

## Have you purchased Cold-FX® products since January 1, 2017?

Please read this notice about a certified class action.

### Who is included in the Class?

A class action lawsuit has been certified against Bausch Heath Canada Inc. and Valeant Canada LP (together, the “**Defendants**”) referred to as *Robert Drynan v. Bausch Health Companies Inc. et al*, Court File No. CV-19-632601-00CP.

You are a member of the class of individuals who will be represented in the class action (a “**Class Member**”) 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) (the **Cold-FX® Products**). Bausch + Lomb now distributes the COLD-FX® Products in Canada.

If you fit this Class Member definition, you are automatically included in the class action unless you take steps to exclude yourself by opting out (see below). If you do nothing, you will be bound by any decisions of the Court in relation to this class action, whether favourable or not.

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”).

### What is this class action about?

This class action alleges that the Defendants have made false, misleading, deceptive, and 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 Defendants deny that they have made any false, misleading, deceptive, or unconscionable advertising claims in respect of the marketing or distribution of the Cold-FX® Products, or breached any statute, and are defending the certified class action on the merits. The decision to certify the class action is procedural only and not a decision on the merits. The allegations against the Defendants have not been proven to date and will be determined on their merits at a future trial.

### What compensation is claimed?

This class action seeks reimbursement (in full or in part) for the amounts consumers paid to purchase the Cold-FX® Products or a return to consumers of the profits the Defendants have gained in selling the Cold-FX® Products, for the period between January 1, 2017 and September 28, 2023, as well as punitive damages. If the Plaintiff succeeds at 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 Plaintiff succeeds at the trial of the common issues, and 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 is entitled, in which case you will get a notice that explains what you need to do to prove your entitlement to compensation.

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.

### **What do I need to do now?**

If you are a Class Member and you want to participate in the lawsuit, then you do not have to do anything at this stage. The action will now be progressing through the necessary stages to get ready for the common issues trial. The trial will not take place for some time. Please ensure that Class Counsel have your up-to-date contact information, so they can provide you with updates as the case progresses. You can also check <https://class-actions.tyrlp.com/cold-fx-class-action.html> from time to time for updates on the progress of the action.

### **Do I have to pay anything?**

There is **NO PAYMENT** necessary to participate in the class action. Class Counsel will be paid only if this action succeeds at trial or if there is a settlement.

The Representative Plaintiff has entered into a retainer agreement that provides for a contingency legal fee of up to 33.3% of the total amount recovered (net of certain disbursements and inclusive of payment to the third-party funder, as explained below). But no legal fees are payable unless a settlement or a judgment is achieved for the Class, in which case fees will be payable from the funds recovered. The exact amount of the recoverable legal fees then has to be approved by the Court.

The Representative Plaintiff is also receiving financial support for this Class Action from a third-party litigation funder, Harbour Fund IV, L.P. (“**Harbour**”). Harbour is contributing a portion of the costs of prosecuting the Class Action in exchange for 25% of the net proceeds recovered and reimbursement of amounts paid. The funding agreement entered into between Robert Drynan (the “**Representative Plaintiff**”), Class Counsel, and Harbour has been approved by the Court. The fairness of the ultimate recovery by Class Counsel and Harbour, respectively, is subject to review and approval by the Court at the end of the Class Action.

### **I do not want to be involved in this class action. What do I need to do?**

If you do not want to participate in this class action, and you do not wish to be bound by any future court orders involving this matter, then you must opt out of, and thereby exclude yourself from, the class action. If you opt out, you will not be able to change your mind and opt back in at a later time, and you will not be able to participate in any future settlement or judgment.

To opt out, you must deliver a completed Opt-Out (Exclusion Request) Form by e-mail or other written request no later than 5:00 p.m. PST on October 30, 2023 to:

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

Opt-Out (Exclusion Request) Forms are available at <https://class-actions.tyrlp.com/cold-fx-class-action.html>.

If you opt out, you will not be eligible for any of the benefits of any judgment or settlement if the action is successful, nor will you be bound by any judgment or court order.

### **What if I have more questions?**

For more information about the class action, please go to:

<https://class-actions.tyrllp.com/cold-fx-class-action.html>

Or contact Class Counsel at:

**Tyr LLP**

488 Wellington Street West, Suite 300-302

Toronto, ON M5V 1E3

Tel: 416.477.5525

Email: [info@tyrllp.com](mailto:info@tyrllp.com)

This notice was approved by the Ontario Superior Court of Justice. It is a summary of the terms of the certification order entered into Court. If there is a conflict between the provisions of this notice and the terms of the certification order, the certification order prevails.