

UNITED STATES DISTRICT COURT, DISTRICT OF NEW HAMPSHIRE

If you purchased FoodState dietary supplements (MegaFoods or Innate Response Formula brands), you can request a payment from a class action settlement.

A court authorized this Notice. It is not a solicitation from a lawyer.

- A class action settlement has been preliminarily approved by the Court in *Holt, et al. v. FoodState, Inc.*, Case No. 1:17-cv-00637-LM (D.N.H.). Your rights may be affected by this proposed settlement. Plaintiffs allege that the labeling, packaging and websites for supplements manufactured by FoodState, Inc. (“FoodState”) or its affiliates (“Covered Products”), was misleading regarding the amount of nutrients provided from “whole foods” and whether the products were Made in the USA. Plaintiffs also allege that some Covered Products did not disclose the presence of magnesium stearate. Plaintiffs do not claim that the Covered Products are unsafe or present a health hazard. The Court has not decided in favor of either side. FoodState denies the claims made in the lawsuit and denies it has done anything wrong. FoodState stands by the Covered Products, their labels and packaging, and their safety and efficacy. FoodState has agreed to a settlement to avoid the substantial cost, inconvenience and disruption of litigation.
- FoodState will create a \$2.1 million Settlement Fund. After deducting any Court-approved attorneys’ fees and costs, incentive awards, and settlement notice and administration costs, the balance of the Settlement Fund will be distributed to Settlement Class Members who submit valid claims. Settlement Class Members who submit valid claims may request up to \$25 per bottle of Covered Products claimed (up to four bottles per household). Actual payment amounts may vary based on the total number of valid claims received, the balance of the Settlement Fund once Court-approved deductions are made, and whether or not you provide proof of purchase with your Claim Form.
- You are included in this settlement as a Settlement Class Member if you purchased a Covered Product between January 15, 2011 and September 15, 2018.
- Your rights are affected whether you act or don’t act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM (DEADLINE: AUGUST 19, 2019)	This is the only way you can request a payment from this settlement. If you submit a Claim Form, you will give up the right to sue FoodState in a separate lawsuit about the legal claims this settlement resolves.
ASK TO BE EXCLUDED (DEADLINE: AUGUST 28, 2019)	This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against FoodState related to the legal claims this settlement resolves. However, you will give up the right to get a payment from this settlement.
OBJECT TO THE SETTLEMENT (DEADLINE: AUGUST 28, 2019)	If you do not exclude yourself from the settlement, you may object to it by writing to the Court about why you do not like the settlement. If you object, you may also file a claim for a cash payment.
HEARING ON NOVEMBER 4, 2019	If you do not exclude yourself from the settlement, you may object to it and inform the Court of your intention to speak at the Final Approval Hearing about your objection.
DO NOTHING	Unless you exclude yourself, you are automatically part of the settlement. If you do nothing, you will not get a payment from this settlement and you will give up the right to sue, continue to sue, or be part of another lawsuit against FoodState about the legal claims resolved by this settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to give final approval to the settlement.

QUESTIONS? CALL 1-866-683-9603 TOLL-FREE OR VISIT WWW.FOODSTATESETTLEMENT.COM

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BASIC INFORMATION

1. Why was this Notice issued?

A court authorized this Notice because you have a right to know about the proposed settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval to the settlement. This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, and who can get them.

Judge Landya B. McCafferty of the United States District Court for the District of New Hampshire is overseeing this class action. The case is known as *Kathleen Holt, Stephanie Bauman and Jose Rubalcava v. FoodState, Inc.*, Case No. 1:17-cv-00637-LM (D.N.H.) (the “Lawsuit” or “Litigation”). The people that filed this lawsuit are called the “Named Plaintiffs” and the company they sued, FoodState, Inc., is called the “Defendant” or “FoodState.”

2. What is this Lawsuit about?

This Lawsuit is about claims made on the labeling and packaging of vitamin supplements manufactured and sold by FoodState under the MegaFoods and Innate Response Formula brands. Named Plaintiffs allege that the labeling, packaging, and websites for products manufactured by FoodState and/or its affiliates or co-manufacturers, including vitamin supplements sold under the MegaFoods and Innate Response Formula brands, were misleading and violate consumer protection laws. Named Plaintiffs allege that the Covered Products were false or misleading regarding the representation that certain nutrients came from “whole foods.” Additionally, Named Plaintiffs allege that the products contain magnesium stearate and/or were not Made in the USA. FoodState denies all of the allegations made in the Litigation. No one claims that these products are unsafe or present a health hazard.

3. What is a class action?

In a class action, one or more people called Named Plaintiffs (in this case, Kathleen Holt, Stephanie Bauman and Jose Rubalcava) sue on behalf of other people with similar claims. Together, the people included in the class action are called a class or class members. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a settlement?

The Court did not decide in favor of the Named Plaintiffs or Defendant. Instead, the Named Plaintiffs and Defendant agreed to a settlement. This way, the cost and burden of a trial is avoided and the people allegedly affected can get benefits. The Named Plaintiffs and their attorneys think the settlement is best for all Settlement Class Members. The Court granted preliminary approval of the settlement on May 15, 2019 and directed that this Notice be provided.

WHO IS INCLUDED IN THE SETTLEMENT

5. How do I know whether I am part of the settlement?

The settlement includes all residents of the United States and its territories who purchased for personal use, and not resale or distribution, a Covered Product between January 15, 2011 and September 15, 2018 (the “Class Period”) (“Settlement Class Members”). Covered Products include products manufactured by FoodState and/or its affiliates or co-manufacturers, including vitamin supplements sold under the MegaFoods and Innate Response Formula brands. A list of products manufactured by FoodState during the Class Period by this Proposed Class Action Settlement may be accessed [by clicking here](#). The same list is also attached as Exhibit D to the Proposed Class Action Settlement available under the “Court Documents” tab of the Settlement Website.

6. Are there exceptions to being included?

Yes. The Settlement Class does not include: (1) FoodState and its respective affiliates, employees, officers, directors, agents, and representatives, and their immediate family members; (2) Settlement Class Counsel and partners, attorneys, and employees of their law firms; and (3) the judges who have presided over the Litigation, the case identified in Paragraph I.B. and I.C. of the Proposed Class Action Settlement, or the mediations referenced in Paragraph I.G. of the Proposed Class Action Settlement, and their immediate family members.

7. What if I am still not sure whether I am part of the settlement?

If you are not sure whether you are included, call 1-866-683-9603, go to www.FoodStateSettlement.com or write Class Counsel listed in Question 19 below.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

8. What does the settlement provide?

FoodState has agreed to establish a \$2,100,000 Settlement Fund to settle the claims as set forth in the Settlement Agreement. After deducting (1) Court-approved attorneys' fees and costs; (2) incentive awards for the Named Plaintiffs; and (3) the costs of settlement notice and administration, the balance of the Settlement Fund (the "Available Cash Award Total") will be distributed to Settlement Class Members who submit a valid Claim Form.

In addition to the Settlement Fund, FoodState has agreed to modify the labeling of the Covered Products.

9. How much will my payment be?

If you submit a valid Claim Form, you may request a payment of up to \$25 per bottle of Covered Products purchased. Up to four (4) bottles per household may be claimed. Your actual payment amount will be based on the total number of valid Claim Forms received, the balance of the Available Cash Award Total, and whether or not you provided proof of purchase with your Claim Form.

- If there is enough money in the Available Cash Award Total to pay the total dollar amount claimed on *all* valid Claim Forms, regardless of whether proof of purchase was included, then all Settlement Class Members who file a valid Claim Form will receive \$25 per bottle (\$100 maximum).
- If the Available Cash Award Total is less than the total dollar amount claimed on valid Claim Forms submitted with proof of purchase, payment amounts will be reduced proportionately (equally based on the total number of bottles claimed) and paid to those Settlement Class Members only.
- If there is enough in the Available Cash Award Total to pay the total dollar amount claimed on valid Claim Forms submitted with proof of purchase, but not enough to pay the dollar amount claimed on *all* Claim Forms, then Settlement Class Members whose Claim Forms are submitted with proof of purchase will be paid the dollar amount claimed and Settlement Class Members whose Claim Forms submitted without proof of purchase will be paid a proportionately reduced amount (based on the total number of bottles claimed without proof of purchase).

If any money remains in the Available Cash Award Total after making payments to Settlement Class Members who submit valid Claim Forms, it will be split equally between the proposed *cy pres* recipients, Feed The Children and the Public Justice Foundation, as subject to approval by the Court.

HOW TO GET A SETTLEMENT PAYMENT—SUBMITTING A CLAIM FORM

10. How do I get a payment from the settlement?

To request a payment from the settlement, you must complete and submit a Claim Form by **August 19, 2019**. Claim Forms may be submitted online at www.FoodStateSettlement.com or printed from the website and submitted to the Settlement Administrator at the address on the form. Claim Forms are also available by calling 1-866-683-9603 or by writing to the Settlement Administrator, *Holt v. FoodState, Inc.* Settlement Administrator, P.O. Box 404041 Louisville, KY 40233-4041.

11. When would I get my settlement payment?

The Court will hold a Final Approval Hearing (or fairness hearing) on November 4, 2019 to decide whether to grant final approval to the settlement. If the Court approves the settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. Settlement payments will be distributed as soon as possible, if and when the Court grants final approval to the settlement and after any appeals are resolved (if they are resolved in favor of the settlement).

QUESTIONS? CALL 1-866-683-9603 TOLL-FREE OR VISIT WWW.FOODSTATESETTLEMENT.COM

12. What rights am I giving up to get a payment and stay in the Settlement Class

Unless you exclude yourself, you will remain in the Class. If the settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. You won't be able to sue, continue to sue, or be part of any other lawsuit against FoodState or the Released Persons (see next question) about the legal issues resolved by this settlement. The rights you are giving up are called Released Claims.

13. What are the Released Claims?

If and when the settlement becomes final, Settlement Class Members will permanently release FoodState and the other Released Persons from all claims of any kind during the Class Period, arising from or relating to the Covered Products (the "Claims"), including, without limitation, the Claims made by the Named Plaintiffs in the Litigation, and also including, without limitation, causes of action for violation of the Consumers Legal Remedies Act, violation of the California Business & Professions Code, and breach of express warranty, and including, without limitation, Claims that have been, could have been, may be or could be alleged or asserted now or in the future by the Named Plaintiffs or any Settlement Class Members against the Released Persons in the Litigation or in any other forum, arising out of or related to the Claims, but excluding any claims for bodily injury.

More detail about the claims you will be releasing, including the provisions of California Civil Code § 1542, are described in Paragraph IX.B and C of the Proposed Class Action Settlement, available at www.FoodStateSettlement.com. The Release language is also contained at the end of this notice. "Released Claims" is defined in Paragraph II.HH on page 7 of the Settlement Agreement. "Released Persons" is defined in Paragraph II.II on page 8 of the Settlement Agreement.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Yes. Judge Landya B. McCafferty appointed Abbas Kazerounian and Jason A. Ibey of Kazerouni Law Group, APC, and Joshua B. Swigart of Hyde & Swigart, to represent you and other Settlement Class Members as "Settlement Class Counsel." These law firms and their lawyers are experienced in handling similar cases. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers be paid?

Settlement Class Counsel will ask the Court for an award of attorneys' fees and costs of up to 33.33% (up to \$699,930) of the Settlement Fund. They will also ask the Court to approve \$1,500 incentive awards to each of the Named Plaintiffs (\$4,500 total). The Court may award less than these amounts. If approved, these fees, costs and awards will be paid from the Settlement Fund before making payments to Settlement Class Members who submit valid Claim Forms.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue FoodState or the Released Persons about the legal claims in this case, and you do not want to receive a payment from this settlement, you must take steps to get out of the settlement. This is called excluding yourself from or opting out of the settlement.

16. How do I get out of the settlement?

To exclude yourself from the settlement, you must submit a written request for exclusion online or by mail. Your request for exclusion must include: (1) your name; (2) your current address; (3) a statement that you are a Settlement Class Member and you purchased one or more of the Covered Products and wish to be excluded from the settlement in *Holt v. FoodState, Inc.*, Case No. 1:17-cv-00637-LM (D.N.H.); and (4) your signature. Your request for exclusion must be submitted online by **August 28, 2019** or mailed to the Settlement Administrator at the address below so it is postmarked no later than **August 28, 2019**.

Holt v. FoodState, Inc. Settlement Administrator
P.O. Box 404041
Louisville, KY. 40233-4041

17. If I exclude myself, can I still get a payment from this settlement?

No. If you exclude yourself, you are telling the Court that you do not want to be part of the settlement. You can only get a payment if you stay in the settlement and submit a valid Claim Form. If you submit an exclusion request *and* a Claim Form, your exclusion request will be cancelled and your Claim Form will be processed instead.

18. If I do not exclude myself, can I sue FoodState for the same legal claims later?

No. Unless you exclude yourself, you are giving up the right to sue FoodState and the Released Persons for the claims that this settlement resolves. You must exclude yourself from *this* Litigation to start or continue with your own lawsuit or be part of any other lawsuit against FoodState or any of the Released Persons.

OBJECTING TO THE SETTLEMENT

You can tell the Court if you do not agree with the settlement or any part of it.

19. How do I tell the Court that I do not like the settlement?

If you are a Settlement Class Member, you can object to the settlement if you do not like it or any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. Your objection must be in writing and include: (1) your name, address, and phone number; (2) a signed declaration stating that you are a Settlement Class Member and you purchased one or more of the Covered Products; (3) the reasons why you object to the settlement, including any supporting documents; (4) a statement indicating whether you or your attorney intends to appear at the Court’s Final Approval Hearing (if so, include the name of your attorney). Mail your objection to all four addresses below postmarked on or before **August 28, 2019**.

The Court	Class Counsel	Counsel for Defendant
District of New Hampshire Clerk of the Court 55 Pleasant, Suite 110 Concord, NH 03301	Abbas Kazerounian Kazerouni Law Group, APC 245 Fischer Avenue, Suite D1 Costa Mesa, CA 92626 -and- Joshua B. Swigart HYDE & SWIGART 2221 Camino Del Rio South, Suite 101 San Diego, CA 92108-3551	René P. Tatro TATRO TEKOSKY SADWICK LLP 333 S. Grand Avenue, Suite 4270 Los Angeles, CA 90071

20. May I come to Court to speak about my objection?

Yes. You or your attorney may request permission from the Court to speak at the Final Approval Hearing about your objection. To do so, you must include a statement in your objection indicating that you or your attorney intend to appear at the Final Approval Hearing. Remember, your objection must be postmarked by **August 28, 2019** and sent to all four addresses in Question 19.

21. What is the difference between objecting to the settlement and asking to be excluded from it?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you remain as a Settlement Class Member (that is, do not exclude yourself). Excluding yourself is telling the Court that you do not want to be part of the settlement. If you exclude yourself, you cannot object because the settlement no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a final hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to do so.

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

The Court will hold a Final Approval Hearing at 9:30 a.m. on November 4, 2019 in Courtroom 5 at the District of New Hampshire, 55 Pleasant Street, Concord, NH 03301. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. It will also consider whether to approve Settlement Class Counsel's request for an award of attorneys' fees and costs, as well as the Named Plaintiff's incentive awards. If there are objections, the Court will consider them. Judge Landya B. McCafferty will listen to people who have asked to speak at the hearing (see Question 20 above). After the hearing, the Court will decide whether to approve the settlement.

23. Do I have to come to the hearing?

No. Settlement Class Counsel will answer any questions Judge Landya B. McCafferty may have. However, you are welcome to come to the hearing at your own expense. If you send an objection, you do not have to come to court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary to do so.

24. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Final Approval Hearing (see Question 20 above). You are not required to attend the Final Approval Hearing.

IF YOU DO NOTHING

25. What happens if I do nothing at all?

If you are Settlement Class Member and you do nothing, you will give up the rights explained in Question 13, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against FoodState and the Released Persons about the legal issues resolved by this settlement. In addition, you will not receive a payment from the Settlement Fund.

GETTING MORE INFORMATION

26. How do I get more information?

This Notice summarizes the proposed settlement. Additional details are provided in the Proposed Class Action Settlement. The Proposed Class Action Settlement and other related documents are available at www.FoodStateSettlement.com. Additional information is also available by calling 1-866-683-9603 or by writing to *Holt v. FoodState, Inc.* Settlement Administrator, P.O. Box 404041 Louisville, KY 40233-4041. Publicly-filed documents can also be obtained by visiting the District of New Hampshire during business hours or for a fee using the Court's online PACER system.

EXCEPT AS PROVIDED IN PARAGRAPH 19, ABOVE, PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, FOODSTATE OR FOODSTATE'S COUNSEL ABOUT THE SETTLEMENT

RELEASE

"Released Claims" means any and all claims, claims for damages, equitable, legal and/or administrative relief, interest, demands, or rights, including without limitation, claims for damages of any kind, including but not limited to those in excess of actual damages, whether based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other sources, all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to tort claims, negligence claims, claims for breach of contract, breach of the duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer fraud, breach of fiduciary duty, violation of elder

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abuse and dependent adult civil protection acts, unfair business or trade practices, false advertising, restitution, rescission, compensatory and exemplary or punitive damages, injunctive or declaratory relief, attorneys' fees, interests, costs, penalties, and any other claims, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or matured, under federal, state, or local law, which the Named Plaintiffs and/or any Settlement Class Member had, now have or may in the future have with respect to any conduct, act, omissions, facts, matters, transactions, or oral or written statements or occurrences, during the Class Period, arising from or relating to the Covered Products (collectively, "Claims"), including, without limitation, the Claims made by the Named Plaintiffs in the Litigation, and also including, without limitation, causes of action for violation of the Consumers Legal Remedies Act, violation of the California Business & Professions Code, and breach of express warranty, and including, without limitation, Claims that have been, could have been, may be or could be alleged or asserted now or in the future by the Named Plaintiffs or any Settlement Class Members against the Released Persons, or any of them, in the Litigation or in any other court action or before any administrative body (including, without limitation, any regulatory entity or organization), tribunal, arbitration panel, or other adjudicating body, arising out of or related to the Claims, but excluding claims for bodily injury.

As of the Effective Date, the Releasing Persons are deemed to have fully released and forever discharged the Released Persons of and from all Released Claims, in accordance with the terms of this Settlement Agreement, by operation of entry of the Final Order And Judgment.

All Settlement Class Members shall be bound by this Settlement Agreement and all of their claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Litigation or this Settlement Agreement.

Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs, or disbursements incurred by Settlement Class Counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation, the Settlement Agreement, the administration of such Settlement Agreement and/or the Released Claims as well as any and all claims for any Incentive Award or any Attorneys' Fees and Costs Award.

The Releasing Persons and the Released Persons expressly acknowledge that they are familiar with principles of law such as Section 1542 of the Civil Code of the State of California, which provides:

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 MIGHT HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

California or other law notwithstanding, the Releasing Persons and the Released Persons hereby expressly agree that the provisions, rights, and benefits of Section 1542 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable herein are hereby knowingly and voluntarily waived, released, and relinquished to the fullest extent permitted by law solely in connection with unknown claims that are the same as, substantially similar to, or overlap the Released Claims, and the Releasing Persons acknowledge that this is an essential term of the Release. In connection with the Release, the Releasing Persons acknowledge that they are aware that they may hereafter discover claims presently unknown and unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to the Released Claims, and that such claims, to the extent that they are the same as, substantially similar to, or overlap the Released Claims, are hereby released, relinquished, and discharged.

Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including, without limitation, participation in any of the processes detailed herein.

Additional Releases. Except as to the rights and obligations established by this Settlement Agreement, and solely with respect to Released Claims, FoodState releases and forever discharges as of the Effective Date the Named Plaintiffs, Settlement Class Members who are not Opt-Outs, and Settlement Class Counsel from any and all rights, duties, obligations, claims, actions, causes of action, or liabilities, whether arising under local, state, or federal law, whether by statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, which FoodState may now have, own or hold or which the Released Persons at any time may have, own, or hold, against the Named Plaintiffs, Settlement Class Members who are not Opt-Outs, or Settlement Class Counsel arising out of Released Claims.

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