

If You Purchased Lipozene Weight Loss Pills, You Could Be Entitled To Money From A Proposed Class Action Settlement

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

- A Settlement has been reached between Obesity Research Institute, LLC, Continuity Products, LLC, Henny den Uijl, and Sandra den Uijl (“Defendants”) and DeMarie Fernandez, Alfonso Mendoza, and Fred Duran (“Class Representatives” or “Plaintiffs”), individually and on behalf of the Settlement Class. The Proposed Settlement resolves a class action lawsuit about allegations that Defendants made false and misleading statements in their labeling and advertising regarding the effectiveness of Lipozene weight loss pills. Defendants deny the allegations. The Court did not rule in favor of either side. The Parties agreed to the Settlement to avoid the expense and risks of continuing the lawsuit.
- You are a Class Member if you are a resident of the United States who purchased Lipozene weight loss pills from August 10, 2012 through October 28, 2019.
- Class Members without Proof of Purchase may submit a Claim to receive \$7 per unit of Lipozene, with a cap of 1 unit. Class Members with Proof of Purchase may submit a Claim to receive a refund of the amount(s) shown on the Proof(s) of Purchase, up to \$15 per unit, with a cap of 4 units. The Claim amount may be subject to pro rata dilution if the total amount of Claims exceeds the available Settlement funds.

Please read this Notice carefully and in its entirety.

Your rights may be affected by this Settlement of this lawsuit, and you have a choice to make now about how to act:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit A Valid Claim by FEBRUARY 17, 2020	This is the only way to receive Settlement benefits, if you qualify. By submitting a Claim, you will give up any rights to sue Defendants separately about the same legal claims in this lawsuit.
Exclude Yourself From the Class by JANUARY 24, 2020	If you opt-out of the Settlement, you will not be eligible to receive the Settlement benefits, but you will keep any rights to sue Defendants separately about the same legal claims in this lawsuit.
Object or Comment By JANUARY 24, 2020	You may write to the Court about why you do, or do not, like the Settlement. You must remain in the class to comment in support of or in opposition to the Settlement.
Appear in the Lawsuit or Attend A Hearing on March 6, 2020	You may ask to speak in Court about the fairness of the Settlement. You may enter your appearance in Court through an attorney if you so desire.
Do Nothing	If you do nothing, you will receive no Settlement benefits. You will also give up your right to sue Defendants on your own regarding any claims that are part of the Settlement.

- Your options – **and the deadlines to exercise them** – are further explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. The Settlement Benefits will be made available if the Court approves the Settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this Notice?

If you purchased one or more units of Lipozene weight loss pills between August 10, 2012 through October 28, 2019, you have a right to know about a Proposed Settlement of a class action lawsuit and your options. You may have received this Notice because you requested more information after reading the Publication Notice.

The Court ordered that you be given this Notice because you have a 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. If the Court approves it, and after objections and appeals are resolved, a Claims Administrator appointed by the Court will oversee the Settlement benefits that the Settlement allows. You will be informed of the progress of the Settlement.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the cases is the Superior Court for the State of California, San Diego County, and the case is known as *Duran, et al. v. Obesity Research Institute, LLC, et al.*, Case No. 37-2013-00048664-CU-BT-CTL. The people who sued are called the Plaintiffs, and the companies and people they sued, Obesity Research Institute, LLC, Continuity Products, LLC, Henny den Uijl, and Sandra den Uijl, are called the Defendants.

2. What is this lawsuit about?

The lawsuit claims that Defendants have engaged in acts that violate state consumer protections laws (including California’s False Advertising Laws (“FAL”), Bus. & Prof. Code § 17500, *et seq.*, California’s Unfair Competition Laws (“UCL”), and California’s Consumers Legal Remedies Act (“CLRA”), Civil Code § 1750, *et seq.*), as well as giving rise to causes of action for breach of express warranty, breach of the implied warranty of merchantability, unjust enrichment, negligent misrepresentation, fraudulent concealment / nondisclosure, intentional misrepresentation, and fraud, and that as a direct result of such violations, Plaintiffs and the putative class have suffered monetary damages and also seek equitable remedies. Specifically, Plaintiffs alleged that Lipozene’s packaging, labeling, and marketing materials contain false and misleading information regarding the product’s efficacy.

Defendants deny that they did anything wrong, and instead assert that Lipozene is accurately packaged, labeled, and marketed. The Court has not made any ruling on the factual allegations in the lawsuit.

The Court hasn’t decided whether the Defendants or the Plaintiffs are correct. Instead, the Parties agreed to a Proposed Settlement to avoid the expense and risks of continuing the Lawsuit.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” (in this case, Plaintiffs DeMarie Fernandez, Alfonso Mendoza, and Fred Duran) sue on behalf of other people who have

similar claims. The people together are a “Class” or “Class Members.” The named plaintiffs who sued – and all the Class Members like them – are called the Plaintiffs. The companies and people they sued are called the Defendants. One court resolves the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class.

4. Am I part of this Class?

If you fit into the following description, you are a Class Member:

All Persons in the United States who purchased Lipozene on or after August 10, 2012 through October 28, 2019 excluding those who purchased Lipozene for resale.

THE CLAIMS IN THE LAWSUIT

5. What does the lawsuit complain about?

Defendants sell Lipozene weight loss pills throughout the United States. Plaintiffs alleged that Lipozene’s packaging, labeling, and marketing materials contain false and misleading information regarding the product’s efficacy. You can read Plaintiffs’ Complaint at www.lipozenesettlement.com.

6. How do Defendants answer?

Defendants deny any wrongdoing and deny the Plaintiffs’ allegations. You can read Defendants’ Answer at www.lipozenesettlement.com.

7. Has the Court decided who is right?

The Court hasn’t decided whether the Defendants or the Plaintiffs are correct. Instead, the Parties agreed to a Proposed Settlement to avoid the expense and risks of continuing the lawsuit.

YOUR LEGAL RIGHTS AND OPTIONS

You have to decide now whether to submit a Claim, do nothing at all, or ask to be excluded from the Proposed Settlement. You may also choose to object to the Proposed Settlement.

8. What does the Proposed Settlement provide if I submit a Claim?

The Settlement provides that Defendants have agreed to make available a total Claim Fund of four million, six hundred thousand dollars (\$4,600,000) for payment of Valid Claims.

Class Members without Proof of Purchase may submit a Claim to receive \$7 per unit of Lipozene, with a cap of 1 unit (unit is only product paid for and defined as a buy-one, get one free, or a single bottle individual purchase, not promotional offers).

Class Members with Proof of Purchase may submit a Claim to receive a refund of the amount(s) shown on the Proof(s) of Purchase, up to \$15 per unit, with a cap of 4 units (unit is only product paid for and defined as a buy-one, get one free, or a single bottle individual purchase, not promotional offers). “Proof of Purchase” means documentary evidence (*e.g.*, a Receipt) establishing the purchase of Lipozene, the date of purchase, and the purchase price. To constitute a purchase for which a claimant is eligible to submit a Claim, all payments must have been made full. For purchases made on the Lipozene.com website or through the Lipozene toll-free number, a qualifying “Proof of Purchase” may consist of a credit card statement depicting such a purchase unless the purchase price was already previously refunded to the claimant as a return transaction or if the transaction resulted in a charge back.

The Claim amount may be subject to pro rata dilution if the total amount of Claims exceeds the available settlement funds. When submitting a Claim, you will be required to confirm under penalty of perjury that you purchased Lipozene within the Settlement Class Period.

Additionally, Defendants will provide the Settlement Class injunctive relief by way of modification of marketing language for Lipozene so that the following statements no longer appear in their commercials or other marketing materials: “Lipozene is so powerful ...” and “Lipozene is specifically designed to target fat.”

9. How do I submit a Claim Form?

Class Members who wish to receive Settlement benefits must submit a claim.

To submit a Claim, you must complete a Claim Form. You can access a Claim Form via the Settlement Website by using the unique Class Member Identifier provided by the Claims Administrator at www.lipozenesettlement.com. Read the instructions carefully, fill out the form, and submit it online on or before February 17, 2020. Alternatively, you may also submit your Claim Form by mailing it to the following address: Lipozene Settlement, c/o Claims Administrator, PO Box 59269, Philadelphia, PA 19102-9269. It must be received by the Claims Administrator no later than February 17, 2020.

10. How to get a Claim Form?

You can obtain a Claim Form in one of three ways:

- (1) **By Phone:** Call toll-free, 1-844-528-0183
- (2) **By Mail:** Write to Lipozene Settlement, c/o Claims Administrator, PO Box 59269, Philadelphia, PA 19102-9269. Be sure to include your name and mailing address.
- (3) **Online:** You can download the Claim Form at www.lipozenesettlement.com. You can also submit a Claim Form online through the same website.

11. What happens if I do nothing at all?

By doing nothing, you are staying in the Class but will not receive any Settlement Benefits.

Keep in mind that if you do nothing now, you will not be able to separately sue, or continue to sue, Defendants – as part of any other lawsuit – for the same legal claims that are the subject of this lawsuit. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in this Class Action. You must exclude yourself to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the subject matter of this lawsuit ever again.

12. Why would I ask to be excluded?

If you exclude yourself from the Class – which is sometimes called “opting out” of the Class – you won’t get any Settlement benefits from the Proposed Settlement. However, you may then be able to separately sue or continue to sue Defendants for the legal claims that are the subject of this lawsuit. If you exclude yourself, you will not be legally bound by the Court’s judgments in this Proposed Settlement.

If you bring your own lawsuit against Defendants after you exclude yourself, you will have to hire and pay your own lawyer for that lawsuit, and you will have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Defendants, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

13. How do I exclude myself from the Class?

To exclude yourself from the Class, you must send a written Request for Exclusion *that is postmarked no later than January 24, 2020*, to:

Lipozene Settlement
c/o Claims Administrator
PO Box 59269
Philadelphia, PA 19102-9269

Your request for exclusion *must* contain: (1) the case name, “*Duran v. Obesity Research Institute, LLC*, Case No. 37-2013-00048664-CU-BT-CTL;” (2) your full name and current address; (3) a clear statement of intention to exclude yourself such as “I wish to be excluded from the Class”; and (4) your signature. You may also get an Exclusion Request Form at www.lipozenesettlement.com.

14. How do I tell the Court I don’t like the Proposed Settlement?

If you’re a Class Member, you can object to the Settlement if you don’t like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views.

To object, you must send a letter that contains all the following:

- Your name and current address, and your lawyer’s name and address if you are objecting through counsel;
- The case name, *Duran v. Obesity Research Institute, LLC*, Case No. 37-2013-00048664-CU-BT-CTL;
- A statement of your objections and the reasons for each objection you make;
- A list of the documents you are giving the Court to support your objections, if any;
- A list of any legal authorities you want the Court to consider, if any;
- The names and addresses of any witnesses you want to call to testify, and a summary of the witnesses’ expected testimony, if any;
- If you (or your lawyer) want to appear and speak at the Final Approval Hearing, a statement that you wish to appear and speak; *and*
- Your signature (or your lawyer’s signature).

Your objection must be signed, mailed, and *postmarked by* January 24, 2020 to the Court at:

Clerk of the Court
Superior Court of California, County of San Diego
330 West Broadway
San Diego, CA 92101

Copies of your objection **must also** be signed, mailed, and **postmarked by** January 24, 2020 to the following addresses:

<u>Counsel for the Class</u>	<u>Counsel for Defendants</u>
L. Timothy Fisher Bursor & Fisher, P.A. 1990 North California Blvd., Suite 940 Walnut Creek, CA 94596	Daniel S. Silverman Venable LLP 2049 Century Park East, Suite 2300 Los Angeles, CA 90067

If you object through a lawyer, you will have to pay for the lawyer yourself.

15. What's the difference between objecting and excluding?

Objecting is simply telling the Court you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

16. Can I appear or speak in this lawsuit and Proposed Settlement?

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in this lawsuit and Proposed Settlement. This is called making an appearance. You can also have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

17. How can I appear at the Final Approval Hearing?

If you want yourself or your own lawyer (instead of Class Counsel) to participate or speak for you in this lawsuit, you must give the Court a paper that is titled a "Notice of Appearance." The Notice of Appearance must contain the title of the case, a statement that you wish to appear at the Final Approval Hearing, and the signature of you or your lawyer.

Your Notice of Appearance can also state that you or your lawyer would like to speak at the Court's Final Approval Hearing on the Proposed Settlement. If you submit an objection (see question 14 above) and would like to speak about the objection at the Court's Final Approval Hearing, both your Notice of Appearance and your objection should be included in that information.

Your Notice of Appearance must be signed, mailed, and **postmarked by** January 24, 2020 to the Court at:

Clerk of the Court
Superior Court of California, County of San Diego
330 West Broadway
San Diego, CA 92101

Copies of your objection **must also** be signed, mailed, and **postmarked by** January 24, 2020 to the same two addresses appearing in question 14 of this Notice.

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

The law firms of Bursor & Fisher, P.A. and Nicholas & Tomasevic, LLP (“Class Counsel”) represent you and the other Class Members. You will not be charged for these lawyers. More information about Bursor & Fisher, P.A. and Nicholas & Tomasevic, LLP, their practices, and the firms’ lawyers is available at www.bursor.com and www.nicholaslaw.org.

19. Should I get my own lawyer?

If you choose to remain in the Class, you do not need to hire your own lawyer because Class Counsel are working on your behalf. But, if you want your own lawyer, you will be responsible for paying that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

20. How will the lawyers be paid?

From the inception of the litigation in May 2013 to the present, Class Counsel have not received any payment for their services in prosecuting the case or obtaining Settlement, nor have they been reimbursed for any out-of-pocket expenses they have incurred. When they ask the Court to approve the Settlement, Class Counsel will also make a motion to the Court for an award of attorneys’ fees and reimbursement of costs and expenses of up to \$1.4 million. The Court may award less than that. No matter what the Court decides with regard to the requested attorneys’ fees, costs and expenses, Class Members will never have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the Settlement on behalf of all Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

THE COURT’S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don’t have to attend or speak.

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

The Court will hold a Final Approval Hearing at 10:30 a.m., on March 6, 2020, at the Superior Court of California, County of San Diego, 330 West Broadway, San Diego, CA 92101, Department SD-64. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court will also consider Class Counsel’s request for an award of attorneys’ fees and reimbursement of costs and expenses. After the hearing, the Court will decide whether to approve the Proposed Settlement, and whether to grant Class Counsel’s request for attorneys’ fees and expenses. We do not know how long these decisions will take.

22. Do I have to come to the hearing?

No. Class Counsel is working on your behalf and will answer any questions the Court may have, but, you are welcome to attend the hearing at your own expense. If you send an objection, you don’t 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’s not necessary.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must follow the steps listed in questions 16 and 17 above. You cannot speak at the hearing if you excluded yourself.

FINAL APPROVAL OF THE SETTLEMENT

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

If the Court grants final approval of the Settlement, all members of the Class will release and forever discharge any and all claims or causes of action arising from the factual allegations and/or legal claims made in the Action, whether in law or equity, whether seeking damages or any other relief (including attorneys' fees), of any kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, based upon any federal or state statutory or common law, including, without limitation, claims sounding in tort, contract, and the consumer protection laws of the United States or of any state or other jurisdiction within the United States, as well as under the unfair or deceptive trade practices, trade regulation, consumer fraud, misrepresentation, and false advertising law of the United States or any state or other jurisdiction within the United States (the "Released Claims"). Excluded from the Released Claims are (a) any and all claims for personal injury, wrongful death, and/or emotional distress arising from personal injury and (b) any antitrust claim arising from a conspiracy among, or collusive agreement between Defendants and one or more of their competitors.

If the Settlement is not approved, the case will proceed as if no Settlement had been attempted. There can be no assurance that if the Settlement is not approved and litigation resumes, the Class will recover more than is provided for under the Settlement, or will recover anything.

GETTING MORE INFORMATION

25. How do I get more information?

This Notice is only intended to provide a summary of the Proposed Settlement. You may obtain the complete text of the Settlement Agreement at www.lipozenesettlement.com, by writing to the Claims Administrator: Lipozene Settlement, c/o Claims Administrator, PO Box 59269, Philadelphia, PA 19102-9269, or from the court file, which is available for your inspection during regular business hours at the Office of the Clerk of the Superior Court of California, County of San Diego, 330 West Broadway, San Diego, CA 92101, under Case No. 37-2013-00048664-CU-BT-CTL.

Visit the website, at www.lipozenesettlement.com, where you will find the Plaintiffs' Complaint, Defendants' Answer, a Claim Form, and an Exclusion Request Form.

You may also contact Class Counsel by email at info@bursor.com, or by writing to Bursor & Fisher, P.A. 1990 North California Blvd., Suite 940 Walnut Creek, CA 94596.

DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.

DATED: _____, 2019

**BY ORDER OF THE SUPERIOR COURT OF
CALIFORNIA, IN AND FOR THE COUNTY
OF SAN DIEGO**