

Notice of Certification of a Class Action

**Have you purchased Cold-FX® products since January 1, 2017?
If so, a class action lawsuit may affect your rights.**

This notice is for all persons residing in Canada who purchased one or more Cold-FX® products since January 1, 2017 (the “**Class**” or “**Class Members**”). The Cold-FX® products applicable to this class action are Cold-FX® Daily Support (regular, chewable, and extra strength), Cold-FX® First Signs, Cold-FX® First Signs Nighttime, Cold-FX® Daily Defence (regular and extra strength), and Cold-FX® (regular and extra strength) insofar as these were sold to consumers in the period of January 1, 2017 to the date of the publication of this Notice of Certification (the “**COLD-FX® Products**”).

A class action has been certified by the Ontario Superior Court of Justice against Bausch Heath Canada Inc. and Valeant Canada LP (together, the “**Defendants**”). Bausch + Lomb now distributes COLD-FX® in Canada. The title of proceeding and court file is *Robert Drynan v. Bausch Health Companies Inc. et al*, Court File No. CV-19-632601-00CP (the “**Class Action**”).

The Class Action claims that the Defendants have made false, misleading, deceptive, or unconscionable representations, including as to whether the Cold-FX® Products are “proven by science”, “clinically proven”, or contain “clinically proven ingredients” or have a “clinically proven formula” to help (i) reduce the frequency, duration, and severity of cold and flu symptoms and (ii) increase the proportion of natural killer cells and T-helper cells to boost the immune system.

The Defendants deny that they have made any false, misleading or deceptive advertising claims in respect of the Cold-FX® Products or breached any statute and is defending the now certified Class Action on the merits. None of the allegations made by the plaintiff have been proven. The decision to certify the Class Action is procedural only and is not a ruling on the merits. The merits of the allegations remain to be determined at a future trial.

The Class Action seeks to permit Class Members to recover the costs (in full or in part) paid to purchase the Cold-FX® Products or to require the Defendants to give up the profits gained in selling the Cold-FX® Products during the period of January 1, 2017 to the date of the publication of this Notice of Certification, and distribute those profits to Class Members. The Class Action also seeks to prevent the Defendants from continuing to make the allegedly unlawful Cold-FX® advertising claims.

LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

DO NOTHING - Stay in the lawsuit	<p>If you do nothing, you will automatically be included as a member of the Class. You do not need to take any further action now to stay in the lawsuit.</p> <p>As a Class Member, you will be bound by any judgment on the common issues or any Court-approved settlement in the Class Action.</p> <p>By doing nothing, you are choosing to stay in the Class Action. You will keep your right to share in possible money or other benefits that may come from the trial or a possible settlement in the Class Action; however, you will also be bound by any negative results. If the Defendants are successful in their defence of the Class Action, the class members will not receive compensation. In the event that the Defendants are able to recover costs of the defence of the Class Action from the Plaintiff, this may impact the compensation recoverable by the class, but class members will not be liable for these costs.</p> <p>You are giving up the right to sue the Defendants on your own regarding the allegedly false, misleading, deceptive, or otherwise unlawful advertising claims in respect of the Cold-FX® Products.</p>
OPT OUT - Exclude yourself from the lawsuit	<p>If you choose to opt out of, and thereby exclude yourself from the Class Action, then you will not be bound by any court orders in the proceeding. This means that you will get no money or benefits if the Class Action succeeds or a settlement is negotiated. This also means that you will not be bound by any negative results.</p> <p>If you exclude yourself by opting out, you keep the right to sue the Defendants on your own regarding the allegedly unlawful advertising of the Cold-FX® Products.</p> <p>If you intend to opt out and sue the Defendants on your own, you should be aware that there may be limitation periods that apply to your claim, meaning there may be a deadline within which an action may be started. You should consult a lawyer to obtain advice about your rights to bring an individual action before you opt out.</p>

Your rights and options are explained in this notice.

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BASIC INFORMATION

1. What is the purpose of this notice?

The Ontario Superior Court of Justice (the "**Court**") has authorized this notice to let you know that it has allowed, or "certified," a class action lawsuit that may affect your rights. The title of the court proceeding and court file is *Robert Dryman v. Bausch Health Companies Inc. et al*, Court File No. CV-19-632601-00CP (the "**Class Action**"). Bausch Health Canada Inc. and Valeant Canada LP (together, the "**Defendants**") are the named defendants against which the Class Action was certified. Bausch + Lomb now distributes COLD-FX® in Canada.

The Court has allowed this lawsuit to be prosecuted as a class action. This is called "certification." Certification is not a decision on the merits; it is a procedural step in the Class Action. If the Class Action is not settled, there will be a trial to decide certain "common issues" that relate to the Plaintiff's claims that the Defendants are liable to Class Members.

A copy of the Court's Reasons for Decision certifying the Class Action (the "**Certification Reasons**") can be viewed at <https://class-actions.tyrllp.com/cold-fx-class-action.html>. under the heading "Downloads". You can also consult other court documents at that website, including the Court Order certifying the case to proceed as a class action (the "**Certification Order**").

Assuming that there is a common issues trial, and that the issues are decided in favour of the Class, but the Court is not able to assess all of the Class' losses, there may then be a separate process to determine the amount of damages to which each Class Member is entitled. If that happens, each Class Member can decide whether they wish to participate in the process to claim for their own losses.

If you meet the Class definition, you will be bound by the Court's decisions as the case proceeds to the end of the common issues trial, whether favourable or not. You will also be bound by any settlement that is approved by the Court.

2. What is a Class Action?

In a class action, one or more people called “Representative Plaintiff(s)” (in this case, Robert Drynan) sue on behalf of people who have similar claims (in this case, the people who purchased the Cold-FX® Products). Together, all of these people are called a “Class” or “Class Members.” The Court will in one single proceeding resolve the issues that are the same for everyone affected (known as the “common issues”) at a common issues trial. The Court’s decision will bind everyone in the Class, except for those who exclude themselves from (or “opt out” of) the Class Action.

THE CLAIMS IN THE LAWSUIT

3. What is this Class Action about?

This Class Action alleges that the Defendants have made false, misleading, deceptive, or unconscionable advertising claims to consumers as to whether the Cold-FX® Products are: “proven by science”; “clinically proven”; contain “clinically proven ingredients”; or have a “clinically proven formula” to help (i) reduce the frequency, duration, and severity of cold and flu symptoms and (ii) increase the proportion of natural killer cells and T-helper cells to boost the immune system. These claims largely form the basis of the allegations in this Class Action that the Defendants have breached provincial consumer protection legislation, the federal *Competition Act*, and the federal *Food and Drugs Act*.

The Class Action seeks to permit Class Members to recover the costs (in full or in part) paid to purchase the Cold-FX® Products or to require the Defendants to return to consumers the profits gained in selling the Cold-FX® Products during the period of January 1, 2017 to the date of the publication of this Notice of Certification. The Class Action also seeks to prevent the Defendants from continuing to make the allegedly unlawful Cold-FX® advertising claims.

A copy of the Statement of Claim and other relevant court filings can be viewed on Class Counsel’s website at <https://class-actions.tyrlp.com/cold-fx-class-action.html> under the “Downloads” heading.

4. How do the Defendants answer these allegations?

The Defendants deny that they have made any false, misleading or deceptive advertising claims in respect of the Cold-FX® Products or breached any statute and are defending the certified class action on the merits. The Defendants’ Statement of Defence is posted on Class Counsel’s website at <https://class-actions.tyrlp.com/cold-fx-class-action.html> under the “Downloads” heading.

5. Has the Court decided who is right?

No decision about whether the Plaintiff or the Defendants are right has been made. None of the allegations made against the Defendants have been proven: the certification process is procedural and has not determined the merits of the claims. The allegations will be determined at trial. The trial will not take place for some time. Updates about the status of the action will be posted on Class Counsel’s website <https://class-actions.tyrlp.com/cold-fx-class-action.html>.

6. What is the Plaintiff asking for?

The Plaintiff is asking for the Court to require the Defendants to compensate Class Members for the amounts they paid to purchase the Cold-FX® Products (in full or in part) or to require the Defendants to return the profits gained in selling the Cold-FX® Products during the period of January 1, 2017 to the date of the publication of this Notice of Certification, and distribute those profits to Class Members. The Class Action also seeks to prevent the Defendants from continuing to make the allegedly unlawful Cold-FX® advertising claims, and as well as punitive damages. The details of the specific claims are set out in the Statement of Claim (see link at #3, above).

7. What are the common issues?

The Certification Order sets out all the common issues that have been certified by the Court. They are:

Consumer Protection

- 1) Does the Ontario *Consumer Protection Act* (“CPA”) or the Equivalent Consumer Protection Legislation (as defined in the Statement of Claim) apply to the Defendants? If so, to which Defendants?

- 2) Is contractual privity between the Defendants, or any of them, and the Class Members required to ground a claim under Part III of the CPA or parallel provisions of the Equivalent Consumer Protection Legislation?
- 3) If so, has contractual privity been established, either directly as between the Defendants, or any of them, and Class Members, or through the existence of an agency relationship between the Defendants and their online and/or bricks and mortar sales agents?
- 4) Did the Defendants, or any of them, engage in unfair practices within the meaning of the CPA or the Equivalent Consumer Protection Legislation?
- 5) If so, are the Class Members, or any of them, entitled to damages under the CPA or the Equivalent Consumer Protection Legislation?
- 6) Are the Defendants liable jointly and severally with any person who entered into an agreement with the consumer for any amount to which the Class Members may be entitled under the CPA or parallel provisions of the Equivalent Consumer Protection Legislation?
- 7) Is it in the interests of justice to disregard the requirement to give notice that a consumer seeks to recover damages under the CPA or the Equivalent Consumer Protection Legislation?

Competition Act

- 8) Did the Defendants, or any of them, engage in conduct contrary to section 52 of the *Competition Act*?
- 9) If so, are the Defendants, or any of them, liable to the Class Members for loss or damage suffered, investigation costs, and/or costs of this proceeding under section 36(1) of the *Competition Act*?

Unjust Enrichment

- 10) Were the Defendants, or any of them, unjustly enriched from the sale of COLD-FX Products?
- 11) If so, did the Class Members suffer a corresponding deprivation?
- 12) If so, is there a juristic reason for the Defendants' enrichment?
- 13) If so, are the Class Members entitled to restitution on the basis of unjust enrichment?

Aggregate Monetary Relief

- 14) If common issues 5 and/or 9 are answered in the affirmative, can the amount of loss or damages suffered by the Class members be determined on an aggregate basis, and if so, in what amount?
- 15) If common issue 13 is answered in the affirmative, can the amount of restitutionary relief or disgorgement to which the Class members are entitled be determined on an aggregate basis, and if so, in what amount?
- 16) Are the Defendants, or any of them, liable to pay punitive damages to the Class Members, having regard to the nature of their conduct, and if so, what is the amount of punitive damages?

These are the issues that will be decided at the common issues trial. The Certification Order can be viewed on Class Counsel's website at <https://class-actions.tyrlp.com/cold-fx-class-action.html> under the "Downloads" heading.

8. Is there any money available now?

No. There is no money available now because the Court has not yet decided whether the Defendants did anything wrong. There is no guarantee that the Class Action will be successful for the Class. However, if money becomes payable, you will be notified about how to ask for a share.

9. How do I know if I am a member of the class of individuals represented in this class action?

You are a member of the class of individuals who will be represented in this Class Action if you live in Canada and purchased one or more of the following Cold-FX® products between January 1, 2017 and September 28, 2023: Cold-FX® Daily Support (regular, chewable, and extra strength), Cold-FX® First Signs, Cold-FX® First Signs Nighttime, Cold-FX® Daily Defence (regular and extra strength), and Cold-FX® (regular and extra strength).

Unless you take steps to exclude yourself by opting out (see #14 below), you will be bound by any decisions of the Court in relation to this Class Action, whether favourable or not.

10. What do I do if I am not sure if I am included?

If you are still not sure whether you are included in the Class, you may call Tyr LLP at 416.477.5525 or email info@tyrllp.com with questions.

RIGHTS AND OPTIONS FOR CLASS MEMBERS

11. What happens if I do nothing?

If you do nothing, you will automatically be included in the class action as a Class Member, which means you will be bound by any decisions of the Court in relation to this Class Action, whether favourable or not, and you will be bound by any settlement that may be reached between the parties and approved by the Court.

If you do nothing, you will not be able to start or continue with a lawsuit against the Defendants about the same legal claims that are included in this Class Action. If the Class gets money or benefits from the Defendants as a result of a judgment or a settlement between the parties, you will be notified about how to ask for a share or what your options are at that time.

If you do not want to be automatically included in the class action as a Class Member, this is your only opportunity to exclude yourself (to “opt out”). To do so, you are required to take the steps set out at #14 below.

12. What happens if I exclude myself?

You can exclude yourself by a process known as “opting out.” If you opt out, you will not be able to get any money or benefits from this Class Action if a judgment is granted or a settlement is reached. But, if you exclude yourself, you may sue the Defendants on your own. You will not be bound by anything that happens in this Class Action.

If you intend to opt out and sue the Defendants on your own, you should be aware that there may be limitation periods that apply to your claim, meaning there may be a deadline within which an action may be started. You should consult a lawyer to obtain advice about your rights to bring an individual action before you opt out.

To exclude yourself (opt out) from the Class Action, follow the instructions at #14, below.

13. If I don’t exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue the Defendants for the legal claims in this Class Action. You must opt out from this lawsuit if you want to start your own lawsuit regarding the advertising claims alleged in this Class Action as they may relate to your purchase of a specific COLD-FX® product.

The deadline to opt out/exclude yourself is October 30, 2023.

14. How do I ask to be excluded and “opt out”?

To exclude yourself, you must send a completed, signed copy of the Opt-Out (Exclusion Request) Form to Class Counsel by e-mail or other written request. The Opt-Out (Exclusion Request) Form is available for download at <https://class-actions.tyrllp.com/cold-fx-class-action.html> under the “Downloads” heading. You may also send a letter or email to Class Counsel clearly stating that you are opting out of the *Drynan v. Bausch* Cold-FX® Class Action and providing your name, address, the type of Cold-FX® product(s) you purchased, and the date(s) of purchase.

If you mail your Opt-Out (Exclusion Request) Form or letter, it must be postmarked by October 30, 2023. If you email your Opt-Out (Exclusion Request) Form or otherwise opt out by email, it must be time-stamped as having been sent by October 30, 2023 at 5 p.m. PST.

Opt-Out (Exclusion Request) Forms are to be sent to:

Cold-FX® Class Action
Tyr LLP
488 Wellington Street West, Suite 300
Toronto, ON M5V 1E3

Deadline for Opting Out:

No Opt-Out (Exclusion Request) Form or request to opt out will be accepted after 5 p.m. PST on October 30, 2023. If you have not excluded yourself from the action by that date and time, you will automatically be included in the Class Action as a Class Member, and you may not exclude yourself thereafter.

THE LAWYERS IN THIS CASE

15. Who is Class Counsel?

Class Counsel is Tyr LLP of Toronto, Ontario. Class Counsel are the Representative Plaintiff's (Robert Drynan) lawyers, and are prosecuting the action for the benefit of the Class as a whole. More information about Tyr LLP, their practices, and their lawyers' experience is available at www.tyrlp.com

16. How will Class Counsel be paid?

Class Counsel have been retained by the Plaintiff on a contingency fee basis. If the Class gets awarded money through a judgment or settlement, Class Counsel will ask the Court to approve payment of a portion of their fees and expenses, which will be deducted from the amount to be paid to the Class. The fee request will not exceed 33.3% of the net proceeds, as further explained below. You will not have to pay any of these fees and expenses personally out-of-pocket.

The Representative Plaintiff is also receiving financial support for this Class Action from a third-party litigation funder, Harbour Fund IV, L.P. ("**Harbour**"). The funding agreement entered into between the Representative Plaintiff, Class Counsel, and Harbour has been approved by the Court, and the Court's Reasons for Decision regarding funding approval can be accessed at <https://class-actions.tyrlp.com/cold-fx-class-action.html> under the "Downloads" heading.

Harbour is paying for the disbursements incurred to prosecute this case (such as expert fees and examiner expenses) and 80% of Class Counsel's legal fees. Harbour has also agreed to indemnify the Representative Plaintiff for any adverse court cost awards issued against him. In exchange for its support, Harbour will be entitled to be paid 25% of the net proceeds of any judgment or settlement in favour of the Class and to be repaid the funds it has invested in the case. However, Harbour's total recovery is capped such that payment to Harbour of 25% of the net proceeds and the reimbursement of 80% of Class Counsel's legal fees (less any legal fees recovered from the defendants) shall not exceed in the aggregate 33.3% of the net proceeds of the Class Action.

At the end of the Class Action, if the amount recovered by Harbour described above is less than 33.3% of the net proceeds of the Class Action, Class Counsel will be entitled to request that the Court approve a "top-up" of its legal fees, subject however to the overall cap of 33.3% of the net proceeds.

The fairness of the ultimate recovery by Class Counsel and Harbour, respectively, is subject to review by the Court at the end of the Class Action.

THE TRIAL

17. How and when will the Court decide who is right?

Unless the action is resolved by a settlement, the Plaintiff will have to prove his claims at a common issues trial. During the trial, a judge will hear all of the evidence against the Defendants, as well as all of the Defendants' evidence about why they should not be held responsible for the claims made against them. The judge will then decide the common issues set out above at #7.

The common issues trial will likely not proceed for a number of years. Before then, the parties will go through the usual steps in the litigation process, including an exchange of relevant documents and examinations for discovery (depositions). Expert witnesses will be retained, and there will be exchanges of their reports. Given the backlog in the civil courts, if there is no settlement, it could be several

years before the common issues trial is heard and decided by the Court.

18. Do I have to come to the trial?

No. You do not need to attend the common issues trial. Class Counsel will present the case for the Plaintiff. You are welcome to watch any part of the trial, or any court hearings before the trial, but you don't have to. If you wish to participate as a witness at the common issues trial, you should contact Class Counsel, and they will discuss that option with you.

19. Will I get money after the trial?

If the Plaintiff succeeds at the common issues trial or if a settlement is approved by the Court, you will be notified about how to ask for a share of the proceeds. If the Court is not able to assess all of the Class's losses, there may then be a separate process to determine the amount of damages to which each Class Member may be entitled, in which case you will get a notice that explains what you need to do to prove your entitlement to compensation.

If the Plaintiff does not succeed at the common issues trial, Class Members will not receive compensation.

GETTING MORE INFORMATION

20. How do I get more information about the Class Action?

This notice summarizes certain aspects of the Class Action. More details are in the Statement of Claim, the Certification Reasons, and the Certification Order, all of which can be viewed at <https://class-actions.tyrrlp.com/cold-fx-class-action.html> under the "Downloads" tab.

You may send questions to Class Counsel at:

Tyr LLP
488 Wellington Street West, Suite 300-302
Toronto, ON M5V 1E3
Tel: 416.477.5525
Email: info@tyrrlp.com

You may also fill in the inquiry form on Class Counsel's website at <https://class-actions.tyrrlp.com/cold-fx-class-action.html>.

This notice was approved by the Ontario Superior Court of Justice. It contains a summary of certain terms of the Certification Order. If there is any conflict between the provisions of this notice and the terms of the Certification Order, the Certification Order prevails.