

NOTICE OF CLASS ACTION SETTLEMENT

Andrade-Heymsfield v. NextFoods, Inc., No. 21-cv-1446-BTM-MSB (S.D. Cal.)

*The United States District Court has authorized this notice.
This is not a solicitation from a lawyer.*

You may be a Class Member entitled to a Cash Award if you purchased any flavor of GoodBelly Probiotic JuiceDrink sold in a 1 Quart (32oz.) container between August 13, 2017 and November 27, 2023

THIS NOTICE CONCERNS YOUR LEGAL RIGHTS, WHICH ARE AFFECTED WHETHER YOU ACT OR DON'T. PLEASE READ IT CAREFULLY.

Summary of Your Legal Rights & Options	
Submit a Claim Form	Obtain compensation from the Settlement. The only way to get a monetary payment. Claim Forms must be submitted online at the Settlement Website, www. GoodBellySettlement.com , or mailed to the Class Administrator by January 29, 2024.
Ask to be Excluded	Opt out of the Settlement, get no benefits from it, and retain your claims. You may ask to be excluded from the Settlement, in which case your individual claims will not be released if the Settlement is approved by the Court. But if you ask to be excluded, you cannot obtain compensation from the Settlement. Opt-Out Forms must be submitted online at the Settlement Website, www.GoodBellySettlement.com , or mailed to the Class Administrator by January 29, 2024.
Object	Tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate. You may mail file with the Clerk of Court a written objection no later than January 29, 2024, and/or appear at the Final Approval Hearing to tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate. If you object, you may still submit a claim form and be eligible to receive settlement benefits if the Settlement becomes final.
Do Nothing	Stay in the Settlement, await the outcome, give up certain rights. By doing nothing, you will get no compensation from the Settlement, and give up any right you may have to sue the Defendant separately about the same legal claims in this lawsuit.

WHAT THIS NOTICE CONTAINS

Basic Information.....	4
1. Why is there a Notice?	4
2. What is this lawsuit about?	4
3. Why is this a class action?	4
4. Why is there a settlement?	4
Who is in the Settlement?.....	4
5. How do I know if I am part of the Settlement?.....	4
6. What if I am still not sure if I am included in the Settlement?	5
What are the Terms of the Settlement?	5
7. What types of relief does the Settlement provide?.....	5
8. What is the Settlement Fund?	5
9. What can I get from the Settlement?.....	5
10. What am I giving up to get a payment?	5
11. How do I make a claim?	6
12. When will I get my Cash Award?.....	6
13. What injunctive relief does the Settlement provide?	6
Excluding Yourself from the Settlement.....	7
14. How do I get out of the Settlement?	7
15. If I don't exclude myself, can I sue Defendant for the same thing later?	7
16. If I exclude myself, can I still get a Settlement payment?	7
Objecting to the Settlement.....	8
17. How do I tell the Court if I do not like the Settlement?.....	8
18. What is the difference between objecting and excluding myself?.....	8
The Lawyers Representing You	9
19. Do I have a lawyer in the case?.....	9
20. How will the lawyers be paid?.....	9
Notice and Administration Expenses	9
21. How will notice and administration expenses be paid?	9
The Court's Final Approval Hearing.....	9
22. When and where will the Court decide whether to approve the Settlement?	9

23. Do I have to come to the hearing? 9

24. May I speak at the hearing? 10

If You Do Nothing..... 10

25. What happens if I do nothing at all? 10

Getting More Information 11

26. How can I get more information? 11

Basic Information

1. Why is there a Notice?

You have the right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement.

The court in charge of this case is the United States District Court for the Southern District of California (the “Court”), and the case is called *Andrade-Heymsfield v. NextFoods, Inc.*, No. 21-cv-1446-BTM-MSB (S.D. Cal.). The case is assigned to the Honorable Barry Ted Moskowitz. The individuals who sued are called the Class Representatives. Those persons are Evlyn Andrade-Heymsfield and Valerie Gates (who filed a separate action titled *Gates v. NextFoods, Inc.*, No. 23-cv-530-FJS (N.D.N.Y.)). The company they sued, NextFoods, Inc. (“NextFoods”), is called the Defendant.

2. What is this lawsuit about?

The lawsuit alleges NextFoods violated certain laws in labeling GoodBelly Probiotic JuiceDrinks that contain sugar with certain “health and wellness” claims. NextFoods denies any and all wrongdoing and has asserted various defenses that it believes are meritorious.

3. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case, Evlyn Andrade-Heymsfield and Valerie Gates), sue on behalf of people who have similar claims, all of whom are a class, or class members. Bringing a case as a class action allows the adjudication of many similar claims that might be economically too small to bring in individual actions. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a settlement?

NextFoods denies that the labeling of GoodBelly Probiotic JuiceDrinks violated any law and denies that it did anything wrong. Both sides have agreed to a Settlement, which will allow both sides to avoid the risk and cost of further litigation. The Court has not decided in favor of the Class or NextFoods. The Class Representatives and their attorneys think the Settlement is best for the Class.

Who is in the Settlement?

5. How do I know if I am part of the Settlement?

The Class includes all persons in the United States who, between August 13, 2017 and November 27, 2023 (the “Class Period”), purchased in the United States, for household use and not for resale or distribution, one of the Class Products. The Class Products include all flavors of GoodBelly Probiotic JuiceDrinks sold in 1 Quart (32 oz.) containers during the Class Period.

6. What if I am still not sure if I am included in the Settlement?

If you are not sure whether you are a Class Member, or have any other questions about the Settlement, you should visit the Settlement Website, www.GoodBellySettlement.com, or call the Settlement Administrator toll-free at 1-844-527-6610. Do not contact NextFoods or the Court to inquire regarding the Settlement.

What are the Terms of the Settlement?

7. What types of relief does the Settlement provide?

The Settlement provides both monetary and injunctive relief to all Class Members. Class Members who make claims will be entitled to monetary compensation, on a *pro rata* basis, depending on how many Class Products they purchased during the Class Period. Although NextFoods denies its labeling violated any law, NextFoods has also agreed to revise the Class Products' labeling to address the Class's claims, as described further in response to Question 13 below.

8. What is the Settlement Fund?

As part of the Settlement, NextFoods has agreed to establish a \$1,250,000, non-reversionary Settlement Fund to pay all Settlement Expenses, including the costs of Class Notice and Administration, attorneys' fees and costs, service awards for the Class Representatives, and Cash Awards for Class Members who make claims.

9. What can I get from the Settlement?

Class Members who timely submit a valid approved claim are entitled to compensation of \$1 per Class Product purchased during the Class Period, with a cap of 5 Products without proof of purchase (and no cap with proof of purchase of more than 5 Products during the Class Period). The actual amount of the Cash Award any individual claimant receives will depend on both the number of claims made.

10. What am I giving up to get a payment?

If you are a Class Member, unless you exclude yourself from the Settlement, you cannot sue NextFoods, continue to sue, or be part of any other lawsuit against NextFoods about the claims released in this Settlement. It also means that all decisions by the Court will bind you. The Released Claims and Released NextFoods Persons are defined in the Settlement Agreement and describe the legal claims that you give up (or "release") if you stay in the Settlement. The Released Claims relate to the Class Products and issues raised in the lawsuit. The Settlement Agreement is available on the Settlement Website, www.GoodBellySettlement.com.

11. How do I make a claim?

Class Members wishing to make a claim must either (a) visit the Settlement Website, [www. GoodBellySettlement.com](http://www.GoodBellySettlement.com), and submit a claim form online, or (b) print, fill out, and mail the claim form to the Class Administrator at the following address:

GoodBelly Settlement Administrator
P.O. Box 108
Baton Rouge, LA 70821

The deadline for submitting a claim is January 29, 2024.

12. When will I get my Cash Award?

Cash Award payments will be made to Class Members who make valid and timely claims after the Court grants “final approval” to the Settlement, and after any appeals are resolved. If the Court approves the Settlement, there may be appeals. It is always uncertain when these appeals will be resolved, and resolving them can take time.

13. What injunctive relief does the Settlement provide?

Although NextFoods denies that its labeling was unlawful, as part of the Settlement, NextFoods has agreed that, beginning 6 months after the entry of a Final Approval Order and for a period of at least 36 months thereafter, it will make the following labeling changes to all flavors of GoodBelly Probiotic JuiceDrinks sold in 1 Quart (32 oz.) containers:

- NextFoods agrees to remove the term “GoodHealth” from the label;
- NextFoods agrees that any reference to “overall health” or “overall wellness” shall be directly tied to digestive health (for example, rather than stating “may help promote healthy digestion and overall wellness,” stating “may help promote healthy digestion, which in turn can promote overall wellness”); and
- NextFoods agrees that any time “overall health” or “overall wellness” is used on a label, it will include an asterisk to language on the label, which shall read:

[LP299v] can be found naturally in the intestinal system, and may help promote healthy digestion when consumed daily as part of a nutritious diet and healthy lifestyle. GoodBelly is a food product and not a treatment or cure for any medical disorder or disease. If you have any concerns about your digestive system, please consult your healthcare professional. See Nutrition Facts Box for sugar content.

Excluding Yourself from the Settlement

14. How do I get out of the Settlement?

If you do not want to be bound by the Settlement, you must request to be excluded from the Settlement. If you request to be excluded, you will retain any individual rights you have against NextFoods and will not be deemed to have individually “released” NextFoods from any of the Released Claims. However, you will **not** be eligible to receive compensation under the Settlement, as described above. You also may not object to the Settlement if you request to be excluded.

To exclude yourself (or “opt-out”) from the Settlement, you must visit the Settlement Website, www.GoodBellySettlement.com, and either complete and submit the Opt-Out Form online, or print, complete, and mail the Opt-Out Form to the Class Administrator at the following address:

GoodBelly Settlement Administrator
P.O. Box 108
Baton Rouge, LA 70821

To be timely, an Opt-Out Form must be submitted online or postmarked on or before January 29, 2024.

15. If I don’t exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue NextFoods for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit to determine whether you must exclude yourself from this Settlement to continue your own lawsuit. If you properly exclude yourself from the Settlement, you shall not be bound by any orders or judgments entered in the Action relating to the Settlement.

16. If I exclude myself, can I still get a Settlement payment?

No. You will not get any money from the Settlement if you exclude yourself. If you exclude yourself from the Settlement, do not submit a Claim Form asking for benefits.

Objecting to the Settlement

17. How do I tell the Court if I do not like the Settlement?

If you are a Class member, you can object to the Settlement if you do not think it is fair, reasonable, or adequate, including Class Counsel's motion for an award of attorneys' fees and costs and expenses, and/or the requested service award payments to the Class Representatives. The Court cannot order a larger settlement or award you more based on your individual circumstances; the Court can only approve or deny the Settlement as it is presented.

If you wish to object, your Objection must contain:

- (a) The name of this Action (*Andrade-Heymfield v. NextFoods, Inc.*, No. 21-cv-1446-BTM-MSB (S.D. Cal.)), and a statement that the document is an objection;
- (b) Your full name, address, and telephone number or, if objecting through counsel, your lawyer's name, address, and telephone number;
- (c) A statement of the Class Product(s) you bought during the Class Period;
- (d) A clear and concise statement of your objection, as well as any facts and law supporting the objection; and
- (e) You and/or your attorney's signature.

To be considered by the Court, your objection must, by January 29, 2024, be sent to and filed with the Clerk of the U.S. District Court for the Southern District of California, 333 W. Broadway, San Diego, California 92101.

If you do not comply with these procedures and the deadline for objections, you may waive your opportunity to have your Objection considered at the Final Approval Hearing or otherwise to contest the approval of the Settlement or to appeal from any orders or judgments entered by the Court in connection with the proposed Settlement. You will still be eligible to receive settlement benefits if the Settlement becomes final, even if you object to the Settlement, if you submitted a claim.

Objecting Class members may appear at the Final Approval Hearing but are not required to do so. Class Members that wish to appear, are requested, but not required to file with the Court in advance of the Hearing, a Notice of Intent to Appear.

Instructions and requirements for objecting are set forth in the Court's Preliminary Approval Order, which is available on the Class Settlement Website, www.GoodBellySettlement.com.

18. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

The Lawyers Representing You

19. Do I have a lawyer in the case?

Yes. The Court has appointed Fitzgerald Joseph LLP as Class Counsel. The lawyers representing you will be paid, only with the Court's approval, from the Settlement Fund, as explained below in Question 20. If you want to be represented by your own lawyer, you may hire one at your own expense.

20. How will the lawyers be paid?

Class Counsel spent considerable time and effort prosecuting this matter on a purely contingent fee basis, and advanced the expenses of the litigation, in the expectation that they would receive a fee, and have expenses reimbursed, only if there was a benefit created for the Class. Class Counsel will file a motion on or before January 15, 2024 seeking an award of fees in an amount equal to their lodestar (*i.e.*, the number of hours spent on the action multiplied by the lawyers' hourly rates, which must be approved by the Court), which is currently estimated to be approximately \$530,000. Class Counsel will also seek reimbursement of case expenses totaling approximately \$37,000. Finally, Class Counsel will ask the Court for service awards of \$5,000 each for Class Representatives Evlyn Andrade-Heymfield and Valerie Gates.

After Class Counsel's motion for attorneys' fees, expenses, and service awards is filed on or before January 15, 2024, it will be posted on the Settlement Website, www.GoodBellySettlement.com, and you will have an opportunity to review and comment on the motion via an Objection. The Court will then determine the amount of fees, expenses, and service awards, which will be paid from the Settlement Fund.

Notice and Administration Expenses

21. How will notice and administration expenses be paid?

Using the Class Administrator's estimates regarding the Class size and likely claims rate, notice and administration expenses, to be paid from the Settlement Fund, are currently estimated to be \$206,669.

The Court's Final Approval Hearing

22. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing (sometimes called a "fairness hearing") on March 11, 2024, at 3:30 p.m., in the United States Courthouse, 333 West Broadway, San Diego, California 92101. At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and may also consider how much to award to Class Counsel and the Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement.

23. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have, but you may come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. You may also pay your own lawyer to attend, but it is not necessary.

24. May I speak at the hearing?

Yes. You may appear and speak at the Final Approval Hearing. Although it is not required, if you intend to appear and speak, you are requested to mail notice of your intent to appear no later than January 29, 2024, to the same address identified above for objections (see Question 17). Persons who opt out, however, may not appear and be heard.

If You Do Nothing

25. What happens if I do nothing at all?

If you do nothing, you will not get a payment from the Settlement but you will still be bound by the release. Unless you exclude yourself, if the Settlement is approved, you will not be able to start a lawsuit, or be part of any other lawsuit against NextFoods regarding claims based on the same facts as the Released Claims in this case.

Getting More Information

26. How can I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement and in case documents, available at the Settlement Website, www.GoodBellySettlement.com. If you have additional questions, you can visit the Settlement Website or contact the Class Administrator:

By Mail: GoodBelly Settlement Administrator
P.O. Box 108
Baton Rouge, LA 70821

By Email: info@GoodBellySettlement.com

By Phone (Toll Free): 1-844-527-6610

Updates will be posted at the Settlement Website, as information about the Settlement process becomes available.

You are also welcome to contact Class Counsel with any questions:

By Email: jack@fitzgeraldjoseph.com

By Phone: (619) 215-1741

For a more detailed statement of the matters involved in the litigation or the Settlement, you may review the various documents on the Settlement Website, and/or the other documents filed in this case by visiting, during business hours, the Clerk's Office at the United States District Court for the Southern District of California, James M. Carter & Judith N. Keep United States Courthouse, 333 West Broadway, San Diego, California 92101, file: *Andrade-Heymsfield v. NextFoods, Inc.*, No. 21-cv-1446-BTM-MSB, or by accessing the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at www.pacer.gov.

* * *

PLEASE DO NOT TELEPHONE OR ADDRESS ANY QUESTIONS ABOUT THE CASE OR SETTLEMENT TO THE CLERK OF THE COURT OR TO THE JUDGE. THEY ARE NOT PERMITTED TO ANSWER YOUR QUESTIONS. THE COURT EXPRESSES NO VIEW AS TO THE MERITS OF ANY CLAIMS OR DEFENSES ASSERTED BY ANY PARTY TO THE ACTION.