.

Under the terms of the Settlement Agreements, Trillium has agreed to pay \$90,000.00, Vita has agreed to pay \$50,000.00 and P&G has agreed to pay \$150,000.00 for the benefit of the settlement class.

The settlements must be approved by the British Columbia Court before they become effective. An application to approve the settlement will be heard by the Supreme Court of British Columbia at 800 Smithe Street in the City of Vancouver on **November 12, 2013 at 10:00 a.m.** At this hearing, the British Columbia Court will determine whether the Settlement Agreements are fair, reasonable and in the best interests of the settlement class members.

Settlement class members who do not oppose the proposed settlements need not appear at the settlement approval hearing or take any other action at this time.

Settlement class members are entitled to appear and make submissions at the settlement approval hearing. If you wish to comment on or make any objection to the Settlement Agreement, a written submission must be delivered to Camp Fiorante Matthews Mogergerman at the address listed below, postmarked no later than **October 31, 2013**. Class counsel will forward all such submissions to the British Columbia Court. All written submissions will be considered by the Court. If you do not file a written submission by **October 31, 2013**, you may not be entitled to participate, through oral submissions or otherwise, in the settlement approval hearing.

If the Settlement Agreements are approved by the British Columbia Court, further notices will be posted online at www.cfmlawyers.ca to advise Settlement class members of such approval.

II. OPTING OUT OF THE CLASS ACTION LAWSUITS

Settlement class members will be bound by the terms of the Settlement Agreements unless you "opt-out" of the class action lawsuit. If you do not opt-out, you will not be able to bring or maintain any other claim or legal proceeding in respect of any allegations asserted in the class action, including allegations relating to violations of the BC *Business Practices and Consumer Protection Act* and the *Competition Act*, unjust enrichment, waiver of tort and constructive trust and you will be bound by the settlements with Trillium, Vita and P&G and any subsequent settlements with, or judgments, whether favourable or not, against the remaining Defendants in the class action.

No further right to opt-out of the class action will be provided including in respect of the litigation against the remaining Defendants.

If you opt-out of the class action lawsuit, you will not be able to participate in the Settlement Agreements, and you will not be able to participate in any further settlements with, or judgments, whether favourable or not, against the remaining Defendants in the class action.

To opt-out, you must submit a written election to be excluded from this case. Your written request must include the following information:

- a) Your full name, current address and telephone number;
- b) The name(s) of each child and his or her date of birth for whom you purchased Children's Cough Medicine between December 24, 1997 and December 21, 2011;
- c) Any information in your possession concerning the price paid for Children's Cough Medicine between December 24, 1997 and December 21, 2011; and
- d) Confirmation that you were a resident of British Columbia at the time of purchase of Children's Cough Medicine.

Written requests to opt-out must be sent to the following address, postmarked or by e-mail or fax no later than **October 31, 2013**:

Camp Fiorante Matthews Mogerman
Attn: Reidar Mogerman/David Jones
Suite 400 – 856 Homer Street
Vancouver, BC, V6B 2W5
Fax: (604) 689-7555
e-mail: rmogerman@cfmlawyers.ca
djones@cfmlawyers.ca

III. CLASS COUNSEL

The law firms of Camp Fiorante Matthews Mogerman and Underhill, Boies Parker ("Class Counsel") represent Settlement class members.

Camp Fiorante Matthews Mogerman can be reached toll free at 1-800-689-2322, by e-mail at lcarmichael@cfmlawyers.ca or by mail at Suite 400 – 856 Homer Street, Vancouver, BC V6B 2W5, Attention: David Jones or Reidar Mogerman.

Contact information for Underhill, Boies Parker can be found on their website at ubplaw.ca.

Pursuant to a fee agreement with the representative plaintiff, Class Counsel will be requesting that legal fees of up to 25 percent of amounts recovered plus disbursements and applicable taxes be approved by the British Columbia Supreme Court in respect of the settlements with Trillium, Vita and P&G. The fee agreement provides for legal fees up to a maximum of 33 1/3 percent of amounts recovered plus disbursements and applicable taxes in respect of future settlements or judgments in the class action.

IV. QUESTIONS ABOUT THE SETTLEMENT

This notice contains only a summary of the Settlement Agreements and settlement class members are encouraged to review the complete Settlement Agreements online at www.cfmlawyers.ca. If you have questions that are not answered online at www.cfmlawyers.ca, please contact Camp Fiorante Matthews Mogergerman. **QUESTIONS SHOULD NOT BE DIRECTED TO THE COURT.**

This Notice has been authorized by the Supreme Court of British Columbia.