

MEDICAL MARIJUANA CLASS ACTION—CHRISTIENSEN v. METTRUM LTD.

NOTICE OF CERTIFICATION & PROPOSED \$6.95 MILLION SETTLEMENT

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS—PLEASE READ IT CAREFULLY

You are receiving this notice because a review of the records of the Defendant, Mettrum Ltd. (“Mettrum” or the “Defendant”), indicates that you are a potential Class Member (“Class Member”) in this medical marijuana class action lawsuit.

1. Summary

This notice summarizes the proposed settlement and the certification and settlement approval process.

The settlement is subject to the approval of the Court. In particular, the Court will decide whether the settlement is fair, reasonable, and in the best interests of Class Members. The Ontario Superior Court of Justice will hold a hearing to decide whether to approve the settlement on **December 16, 2020 at 10:00 a.m. ET**. Due to current COVID-19 precautions and restrictions, the hearing will proceed by video conference.

For more information about this Class Action and the settlement (including the detailed terms of the Settlement Agreement and the materials filed in support of the settlement), please visit: mettrumclassaction.ca. If you have further questions, please contact Class Counsel as set out below.

2. What the Lawsuit is About

The lawsuit alleges that Mettrum used unauthorized pest control products in the cultivation of some of its medical marijuana products between September 2014 and November 2016. The focus of this Class Action was to seek some refund of the purchase price of the recalled medical marijuana products described below.

In or around November 2016, Mettrum began a recall (the “Recall”) relating to various lots or batches of medical marijuana products (the “Recalled Products”). The Recall was initiated when it was found that some of the Mettrum plants or products contained or may have contained traces of pest control products or may have been exposed to pest control products, which were not approved for use on medical marijuana plants by Health Canada.

The two pest control products were pyrethrins and myclobutanil. Pyrethrins are a natural pest control product derived from chrysanthemum flowers, which is approved for use on conventional (non-marijuana) crops. Myclobutanil is a fungicide approved for use on food crops, but was not authorized for use on tobacco and marijuana (products that can be smoked). The Recalled Products included both dried marijuana and cannabis oil.

The Recall proceeded in four waves (the “Waves”):

- (1) Wave 1 of the recall related to the use of a foliar spray containing pyrethrins on certain plants during the cultivation process. Please note: although the Wave 1 Recalled Products were exposed to pyrethrins, the Wave 1 Recalled Products **did not** contain any traces of pyrethrins when tested;
- (2) Waves 2 and 3 related to trace amounts of myclobutanil found in specific lots or batches of products;
- (3) Wave 4 related to certain lots or batches of products sold over a general period of time and was initiated by the Defendant because it was possible that some of the plants may have been exposed to myclobutanil during the cultivation process—no testing was actually conducted on the Wave 4 Recalled Products to ascertain if any of it contained trace amounts of myclobutanil.

IMPORTANT! Each of the Waves of the Recall was designated by Health Canada as a Level III recall, which is classified by Health Canada (the government regulator with oversight of the medical marijuana industry) as a situation in which use of, or exposure to, a product is **unlikely** to cause adverse health consequences. Health Canada subsequently issued a clarification which indicated that, among other things, the level of cyanide from the burning of myclobutanil found on the marijuana samples is more than 1000 times less than the cyanide in marijuana smoke alone, and is 500 times below the acceptable level established by the U.S. National Institute for Occupational Safety and Health.

Please note that the proposed common issues in this action did not relate to any alleged negative health effects from the ingestion or inhalation of the recalled marijuana. Any such health effects were not the focus of this Class Action. If any Class Member feels that they have suffered any compensable adverse health effects, they are free to opt out of this settlement (as described further below) and thereby preserve the possibility of seeking a remedy for any alleged or perceived negative health effects.

3. Who is Affected by the Settlement?

Class Members will be affected by the settlement. Under Ontario law, if you are a person falling within the Class definition, you will **automatically** be included in the Class unless you choose to be excluded from this proceeding (as described in section 6 below). This includes Class Members who reside anywhere in Canada, not just in Ontario. The proposed class definition consists of anyone who purchased the Recalled Products, including dried marijuana and cannabis oil, between September 2014 and November 2016.

4. What Settlement has been Reached in this Class Action?

Mettrum and the proposed Representative Plaintiff have agreed to settle the Class Action for a total all-inclusive payment of \$6.95 million. The settlement was reached following extensive negotiations between the parties.

Mettrum does not admit any liability, wrongdoing or fault in this matter, and none of the allegations against Mettrum have been proven. The agreement to settle this matter does not imply any such liability, wrongdoing or fault on the part of Mettrum, and Mettrum expressly denies all such liability, wrongdoing and fault.

If the settlement is approved by the Court, the \$6.95 million will cover all compensation to the Class Members for all damages arising from their purchase of the recalled medical marijuana from Mettrum and use of such products, legal fees and related disbursements (including taxes), the costs of administration and distribution of money to Class Members, and a 10% statutory levy (as discussed further below). In exchange for its \$6.95 million payment, Mettrum will receive a full release of all claims and potential claims that Class Members may have against Mettrum for any sort of alleged or perceived damages.

If this settlement is approved, Class Members will not have to make an application to receive compensation. Compensation payments will be calculated based on a review of Mettrum's records. If the settlement is approved, Class Members will receive a letter or letters explaining the calculation of their entitlement to compensation for each stage and a corresponding cheque.

The compensation paid to Class Members will be paid from the amount of money remaining after deducting the Court-approved legal fees and disbursements (including taxes), as well as the costs of administering and distributing the money to Class Members, from the \$6.95 million. The money to be distributed to the Class Members will reimburse them for some or all of the purchase price paid for any Recalled Products they ordered. The distribution aims to return:

- (a) 100% of the purchase price for any Recalled Products that tested positive for trace amounts of myclobutanil (Waves 2 and 3); and
- (b) 20% (or possibly more—as discussed further below) of the purchase price for Recalled Products where the plants were exposed to pyrethrins but there were no detectable levels of pyrethrins in the products (Wave 1) and where some of the plants may have been exposed to myclobutanil (Wave 4).

The details are set out in the Settlement Agreement, and reference to the precise details of the distribution can be found in that Agreement. In general terms, and if approved by the Court, the settlement will be paid out in two stages. The first stage payments will be based (as set out above) on 100% of the purchase price paid by each Class Member for the Recalled Products involved in Waves 2 and 3, and 20% of the purchase price by each Class Member for Waves 1 and 4. If and to the extent that funds remain after the first stage after one year (e.g. if certain cheques from the first stage are not cashed by some Class Members), the remaining funds will be used to increase the payments for Waves 1 and 4 or, in other words, the remaining funds will be used to top-up the 20% payments for the purchase price paid for those products. The following calculations will be reduced by any refunds already provided by Mettrum.

Given administration expenses, if any payment to a Settlement Class Member totals less than \$25.00, that payment will not be made to the Settlement Class Member and will instead remain in Trust with the Settlement Administrator. Any funds remaining after stages one and two above will be paid to a charity (namely: The Centre for Addiction and Mental Health Foundation).

5. Plaintiff & Class Counsel's Recommendation

The Representative Plaintiff and Class Counsel recommend the settlement in light of a number of factors, including:

- a. the focus of this Class Action was to obtain some refund for medical marijuana that was recalled by Mettrum;
- b. this settlement will in fact refund a significant percentage of the purchase price of the Recalled Products in the near future without requiring Class Members to take any additional steps or incur any additional expenses;
- c. the settlement amount and distribution take into account various facts, including:
 - i) no pesticides were detected in the Wave 1 Recalled Products;
 - ii) for Waves 2 through 4, Health Canada subsequently advised or clarified that the level of cyanide from the burning of the trace amounts of myclobutanil found in the samples was 500 times below the acceptable level established by the U.S. National Institute for Occupational Safety and Health;
- d. there are significant risks to Class Members in continuing to litigate this action and, even if the action were ultimately certified and successful on the merits, the amount recovered for the Class Members may have very well been less than the amounts generated through this settlement;
- e. putting cash compensation into the hands of Class Members today outweighs the risks of further years of delays, risks and unknown results, and a potential unfavourable finding, if the case had otherwise proceeded to a contested certification motion and, if such motion was successful, a contested trial and likely appeals.

The Plaintiff's written materials setting out the history of this lawsuit, a more detailed explanation of the features and benefits of the settlement and more detailed reasons why the Plaintiff and Class Counsel recommend the settlement are expected to be posted at mettrumclassaction.ca by November 1, 2020. Please review that website for updates from time to time.

6. How to be Excluded from the Class Action

In the event this settlement is approved and certification is granted, Class Members not wishing to participate in the Class Action and the settlement, or who wish to bring their own lawsuit against Mettrum for any sort of alleged damages will be required to exclude themselves from this proceeding. As noted above, the common issues in this Class Action did not seek compensation for any perceived negative health effects and the settlement does not provide compensation for such perceived or alleged health effects. Without limiting the generality of the foregoing, if any Class Member wishes to pursue a claim for any perceived health effects, they can opt out of this Class Action and settlement (*please see further "IMPORTANT" comments below*).

The deadline to exclude yourself from this Class Action will be a date set by the Court sometime reasonably after the approval hearing of December 16, 2020.

If the settlement is approved, anyone deciding to exclude themselves from this Class Action will:

- a. be required to contact Roy O'Connor LLP in writing to confirm their decision to exclude themselves from this Class Action (the specific terms and timing of providing such written confirmation will be set by court order subsequently);
- b. be excluded from the settlement that may be approved by the Court;
- c. receive no compensation under the settlement; and
- d. receive no further communications regarding this action from Class Counsel.

IMPORTANT! If this settlement is approved, any limitation period stayed by the launch of this action will be restarted against anyone that chooses to exclude themselves from this proceeding. If you exclude yourself from this action, Class Counsel will not provide any legal advice about any possible limitation period(s) that may apply to an individual claim against Mettrum. Anyone considering an individual lawsuit against Mettrum should speak to a lawyer before excluding themselves from this action. Roy O'Connor LLP and Wagners LLP will not act for any former Class Member in any individual or other lawsuit against Mettrum.

7. What will Happen if the Settlement is Rejected by the Court?

The Court will decide whether to approve or reject the settlement. It does not have the authority to unilaterally change the material terms of the settlement. If the Court does not approve the settlement, the lawsuit will continue. It may take several more years to complete the pre-trial procedures, common issues trial and possible appeals. The Class may not be successful in respect of certification, the determination of the common issues at trial and, even if successful, Class Members may not necessarily receive more compensation than under this proposed settlement. The damages sought as part of the common issues in this proceeding (which are/were the issues proposed by the Plaintiff to be resolved at trial) relate to or focus on the amounts paid by the Class Members for the Recalled Products.

8. Can I Make Comments to the Court on the Settlement? Do I have to Comment on the Settlement?

Class Members are entitled, but not obligated, to express their opinions about the settlement and whether it should be approved. If you wish to make a submission to the Court supporting or objecting to the proposed settlement, you must send a submission in writing (by mail or email) or by voicemail to Class Counsel, as set out below, and ensure they are received no later than **Tuesday, December 1, 2020**. Class Counsel will provide all submissions to the Court and the Defendant in advance of the hearing. The submissions should include:

- a. your name, mailing address, telephone number and, if applicable, email address;
- b. a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- c. whether you wish to view the settlement approval hearing by videoconference and whether you wish to make public oral submissions (by videoconference) to the Court regarding the proposed settlement. You will be contacted by Class Counsel if you indicate that you do want to view the hearing by video conference.

For those Class Members who indicate that they would like to make public oral submissions to the Court on the date of the hearing, reasonable steps will be taken in coordination with directions from the Court to accommodate such submissions. It may be that a representative selection or sample of such Class Members may be selected to make oral submissions at the hearing, particularly if the number of Class Members indicating a desire to speak is high.

Please note and remember that photographing, copying, recording, publishing, broadcasting or disseminating any court hearing, or any portion of it, including a hearing that is conducted by videoconference, is prohibited and is an offence under s. 136 of the Courts of Justice Act, R.S.O. 1990, c. C.43.

9. When and Where will the Hearing Be?

The hearing will be held before a judge of the Ontario Superior Court of Justice on December 16, 2020 at 10:00 a.m. ET. Due to current COVID-19 precautions and restrictions the hearing will proceed by video conference. As set out above, please contact Class Counsel by December 1, 2020 if you intend to watch the hearing online.

10. Who are the Lawyers Working on this Class Action and how are they Paid?

The law firms of Roy O'Connor LLP and Wagners LLP are proposed Class Counsel and represent members of this Class Action in Canada. Class Counsel's contact information is set out below.

Class Members will not have to personally pay Class Counsel for the work that they have done or for the disbursements that they have carried since this case began. The proposed Representative Plaintiff entered into a contingency fee agreement with Class Counsel at the outset of the case, providing that Class Counsel are to be paid only in the event of a successful settlement or trial judgment. As provided for in that contingency fee agreement, Class Counsel will be asking that the Court approve legal fees of 30% of the settlement funds, plus disbursements and applicable taxes. Approval of the Settlement Agreement and Distribution Protocol will not be contingent upon the court approval of legal fees. Any approved legal fees and disbursements will be paid out of the \$6.95 million total funds paid by the Defendant.

The percentage fees set out in class action retainer agreements (including 30% fees) have generally been enforced by Ontario Courts for a settlement of this nature and size. The materials from the Plaintiff and Class Counsel that are expected to be posted to mettrumclassaction.ca by November 1, 2020 will also address the basis for requesting and potentially approving such fees. As noted above, please review that website for updates from time to time.

In this case, the Plaintiff has received financial support from the Class Proceedings Fund (the "Fund"), which is a body created by statute and designed to allow access to the courts through class actions in Ontario. The Fund has agreed to reimburse the Plaintiff for some disbursements incurred in pursuing this action. The Fund would also be responsible for costs that may be awarded against the Plaintiff in this case. In exchange, the Fund will be entitled to recover, from any court award or settlement in favour of the Class Members, the amount of its funded disbursements (except amounts already repaid to the Fund). The Fund is also entitled to 10% of any amounts that may be payable to Class Members.

11. Where can I ask More Questions?

For more information, please visit: mettrumclassaction.ca. If you have questions that are not answered online or by email, please contact Class Counsel as set out below.

12. Interpretation

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

13. More Information

For further information about the class proceeding lawsuit please see: mettrumclassaction.ca or contact Class Counsel at:

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Attention: James Katsuras
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Toronto, ON, M4S 3E2
Tel: 1-888-330-8815
Fax: 416-362-6204
Email: jk@royoconnor.ca

PLEASE DO NOT CALL OR CONTACT METTRUM, THE COURTHOUSE, OR THE REGISTRAR OF THE COURT ABOUT THIS ACTION. ALL QUESTIONS ABOUT THE LAWSUIT SHOULD BE DIRECTED TO CLASS COUNSEL.

This notice is published pursuant the provisions of to the Ontario *Class Proceedings Act, 1992* and was approved by the Ontario Superior Court of Justice.