

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 9:12-cv-80064-KLR**

SHELLEY PENNEY, GLADYS MURPHY,
ADRIANAH SEELY, STEVEN MARKS,
individually and on behalf of all of a class
of all similarly situated persons,

Plaintiffs,

vs.

WAIORA, LLC., *et. al.*

Defendants.

_____ /

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
AND FAIRNESS HEARING (Hereinafter “NOTICE”)**

The United States District Court for the Southern District of Florida has authorized this Notice.
This is not a solicitation. You are not being sued.

INFORMATION CONTAINED WITHIN THIS NOTICE MAY AFFECT YOUR RIGHT TO RECEIVE COMPENSATION. PLEASE READ THIS COMPLETE NOTICE CAREFULLY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS DESCRIBED IMMEDIATELY BELOW, YOU MAY BE ENTITLED TO THE BENEFITS DESCRIBED BELOW.

TO: **ALL** persons who directly purchased from Waiora at least one (1) bottle of the original formulation of a product known as Natural Cellular Defense (“NCD”) with a label stating that it contained 2400mg of Zeolite at any time between April 2008 and October 2011 as reflected within the books and records of Waiora LLC. The class of persons described herein is hereinafter referred to as the “Settlement Class”.

What Is This Notice? This Notice is to inform you of a proposed class action settlement involving Waiora, LLC. Your rights may be affected by the proposed settlement of a class action lawsuit pending against Waiora, LLC (hereinafter the “Litigation”). If you have received this notice, you may be a member of the proposed Settlement Class (hereinafter a “Class Member”) that will receive certain benefits if the settlement is approved. The benefits described herein will be available to Class Members only if the United States District Court for the Southern District of Florida (hereinafter the “Court”) approves the settlement. All individuals who are members of the Settlement Class described above, as well as their attorneys, are entitled to be present at a **Fairness Hearing that will commence on September 11, 2013 at 2 p.m. in Courtroom 1,**

United States District Court for the Southern District of Florida, West Palm Beach Division, Paul G. Rogers Federal Building and United States Courthouse, 701 Clematis Street, West Palm Beach, Florida 33401 before the Honorable Kenneth L. Ryskamp (hereinafter the “Fairness Hearing”) and will last for 90 minutes. At the Fairness Hearing, the Court will determine whether the settlement should receive final approval as being fair, reasonable and adequate, determine whether to unconditionally certify the Settlement Class and consider the award of counsel fees, costs and class representative incentive awards to be paid according to the terms of the settlement described in this document. Class Members who do not request exclusion from the settlement pursuant to Section X(A) below will automatically be bound by the terms of this settlement if the Court approves it. However, if you request exclusion, you will not receive the designated remedies which are described herein.

I. CLAIMS AND DEFENSES (WHAT THIS LITIGATION IS ABOUT)

This Litigation was brought by four (4) Plaintiffs individually, on behalf of themselves and other consumers, who purchased Natural Cellular Defense (hereinafter “NCD”) at any time from April 2008 through October 2011. Plaintiffs claim that during that time period NCD did not meet label claims; specifically, that it contained significantly less Zeolite than was represented on the package label. Plaintiffs claim that the absence of Zeolite rendered all NCD sold during this time period significantly less valuable than amounts paid for the product.

Waiora, LLC, and all other named Defendants (“Defendants”) deny the claims and contentions alleged against them in this Litigation. Defendants deny all charges of wrongdoing or liability arising out of any of the facts alleged by Plaintiffs in the Litigation. Defendants also deny, inter alia, that the Representatives, Plaintiffs or the Settlement Class was harmed by the conduct alleged in the Litigation. Defendants have nevertheless concluded that the Litigation, and potential future Litigation for claims of Class Members, could be protracted, expensive and uncertain, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation of Settlement (hereinafter “Stipulation”) in order to increase consumer satisfaction; to limit further expense, inconvenience and distraction; to dispose of burdensome and potentially protracted litigation; to permit the operation of their business without further expensive litigation and the division of their personnel with respect to matters at issue in the Litigation; and to protect the interests of their customers. However, in the event this settlement is not approved, Defendants intend to continue to defend against the allegations at issue in this Litigation.

II. MEMBERS OF THE CLASS

In this action, there is a single Settlement Class consisting of all persons who directly purchased from Waiora at least one (1) bottle of the original formulation of a product known as Natural Cellular Defense (“NCD”) with a label stating that it contained 2400mg of Zeolite at any time between April 2008 and October 2011, as reflected within the books and records of Waiora, LLC. This size of the Settlement Class is currently estimated at approximately 79,652 individuals. Excluded from this Settlement Class are: (a) Defendants’ employees, officers, directors, agents and legal representatives; (b) persons who validly exclude themselves from the Settlement Class by requesting exclusion in accordance with the terms of the Notice described herein below; (c)

members of the immediate family of each of the Defendants named in the Litigation that are not corporate entities; and (d) any person, firm, trust, corporation, company, officer, director, member, or other individual or entity in which Waiora, LLC has a controlling interest.

III. TERMS OF THE PROPOSED SETTLEMENT

Settlement of this Litigation provides that members of the Settlement Class who directly purchased from Waiora at least one (1) bottle of the original formulation of a product known as Natural Cellular Defense (“NCD”) with a label stating that it contained 2400mg of Zeolite at any time between April 2008 and October 2011, as reflected within the books and records of Waiora, LLC, shall be entitled to receive a free “3 pack,” consisting of three (3) bottles of NCD manufactured after October 2011. This will include an option to receive any version of NCD that the individual class member desires (NCD 2 or the original NCD formula). Each Class Member that does not opt out of this class settlement, will receive a voucher redeemable for three (3) bottles of NCD, and will be responsible only for payment of reasonable shipping and handling costs, not to exceed Twelve Dollars (\$12.00) per shipment for Class Members in the U.S. or Canada (shipping and handling will vary based on the global location of any particular class member, but under no circumstances will shipping and handling costs exceed \$12.00 per person for Class Members in the U.S. or Canada). The current retail value of an NCD “3 pack” is approximately One Hundred and Fifty Dollars (\$150.00) or more, and this benefit will be made available to approximately 79,652 NCD purchasers, providing a minimum aggregate benefit to the Settlement Class of approximately Eleven Million Nine Hundred and Forty Seven Thousand and Eight Hundred Dollars (\$11,947,800.00).

IV. REASONS FOR SETTLEMENT

The Plaintiffs in this Litigation have been represented by James P. Gitkin, Esq. and Anthony Lagrassa, Esq., of the law firm of Salpeter Gitkin, LLP, and Nolan Klein, Esq., of the Law Offices of Nolan Klein, P.A., as well as special insurance counsel Jason Mazer, Esq. and Cary Steklof, Esq. of the law firm of Ver Ploeg & Lumpkin, P.A. (“Plaintiffs’ Counsel”). Plaintiffs’ Counsel has thoroughly investigated the facts and circumstances surrounding this case and legal claim, and has reviewed the law underlying the Litigation. Plaintiffs’ Counsel also considered the defenses available to Waiora, LLC.

The parties engaged in extensive arms’ length settlement negotiations beginning in earnest in November 2012, and continuing through January 2013. The parties were able to arrive at the Stipulation of Settlement, which details all of the terms and conditions of the proposed settlement between the Plaintiffs, Class Members, and the Defendants, subject to the final approval by the Court. The parties to the Stipulation of Settlement believe that the terms of the Stipulation of Settlement are fair, adequate, and in the best interest of the Class Members. The parties reached this conclusion after investigating and considering, among other things, the strengths and weaknesses of the Class Members’ claims against Waiora, LLC, the financial condition and financial details of Waiora, LLC, insurance available to Waiora, LLC for this claim, the uncertainties inherent in complex litigation, and the benefits provided by the Stipulation of Settlement to the Class Members. While vigorously denying any liability in this Litigation, Waiora, LLC considered it desirable and in its best interest that this Litigation be

dismissed on the terms set forth in the Stipulation of Settlement to avoid further expense, inconvenience, distraction and litigation.

This Notice does not indicate any expression or opinion by the Court concerning the merits of the respective claims or defenses asserted in this Litigation. This Notice is sent merely to advise Class Members of the proposed settlement and of the Class Members' rights in connection therewith.

V. ATTORNEY'S FEES, CLASS REPRESENTATIVE FEES, AND LITIGATION COSTS AND EXPENSES

The Defendants have agreed, subject to Court approval, that in addition to the benefit to the Settlement Class set forth in Section III, above, Defendants will pay the following:

A. Attorney's Fees

The Defendants have agreed to pay Plaintiffs' Counsel a fee and cost amount separate and apart from the benefit negotiated for the class; the agreed fee and cost award is \$830,000.00 which is the approximate equivalent of less than 7% of the cash value of the benefit conferred on the class, and would constitute full and final satisfaction of all attorney's fees and costs incurred in this case. To date, Plaintiffs' Counsels have not received any payment for their efforts.

At the Fairness Hearing, the Court will consider the agreement of the parties and enter an award of attorneys' fees and expenses in an amount the Court deems appropriate, but not to exceed the amounts set forth above. Plaintiffs' Counsel will be proposing a split of the fees and costs in accordance with an agreement of counsel.

B. Incentive Payments

The Defendants have also agreed, subject to Court approval, to pay an incentive award to the Plaintiffs who brought the instant lawsuit. The Plaintiffs will receive a total of \$20,000.00 (or \$5,000.00 to each of the four named Plaintiffs) as an incentive award and in furtherance of their efforts and contributions in the instant action.

C. Litigation Costs and Expenses

In addition, the Defendants have agreed to pay the costs of providing this Notice, the costs of a forensic accounting firm investigating the capacity to pay of the Defendants and reasonableness of the settlement, and the costs and fees of the Settlement Administrator, which payments will be made by Defendants in addition to and separate from all other fees, consideration and remedies paid to and available to the Settlement Class members, Settlement Class representatives, and Plaintiffs' Counsel.

VI. RELEASES

In addition to the binding effect, and all other effects, of any Final Judgment entered in accordance with the Settlement of this Litigation, upon the settlement being approved by the Court, the Defendant Waiora, LLC, and all other Defendants named in this Litigation, and all of their past, present and future officers affiliates, predecessors in interest, successors in interest, parent corporations, subsidiary corporations, assigns, counsel, attorneys, contractors, independent contractors, agents, distributors, directors, managers, employees, and each of their respective heirs, affiliates, predecessors in interest, successors in interest assigns, counsel, attorneys and agents (the “Released Parties”) will, to the fullest extent permitted by law, be released and forever discharged by the Plaintiffs, Class Members, and all other claimants who are included in, or will benefit from, the proposed settlement, as well as their respective heirs, successors, agents and assigns (the “Releasing Parties”), from any and all claims, rights, demands, suits, matters, obligations, damages, including consequential damages, losses or costs, punitive or exemplary damages, fines, penalties, attorney’s fees and costs, actions or causes of action, of every kind and description, whether based on or under a federal law or regulation, the laws or regulations of any state or subdivision or agency, that the Releasing Parties had, or may have, against the Released Parties, arising out of or related in any way to the subject matter of this Litigation, whether known or unknown, suspected or unsuspected, accrued, or which may thereafter accrue, including, but not limited to, and regardless of the legal theory and type of relief or damages sought, claims for damages, injunctive or declaratory relief, arising out of or related to the marketing, sale, or use of Natural Cellular Defense at any time between April 2008 and October 2011 (the “Released Claims”). The Released Claims include, but are not limited to, claims arising under the theories of consumer fraud, fraud, negligence, nuisance, unjust enrichment, and all other state or federal statutory, regulatory, and common-law causes of action.

VII. LIMITS OF CONSIDERATION

The consideration, fees, costs, and expenses set forth in this Notice and the Stipulation of Settlement are the only consideration, fees, costs, or expenses that Defendant Waiora, LLC or the Released Parties shall be obligated to give any Plaintiff, Class Member, or Plaintiffs’ Counsel in connection with the settlement and release of the Released Parties.

VIII. DENIAL OF LIABILITY

Defendants and the Released Parties do not admit any wrongdoing or liability and vigorously deny the allegations of the Plaintiffs and Class Members. The proposed settlement is a compromise of disputed claims and does not mean that Defendants are liable for any of the claims or causes of actions asserted by the Plaintiffs in the Class Action Complaint or in the First Amended Class Action Complaint.

IX. RIGHTS AND OPTIONS OF CLASS MEMBERS

Each member of the Purchaser Class and Non-Purchaser Class has the following rights and options:

A. Request Exclusion From the Settlement Class

Any Class Member who does not want to be a member of the Settlement Class must timely and properly complete and submit the Opt-Out enclosed herewith, stating: (1) the Class Member's name; (2) the Class Member's address and telephone number; and (3) that the Class Member wishes to be excluded from the Settlement Class. The Opt-Out notice must be sent to the Settlement Administrator and counsel for both Plaintiff and Defendant, via First Class United States Mail postmarked no later than May 31, 2013, and sent to the following addresses:

Counsel For Plaintiffs:
James P. Gitkin, Esq.
Anthony Lagrassa, Esq.
Salpeter Gitkin, LLP
Museum Plaza – Suite 503
200 S. Andrews Avenue
Ft. Lauderdale, FL 33301

Counsel for Defendant:
Jordan Cohen, Esq.
Wicker, Smith, O'Hara,
McCoy & Ford, P.A.
Suntrust Center – Suite 1400
515 E. Las Olas Blvd.
Ft. Lauderdale, FL 33301

Settlement Administrator:
Garden City Group, Inc
1985 Marcus Ave.
Lake Success, NY 11042
ATTN: Natural Cellular
Defense Class Action

The Opt-Out Form is enclosed herewith. Failure to follow these instructions for requesting exclusion will result in a waiver of the right to be excluded from the Settlement Class.

B. Become a Settlement Class Member

Any Class Member who does not request exclusion from the settlement pursuant to subsection A, above, will become a member of the Settlement Class, bound by the terms of the settlement and this Notice. The Class Members' interests will be represented by the Court appointed Class Representatives and Class Counsel, James Gitkin, Esq. and Anthony Lagrassa, Esq., who can be contacted at Salpeter Gitkin, LLP, Museum Plaza, Suite 503, 200 S. Andrews Avenue, Ft. Lauderdale, Florida 33301, and Nolan Klein, Esq., who can be contacted at Law Offices of Nolan Klein, P.A., Harrison Executive Centre, 1930 Harrison Street, Suite 502, Hollywood, Florida 33020.

C. Enter an Appearance in the Action Through Counsel of Your Choice

Class Members may enter an appearance in this action through counsel of their choice.

D. Object to the Settlement

Class Members may object to the settlement by filing a written objection with the Clerk of the United States District Court for the Southern District of Florida, West Palm Beach Division, Paul G. Rogers Federal Building and United States Courthouse, 701 Clematis Street, Room 202, West Palm Beach, Florida 33401. Objections must be filed and served upon the Court no later than August 12, 2013. In addition, a copy of any objection must be served upon (1) James Gitkin, Esq. and Anthony Lagrassa, Esq., who can be contacted at Salpeter Gitkin, LLP, Museum Plaza, Suite 503, 200 S. Andrews Avenue, Ft. Lauderdale, Florida 33301; and (2) Jordan Cohen, Esq., Wicker, Smith, O'Hara, McCoy & Ford, P.A., Suntrust Center, Suite 1400, 515 E. Las Olas Blvd., Ft. Lauderdale, Florida 33301. Class Members cannot both request exclusion from the Settlement Class and object to the proposed settlement. Only Class Members may object to the

settlement. The written objection must include: (1) a notice of the objector's intention to appear at the Fairness Hearing; (2) a detailed statement of the objector's objections to any matter before the Court; (3) a detailed statement of all grounds for the objector's objection, including the factual basis for same; (4) proof of membership in the Settlement Class; (5) all documents, writings or exhibits that the objector desires the Court to consider at the Fairness Hearing; and (6) a reference to docket number **12-CV-80064**. Any Class Member who does not make and serve their written objection(s) in the manner prescribed above will be deemed to have waived any objections to the proposed settlement.

X. THE FAIRNESS HEARING

The Court has given its preliminary approval to the proposed settlement, has provisionally certified the Settlement Class, has found that the proposed settlement has apparent merit, has approved this Notice, has approved the appointment of the Class Representatives, and has approved the appointment of Plaintiffs' Counsel, James Gitkin, Esq., Anthony Lagrassa, Esq., and Nolan Klein, Esq., as Class Counsel, and Jason Mazer, Esq. and Cary Steklof, Esq. as special insurance counsel. The Court will hold a Fairness Hearing in the Courtroom of the Honorable Kenneth L. Ryskamp, United States District Court for the Southern District of Florida, West Palm Beach Division, Courtroom 1, Paul G. Rogers Federal Building and United States Courthouse, 701 Clematis Street, Room 202, West Palm Beach, Florida 33401 commencing on Sept. 11, 2013 at 2 p.m. and continuing for 90 minutes to determine whether, as recommended by the Class Representatives and Class Counsel, it should confirm the final certification of the Settlement Class, give final approval to the proposed settlement, direct the consummation of the remaining terms of the Stipulation of Settlement, approve Class Counsel's request for fee in an amount as set for above, make any other findings, and such other rulings incident thereto as are provided in the Stipulation of Settlement, including, but not limited to executing the proposed Final Judgment, which will dismiss with prejudice all of the Class Members' Released Claims against the Release Parties. Attendance at this hearing is not necessary; however, any Class Member wishing to be heard orally in opposition to the proposed settlement must indicate this intention in his or her objection as explained in Section X(D) above. Class Members who support the proposed settlement do not need to appear at the Fairness Hearing or take any other action to indicate their approval.

XI. FURTHER PROCEEDINGS

If the Court does not approve the proposed settlement, the Stipulation of Settlement will be null and void, and the Court will vacate the provisional certification of the Settlement Class, appointment of the Class Representatives and Class Counsel, and the instant action will proceed as though the Settlement Class had never been certified and the appointments had not been made.

XII. OBTAINING A COPY OF THE STIPULATION OF SETTLEMENT

The content of this Notice is only a summary of the terms of the proposed settlement. If you wish to obtain a copy of the Stipulation of Settlement, you may do so by requesting same, in writing, from Salpeter Gitkin, LLP, Museum Plaza, Suite 503, 200 S. Andrews Avenue, Ft. Lauderdale, Florida 33301. Please do not contact the Court. You may seek the advice and

guidance of your own attorney if you desire. The pleadings and other records in this Litigation may be examined and copied at any time during the regular office hours of the office of the Clerk of the United States District Court for the Southern District of Florida, West Palm Beach Division.

SO ORDERED BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, WEST PALM BEACH DIVISION, WEST PALM BEACH, FLORIDA.

Dated March 7, 2013

**By: Hon. Kenneth L. Ryskamp
(Signature on File)**