

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Garo Madenlian, et al. v. Flax USA, Inc.

Civil Litigation No. SACV13-01748 JVS (JPRx)

If you purchased flax milk sold in the United States by Flax USA, Inc., then you may be entitled to compensation.

IMPORTANT

PLEASE READ THIS NOTICE CAREFULLY

THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION LAWSUIT AND, IF YOU ARE A SETTLEMENT CLASS MEMBER, CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO MAKE A CLAIM UNDER THE SETTLEMENT OR TO OPT OUT OF OR OBJECT TO THE SETTLEMENT¹

(A federal court has authorized this Notice. It is not a solicitation from a lawyer.)

Your legal rights are affected whether or not you act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM COMPLETED ONLINE, BY FACSIMILE OR BY MAIL POSTMARKED BY APRIL 28, 2015	The only way to receive a cash payment.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY DECEMBER 29, 2014	Receive no cash payment. This is the only option that allows you to pursue claims alleged in the Litigation against the Defendant and/or any of the Released Persons by filing your own lawsuit at your own expense.
OBJECT TO THE SETTLEMENT BY DECEMBER 29, 2014, OR IF OBJECTION IS SOLELY TO THE ATTORNEYS' FEES OR COSTS AND/OR INCENTIVE AWARD, BY FEBRUARY 2, 2015	If you do not like the Settlement, you may submit your written objections by the December 29, 2014 deadline. If your objection is solely to the Attorneys' Fees and Costs and/or Incentive Award, you may submit your written objections by the February 2, 2015 deadline. You must remain in the Settlement Class to make any objection.
ATTEND A HEARING ON FEBRUARY 23, 2015 at 1:30 p.m.	Ask to speak to the Court about the fairness of the Settlement (if you filed a request to do so by February 2, 2015). <i>(The location, date and time of the Fairness Hearing is subject to change by Court Order. See Question No. 12 below.)</i>
DO NOTHING	Receive no cash payment and give up your rights to pursue your own lawsuit at your own expense.

Your rights and options, **and the deadlines to exercise them**, are explained in this Notice.

1. What is this Notice and why should I read it?

This Notice is to inform you of the settlement of a class action lawsuit entitled *Garo Madenlian, et al. v. Flax USA, Inc.* pending before the Hon. James V. Selna in the United States District Court for the Central District of California (the "Court"). The Court has granted preliminary approval of the Settlement and has set a final hearing to take place on **February 23, 2015 at 1:30 p.m.** in the Ronald Reagan Federal Building and U.S. Courthouse, located at 411 West Fourth Street, Courtroom 827-A, Santa Ana, CA 92701-4516, to determine if the Settlement is fair, reasonable and adequate, and to consider the request by Class Counsel for Attorneys' Fees and Costs and an Incentive Award for the Class Representative. This Notice describes the Settlement. Your rights and options – **and the deadlines to exercise them** – are explained in this Notice. This Notice and the Stipulation of Settlement ("Settlement Agreement") in its entirety are posted on the Settlement Website, www.FlaxMilkSettlement.com, and are also available from the Claims Administrator. Other documents available on the Settlement Website

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation of Settlement available on the Settlement Website at www.FlaxMilkSettlement.com.

include the First Amended Complaint and the papers that are or will be filed with the Court requesting preliminary and final approval of the Settlement described in this Notice.

2. What is this Litigation about?

Defendant Flax USA sold three flavors of aseptic (*i.e.*, shelf-stable, non-refrigerated) flax milk in 32-oz size cartons: unsweetened, vanilla and original flavors (the “Products”). The Products contain, as identified on the carton labels, ingredients including: Tricalcium Phosphate, Xanthan Gum, Vitamin A Palmitate, Vitamin D2, and Vitamin B12 (the “Challenged Ingredients”).

The named Plaintiff filed this lawsuit alleging that he and others bought Defendant’s flax milk Products based, at least in part, on the following allegedly misleading statement printed on the cartons: “All Natural Dairy Free Beverage*.” Plaintiff alleges that, based on this statement, he and others believed the Products were “All Natural” and contained no artificial or synthetic ingredients, and had they known that the Products contained the Challenged Ingredients (which they contend are artificial and/or synthetic), they would not have purchased the Products. The named Plaintiff sued to recover a refund of the purchase price and other alleged damages, as well as attorneys’ fees and costs.

Defendant denies all allegations of wrongdoing and liability. Defendant contends that the statements “All Natural Dairy Free Beverage* / *Added Vitamins & Minerals,” read in combination, do not represent that the added vitamins and minerals are “all natural.” Defendant disputes that the inclusion of the Challenged Ingredients renders the Products’ carton false or misleading to reasonable consumers.

In light of the expense and uncertainty of litigation, Plaintiff and Defendant have decided to settle the Litigation by entering into the Settlement Agreement. The purchasers of flax milk on whose behalf the Settlement has been made are called “Settlement Class Members.” The individuals who make up the Settlement Class (*i.e.*, the Settlement Class Members) are described in Question No. 4 below.

The Settlement has already been preliminarily approved by the Court. Nevertheless, because the settlement of a class action determines the rights of all members of the proposed class, the Court must give final approval to the Settlement before it can take effect.

The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this Notice and the opportunity to exclude themselves from the Settlement Class, voice their opposition, if any, to final approval of the Settlement, and explain how those who do not exclude themselves from the Settlement Class may submit a Claim Form to obtain the relief offered by the Settlement. If the Settlement is not given final approval by the Court or does not otherwise become final, the Settlement will be void and the Litigation will continue as if there had been no Settlement and no certification of the Settlement Class.

3. Why is there a Settlement?

Although the Court has not yet resolved the merits of the lawsuit, or determined whether the Plaintiff’s or Defendant’s contentions are true, the Parties have agreed to settle the Litigation. Defendant denies all allegations of wrongdoing and liability and asserts that its conduct was lawful. Defendant is settling to avoid the substantial cost, inconvenience and disruption of litigation. Plaintiff and Class Counsel believe that the Settlement is in the best interests of the Settlement Class because it provides a recovery for Settlement Class Members while avoiding the substantial risk, expense and delay of pursuing the case through trial and any potential appeals.

4. Who is included in the Settlement?

The class covered by the Settlement (the “Settlement Class”) is defined as follows: all persons in the United States who purchased any of the Products during the Settlement Class Period (which is from November 5, 2009, to September 22, 2014). Excluded from the Class are: (a) Defendant’s employees, officers and directors; (b) Class Counsel and its employees, officers and directors; (c) Defendant’s Counsel and its partners, employees, officers and directors; (d) Persons who purchased the Products for the intended or actual use of distribution, re-sale or donation; (e) Persons who timely and properly exclude themselves from the Settlement Class; and (f) the Court, the Court’s immediate family, and Court staff.

5. What Milk Products are included in the Settlement?

The Settlement is limited to Defendant’s three flavors of aseptic (*i.e.*, shelf-stable, non-refrigerated) flax milk sold in 32-oz size cartons: unsweetened, vanilla and original flavors.

6. What does the Settlement provide?

a. Cash Payments and Prospective Relief.

The Parties have agreed to the certification of this case as a class action solely for the purposes of Settlement. Defendant agrees not to use the phrase “all natural” on any flax milk packaging printed in the future. The parties also agreed to create a \$260,000 Settlement Fund to be funded by Defendant, Flax USA, Inc. The Settlement Fund will be used to pay Settlement Class Members who submit Eligible Claims and also to pay all costs associated with administering the claims process.

The settlement provides for two different levels of potential payment to Settlement Class Members:

Lower level: Without identifying their retailer or the retailer’s location, Settlement Class Members may seek reimbursement of \$2.50 per carton for every Product they purchased during the Settlement Class Period (up to a maximum of 10 cartons per claimant or address).

Higher level: Settlement Class Members may seek reimbursement of \$3.25 per carton for every Product they purchased during the Settlement Class Period (up to a maximum of 10 cartons per claimant or address) for which they indicate on the Claim Form both (1) the name of the retailer where they purchased the Product and (2) the city and state where that retailer is located.

If after payment of all Administrative Costs the total amount of Eligible Claims exceeds the Settlement Fund, then each Claimant’s award shall be proportionately reduced (so that the total paid to satisfy Eligible Claims does not exceed the portion of the Settlement Fund remaining after payment of all Administrative Costs).

b. Process.

To be eligible for a Cash Payment pursuant to the Settlement, a Settlement Class Member must submit one (1) valid, timely and sworn Claim Form to the Claims Administrator that: (i) is postmarked (or received, if submitted via facsimile or online) by **April 28, 2015**, (ii) contains all of the required information set forth in the Claim Form, and (iii) is signed (physically or electronically) by the Settlement Class Member submitting the Claim Form.

You can file your completed Claim Form online or download a Claim Form by going to www.FlaxMilkSettlement.com and following the instructions provided on the website. You can also obtain a Claim Form by writing to the Claims Administrator at Flax Milk Litigation Settlement, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060 or by calling toll free 888-283-7973. You can only and need only submit one (1) Claim Form regardless of the number of Products that you purchased.

7. Who represents the Settlement Class and who represents Defendant Flax USA, Inc.?

Class Representatives. For purposes of the Settlement, the Court has appointed named Plaintiff Garo Madenlian to serve as the Class Representative.

Class Counsel. For purposes of the Settlement, the Court has approved the appointment of the following counsel for the Settlement Class:

Chant Yedalian, Esq.
CHANT & COMPANY
A Professional Law Corporation
1010 N. Central Ave.
Glendale, CA 91202
Phone: 877.574.7100
Fax: 877.574.9411

You will not be charged for the services of Class Counsel. If you want to be represented by your own counsel, you may hire a lawyer at your own expense.

Defendant’s Counsel. Defendant Flax USA, Inc. is represented by the following counsel:

Steven J. Goon, Esq.
Karen E. Walter, Esq.
RUTAN & TUCKER, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Phone: 714.641.5100
Fax: 714.546.9035

8. What are the amounts of Class Counsel's Fees, Expenses and Named Plaintiff Service Awards?

To date, Class Counsel have not been paid any attorneys' fees. In compensation for some of their time and risk in prosecuting the litigation on a wholly contingent fee basis, Class Counsel will request, as part of the final approval of this Settlement, that the Court approve a payment of up to \$70,000 for fees and reimbursement of actual out-of-pocket expenses ("Attorneys' Fees and Costs"). Class Counsel will also ask the Court to approve an Incentive Award of up to \$5,000 to the Named Plaintiff, Garo Madenlian, for the time and effort he contributed to the prosecution of the Litigation. Defendant has agreed not to object to the applications for Attorneys' Fees and Costs and the Incentive Award. Payment of Attorneys' Fees and Costs and the Incentive Award will not come from the Settlement Fund but will be paid for separately by Defendant.

9. What is the effect of final approval of the Settlement?

If the Court approves the proposed Settlement, the Litigation will be dismissed, and Defendant will provide the Cash Award described above to the Settlement Class Members who have not excluded themselves from the Settlement Class and who have submitted a valid and timely Claim Form. After the Litigation is dismissed, no Settlement Class Member who did not request exclusion will be able to file his or her own lawsuit for recovery for any of the Released Claims. If you want to bring your own lawsuit, you must exclude yourself from this Settlement.

10. What are my options?

As a Settlement Class Member, you have the following options:

a. Participate In The Settlement.

If the Court approves the Settlement, you will automatically become eligible to receive the benefits described above. If you would like to claim a Cash Award, you must timely complete and submit a Claim Form to the Claims Administrator by **April 28, 2015**.

b. Exclude Yourself From The Settlement ("Opt-Out").

If you would like to be excluded from the Settlement Class, you must send a written exclusion request to the Claims Administrator by U.S. Mail, postage prepaid, postmarked no later than **December 29, 2014** to the following address: Flax Milk Litigation Settlement, c/o Gilardi & Co. LLC, P.O. Box 6002, Larkspur, CA 94977-6002. A request to exclude yourself from the Settlement Class must include (1) your name, (2) address, (3) telephone number, (4) the Product(s) that you purchased which make you a Class member, (5) the title and case number of the Litigation, and (6) a signed statement indicating your desire to be excluded from the Settlement Class. Exclusions, or opt outs, shall be allowed on an individual basis only, and "mass" or "class" opt outs are not allowed. If you do not timely submit an Opt-Out request including all of the above information, you will be bound by the Settlement and all of your claims for any of the Released Claims will be released. If you validly and timely request exclusion from the Settlement Class, you will not be bound by the Final Order and Judgment entered in this Litigation. Excluding yourself means you cannot receive any of the Settlement benefits or comment upon the Settlement, but you will be able to file a lawsuit on your own behalf. If you have any questions concerning these procedures, please call or write the Claims Administrator or Class Counsel.

c. File Written Objections to the Settlement.

If you are a member of the Settlement Class and you do not exclude yourself from the Settlement, you may object to the terms of the Settlement. If you object and the Settlement is approved, you will be barred from bringing your own lawsuit and you will be bound by the Final Order and Judgment entered in this Litigation. You may, but need not, enter an appearance through counsel of your choice. If you do retain counsel, however, you will be responsible for your own counsel's fees and costs.

If you object to the Settlement, you or your counsel must, on or before **December 29, 2014**, file with the Court and serve on Class Counsel and Defendant's Counsel at the above addresses a written objection. To be valid, the written objection must contain all of the following:

- a. A reference at the beginning to this case, Madenlian, et al. v. Flax USA, Inc., Case No. 8:13-cv-01748-JVS-JPR (C.D. Cal.);
- b. The objector's full name, address, and telephone number;
- c. A written statement of all grounds for the objection, accompanied by any legal support for such objection;

- d. Copies of any papers, briefs, or other documents upon which the objection is based;
- e. A list of all persons who will be called to testify in support of the objection; and
- f. A statement of whether the objector intends to appear at the Settlement Hearing. If the objector intends to appear at the Settlement Hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the Settlement Hearing.

Settlement Class Members who do not timely make their objections in accordance with the procedures set forth above waive all objections and may not be heard at the Settlement Hearing or have the right to appeal approval of the Settlement.

d. File Written Objections to the Attorneys’ Fees And Costs or Incentive Award.

If you are a member of the Settlement Class and you do not exclude yourself from the Settlement, you may object to Class Counsel’s application for Attorneys’ Fees and Costs or for an Incentive Award to the Class Representative, the named Plaintiff. To object, you may, but need not, enter an appearance through counsel of your choice. If you do retain counsel, however, you will be responsible for your own counsel’s fees and costs.

If you object to the Class Counsel’s application for Attorneys’ Fees and Costs or for an Incentive Award, you or your counsel must, on or before **February 2, 2015**, file with the Court and serve on Class Counsel and Defendant’s Counsel at the above addresses a written objection. To be valid, the written objection must contain all of the following:

- a. A reference at the beginning to this case, Madenlian, et al. v. Flax USA, Inc., Case No. 8:13-cv-01748-JVS-JPR (C.D. Cal.);
- b. The objector’s full name, address, and telephone number;
- c. A written statement of all grounds for the objection, accompanied by any legal support for such objection;
- d. Copies of any papers, briefs, or other documents upon which the objection is based;
- e. A list of all persons who will be called to testify in support of the objection; and
- f. A statement of whether the objector intends to appear at the Settlement Hearing. If the objector intends to appear at the Settlement Hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the Settlement Hearing.

Settlement Class Members who do not timely make their objections in accordance with the procedures set forth above waive all objections and may not be heard at the Settlement Hearing or have the right to appeal approval of the Settlement.

e. Do Nothing.

If you are a member of the Settlement Class and do nothing, you will not receive a Cash Award from the Settlement. You must submit a Claim Form to obtain money under the Settlement. Even if you do nothing, you will be bound by the release provisions contained in the Settlement Agreement.

11. How does the Settlement affect my rights?

If you are a member of the Settlement Class and you do not exclude yourself from the Settlement, you will be legally bound by all orders and judgments of the Court and to the releases of the claims in the Settlement Agreement. This means that in exchange for being a Settlement Class Member and being eligible for the benefits of the Settlement, you will not be able to sue, continue to sue, or be part of any other lawsuit against Defendant Flax USA, Inc. and/or any of the Released Persons that involves the same legal claims as those resolved through this Settlement.

You will not be responsible for any out-of-pocket costs or attorneys’ fees concerning this case if you stay in the Settlement Class.

Staying in the Settlement Class also means that you agree to the following releases of claims, which describes exactly the legal claims that you give up:

RELEASES: As of the Effective Date, and except as to such rights or claims created by the settlement, Plaintiffs and each Settlement Class Member, and each of their heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall be deemed to have, and by

operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons. In connection with the Released Claims (defined below, including the time period therein), each Settlement Class Member shall be deemed to have waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code § 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

“Released Claims” means any and all actions, claims, demands, rights, suits, damages, costs, expenses, penalties, attorneys’ fees and causes of action of whatever kind or nature, known or unknown, suspected or unsuspected, in law or equity, that arose during the Settlement Class Period and arise, in any manner whatsoever, out of any facts alleged by Plaintiffs in the Litigation. The Released Claims include, without limiting the foregoing definition, all claims asserting any of the Products or Products’ ingredients are not “natural,” and all claims challenging the truth or accuracy of the statement “All Natural Dairy Free Beverage*” in conjunction with the statement “*Added Vitamins & Minerals.” The Parties acknowledge and agree that personal injury claims are not part of any of the facts alleged by Plaintiffs in the Litigation and personal injury claims are not included within the Released Claims.

“Released Persons” means and includes Defendant, its owners, subsidiaries, affiliates, joint-ventures, partners, members, divisions, distributors, wholesalers, retailers, re-sellers, licensors, suppliers, officers, directors, employees, shareholders, agents, attorneys, administrators, successors, predecessors, insurers, spokespersons, public relations firms, advertising agencies, co-packers, packagers and assigns of all such persons or entities.

“Settlement Class Period” means the period from November 5, 2009, up to and including September 22, 2014.

12. When and where will the Court hold a hearing on the fairness of the Settlement?

A Settlement Hearing will be held before the Hon. James V. Selna on **February 23, 2015 at 1:30 p.m.** at the Ronald Reagan Federal Building and U.S. Courthouse, located at 411 West Fourth Street, Courtroom 827-A, Santa Ana, CA 92701-4516. At the Settlement Hearing, the Court will decide whether the proposed Settlement is fair, reasonable, and adequate and should be approved and, if so, whether to approve the Attorneys’ Fees and Costs and Incentive Awards. The time, date and location of this Settlement Hearing may be changed by the Court without further notice to you. If you plan to attend the hearing, you should confirm its time, date and location. Any updates or changes on the time, date or location of this hearing will be posted on the Settlement Website, www.FlaxMilkSettlement.com.

13. Do I have to come to the Settlement Hearing?

No. Class Counsel and Defendant’s Counsel will respond to any questions the Court may have. However, you or your own counsel may attend the Settlement Hearing at your own expense. The Court, however, has the right to require you or your counsel to attend the Settlement Hearing. If the Court requires you or your counsel’s attendance at the Settlement Hearing, then you and/or your attorney will be notified by the Court or by Class Counsel.

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the Settlement Hearing concerning the proposed Settlement or the application of Class Counsel for Attorneys’ Fees and Costs or an Incentive Award by following the instructions in Question No. 10(c) or (d) above.

14. How can I get additional information?

For additional information, you may visit the Settlement Website. You may also call or write (1) the Claims Administrator at **Flax Milk Litigation Settlement, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060, telephone 1-888-283-7973**, or (2) Class Counsel at the address and telephone number indicated in response to Question No. 7 above. The Claims Administrator is not an affiliate of any party to the Litigation.