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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JACOB PETERSEN, et al., Individually
and on Behalf of All Others Similarly
Situated,

Plaintiff,

v.

COSTCO WHOLESALE CORP.,
TOWNSEND FARMS, INC., and
FALLON TRADING CO.,

Defendants.

Case No. 8:13-cv-01292-DOC-JCG

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement” or “Settlement”), dated as of July 24, 2019, is made and entered into between Gayle Prather, on behalf of herself and each of the Arizona Class Members; Suzanne Faber, on behalf of herself and each of the Colorado Class Members; Leslie Lee, on behalf of herself and each of the Idaho Class Members; Thomas Fiore, on behalf of himself and each of the Nevada Class Members; Leslie Straka, on behalf of herself and each of the Oregon Class Members; David

Troutman, on behalf of himself and each of the New Mexico Class Members; Andrea Medrano, on behalf of herself and each of the Hawaii Class Members; and Aerol and Amy Paden, on behalf of themselves and each of the Washington Class Members (collectively the “Settling Class Members”) and Costco Wholesale Corp., Townsend Farms, Inc., and Fallon Trading Co. (the “TFI Defendants,” and collectively with the Settling Class Members, the “Settling Parties”) by and through their undersigned respective counsel and subject to the approval of the United States District Court for the Central District of California pursuant to Rule 23(a) of the Federal Rules of Civil Procedure.

This Agreement is intended by the Settling Parties to fully, finally, and forever compromise, resolve, discharge, and settle the Released Claims as against the Released Parties (as those terms are defined below) with prejudice, upon and subject to the terms and conditions herein.

WHEREAS, the TFI Defendants and those individuals currently or formerly affiliated with the TFI Defendants named as defendants in the Action, deny any and all allegations of wrongdoing and any and all liability as to them with respect to the Action;

WHEREAS, counsel for the Settling Class Members have conducted extensive investigation of the allegations in the Action, including the alleged harm caused by the TFI Defendants;

WHEREAS, the Settling Parties engaged in settlement negotiations in Washington, DC in June 2019 through their respective counsel, have conditionally agreed to the terms set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises, which are an integral part of this Agreement, and intending for their clients to be mutually bound hereby, the undersigned counsel on behalf of the TFI Defendants and the Settling Class Members agree, subject to Court approval of this Agreement as a good faith, fair, reasonable, and adequate settlement under Rule 23(e) of the Federal Rules of Civil Procedure, on the following terms and conditions:

RECITALS

A. On June 3, 2013, Lead Plaintiff, Jacob Petersen, represented by Marler Clark LLP PS (“Lead Class Counsel”), filed a Class Action Complaint alleging claims for Strict Products Liability, Negligence, Negligence Per Se, and Breach of Warranties against Townsend Farms, Inc. in the Superior Court of California County of Orange in a case styled: *Jacob Petersen, and others similarly situated v. Townsend Farms, Inc., an Oregon Corporation doing business in California, and Does 1-100, Defendants*: Case No. 30-2013-00654042-CU-MT-CXC.

B. In July 2013, Lead Plaintiff filed an amended complaint and added Purely Pomegranate Inc. as a “Doe” defendant. In August 2013, Purely Pomegranate Inc. removed the Action to the United States District Court for the Central District of California, Southern Division. In November 2013, Lead Plaintiff amended his complaint to add additional class representatives and related allegations for Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington (the “Eight State Subclasses,” and collectively with the California subclass, the “Nine State Subclasses”). Plaintiffs also named Fallon Trading Co., Inc. and United Juice Corp. as defendants.

C. In December 2016, Lead Plaintiff filed his operative complaint, substituting certain class representatives of the Eight State Subclasses. The complaint alleges Gayle Prather as class representative on behalf of each of the Arizona Class Members; Suzanne Faber as class representative on behalf of each of the Colorado Class Members; Leslie Lee as class representative on behalf of each of the Idaho Class Members; Thomas Fiore as class representative on behalf of each of the Nevada Class Members; Leslie Straka as class representative on behalf of each of the Oregon Class Members; David Troutman as class representative on behalf of each of the New Mexico Class Members; Andrea Medrano as class representative on behalf of each of the Hawaii Class Members; and Aerol and Amy Paden as class representatives on behalf of each of the Washington Class Members (collectively the “Plaintiffs”).

D. The Court certified the Nine State Subclasses as to liability only and allowed Plaintiffs to proceed without determination as to whether the Nine State Subclasses could be certified as to damages. Plaintiffs eventually abandoned their negligence claims and breach of warranty claims and dismissed Purely Pomegranate Inc. as a defendant. The litigation proceeded with Nine State Subclasses certified as to liability only on a single strict products liability claim against the TFI Defendants and United Juice Corp.

E. In October 2018, Lead Plaintiff, Lead Class Counsel, and the TFI Defendants attended a mediation and settled the claims as to Lead Plaintiff and the California Subclass only. On November 30, 2018, Lead Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement as to the California Subclass. The Court granted the Motion on January 17, 2019 and set the final approval hearing for September 2019.

F. On June 26, 2019, Lead Class Counsel and TFI Defendants' Counsel met in Washington, DC and negotiated a settlement between the Plaintiffs, on behalf of themselves and the Eight State Subclasses, and the TFI Defendants. The terms of this settlement negotiation are reflected in this agreement.

G. The TFI Defendants deny any wrongdoing whatsoever and this Settlement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the TFI Defendants with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the TFI Defendants have asserted. The Settling Parties recognize, however, that the Action has been prosecuted by Plaintiffs and Lead Class Counsel and defended by the TFI Defendants and TFI Defendants' Counsel in good faith and in compliance with Rule 11 of the Federal Rules of Civil Procedure, and that the Action is being voluntarily settled after receiving advice of counsel. Plaintiffs have concluded that the Settlement, as embodied herein, is fair, reasonable, and adequate. This

Settlement shall not be construed or deemed to be a concession by Plaintiffs, or any Settlement Class Member, of any infirmity in the claims asserted in this Action.

H. Lead Counsel has conducted extensive investigation relating to the claims and the underlying events and transactions alleged in the operative complaint. Lead Class Counsel has analyzed the evidence adduced through discovery in this Action and has researched the applicable law with respect to the claims of Plaintiffs and the Eight State Subclasses against the TFI Defendants and potential defenses thereto. The Settling Parties have engaged in extensive discovery during the course of this Action, which has allowed Lead Class Counsel and Plaintiffs to verify the reasonableness and adequacy of the Settlement.

I. Based upon their investigation as set forth above, Plaintiffs and Lead Class Counsel have concluded that the terms and conditions of this Settlement, as embodied herein, are fair, reasonable, and adequate to Plaintiffs and to the other Settlement Class Members, and in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement, after considering: (1) the monetary benefit the Settlement Class Members will receive from the Settlement; (2) the attendant risk of litigation; and (3) the desirability of permitting the proposed settlement to be consummated as provided by the terms of this Agreement.

NOW THEREFORE, without any admission or concession on the part of Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by the TFI Defendants, it is hereby AGREED, by and among the Settling Parties, through their respective counsel, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and in consideration of the benefits flowing to Plaintiffs and the Settlement Class Members that all Released Claims shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

DEFINITIONS

1.1 “Action” means the action pending in this Court under the caption *Jacob Petersen, et al. v. Costco Wholesale Co., Inc., et al.*, Case No. 8:13-cv-01292-DOC-JCG.

1.2 “Approved Claimant” means a Settlement Class Member who submits a timely Proof of Claim Form to the Claims Administrator, that the Claims Administrator has found satisfies all the requirements set forth on the Proof of Claim Form in accordance with the requirements established by this Settlement.

1.3 “Authorized Claimant” means a Settlement Class Member who submits a timely proof of Claim Form to the Claims Administrator that the Claims Administrator has found satisfies all the requirements set forth on the Proof of Claim Form in accordance with the requirements established by this Settlement, and whose Claim neither Settling Party disputes. Subject to Court approval of the Settlement, an Authorized Claimant will be entitled to a payment of damages from the settlement.

1.4 “Berry Mix” means the Townsend Farms Organic Antioxidant Blend.

1.5 “Claim” means a completed and signed Proof of Claim Form submitted by a Settlement Class Member, or on their behalf, to the Claims Administrator in accordance with the instructions on the Proof of Claim Form.

1.6 “Claimant” means a person or entity that submits a Claim.

1.7 “Claims Administrator” means JND Legal Administration | 1100 2nd Ave, Suite 300, Seattle, WA 98101.

1.8 “Effective Date” means the first date by which all of the following shall have occurred: (1) the Court has entered the Preliminary Approval Order, substantially in the form annexed hereto as Exhibit A; (2) the Court has approved all the material terms set forth in this Agreement and the proposed settlement embodied herein, following the provision of Notice to the Settlement Class and a Final Approval Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; (3) the time to exercise the termination rights provided for in this Agreement has expired or otherwise been

waived; and (4) the Court has entered the Judgment, substantially in the form annexed hereto as Exhibit B, which has become Final.

1.9 “Final” when referring to an order or judgment means: (1) that the time for appeal or appellate review of the order or judgment has expired, and no appeal has been taken; or (2) if there has been an appeal, (i) that the appeal has been decided by all appellate courts and affirmed; or (ii) that the order or judgment has been affirmed on appeal and is no longer subject to appellate review by further appeal or writ of certiorari.

1.10 “Final Approval Hearing” means the hearing set by the Court in the Preliminary Approval Order pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to consider, among other things, final approval of the Settlement.

1.11 “GAIC” shall refer to the TFI Defendants’ insurer, Great American Insurance Company.

1.12 “Judgment” means the proposed order and final judgment, substantially in the form attached hereto as Exhibit B, to be entered by the Court pursuant to Rule 54(b) of the Federal Rules of Civil Procedure approving the Agreement and the proposed settlement embodied herein.

1.13 “Lead Class Counsel” means Marler Clark, LLP.

1.14 “Eight State Subclasses” means the subclasses for Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington that the Court has certified as to liability that were not part of the October 2018 settlement agreement between Lead Plaintiff, on behalf of the California subclass, and the TFI Defendants.

1.15 “Nine State Subclasses” means all of the state subclasses that the Court has certified as to liability including the Eight State Subclasses and the California subclass.

1.16 “Notice” means the Notice of Pendency of Class Action and Proposed Settlement, substantially in the form attached hereto as Exhibit C which is to be sent to members of the Settlement Class.

1.17 “Notice and Administration Costs” means (1) the costs, fees and expenses that are reasonably incurred by the Claims Administrator, as described herein and in the

Preliminary Approval Order, in connection with (i) providing Notice to the Class and (ii) administering the claims process; and (2) any Tax Expenses incurred by the Claims Administrator.

1.18 “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Agreement and the proposed settlement embodied therein.

1.19 “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit D, which a Settlement Class Member must complete should that Settlement Class Member seek compensation.

1.20 “Released Claims” means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory, or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims, that (1) have been asserted in this Action by Plaintiffs, the Settlement Class Members, or any of them against any of the Released Parties, or (2) could have been asserted in any forum by Plaintiffs, the Settlement Class Members or any of them against any of the Released Parties which in any way arise out of, are related to, or are based upon (i) the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in any of the complaints filed in this Action. Notwithstanding the foregoing, “Released Claims” does not include claims relating to the enforcement of the Settlement or its terms.

1.21 “Released Party” and “Released Parties” means any and all of the TFI Defendants, each of the TFI Defendants’ respective past and present subsidiaries, parents, successors, predecessors, assigns, affiliates, controlled persons, controlling persons, family members and partners, and as to each of the foregoing, their legal

representatives, heirs, executors, administrators, trustees, beneficiaries, managers, officers, directors, agents, employees, and attorneys.

1.22 “Required Documentation” means any documentation required to establish proof of purchase of the Berry Mix and/or proof of Hepatitis A Vaccination or immune globulin injection as described in Section 3.

1.23 “Settlement Class Member” means all persons who: (1) consumed the Townsend Farms Antioxidant Blend that had been purchased at Costco in Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, or Washington prior to June 4, 2013, (2) were not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination or infection, and (3) received a Hepatitis A vaccine or immunoglobulin shot between May 31 and June 13, 2013.

Excluded from the Settlement Class are any putative Settlement Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice of Pendency of Class Action and Section 12, below.

1.24 “Settlement Notices” means the Notice and Summary Notice.

1.25 “Settling Parties” means the TFI Defendants and Plaintiffs, on behalf of themselves and the Settlement Class Members.

1.26 “Summary Notice” means the Summary Notice of Pendency of Class Action and Proposed Settlement, substantially in the form attached hereto as Exhibit E, to be published as set forth in the Preliminary Approval Order.

1.27 “Tax Expenses” means any expenses and costs reasonably incurred by the Claims Administrator in connection with determining the amount of, and paying, any Taxes (including, without limitation, reasonable expenses of tax attorneys and/or accountants and/or other advisors and reasonable expenses relating to the filing of or failure to file all necessary or advisable tax returns).

1.28 “TFI Defendants” means Costco Wholesale Corp., Townsend Farms, Inc., and Fallon Trading Co.

1.29 “TFI Defendants’ Counsel” means the law firm of Cooley LLP.

1.30 “Unknown Claims” means any and all Released Claims that Plaintiffs or any Settlement Class Member do not know or suspect to exist in his, her or their favor at the time of the release of the Released Parties, which if known by him, her or them might have affected his, her or their decision(s) with respect to the Settlement. With respect to any and all Released Claims, Plaintiffs and Defendants agree that upon the Effective Date, Plaintiffs shall for themselves and all persons claiming by, through, or on behalf of them, expressly waive, and each Settlement Class Member shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, principle of common law, or any other law, rule or regulation that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs and the TFI Defendants acknowledge, and the Settlement Class Members’ and the TFI Defendants’ successors and assigns and any persons or entities claiming through or on their behalf shall, by operation of law, be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a material element of this Settlement.

THE SETTLEMENT

In consideration of the respective covenants and undertakings set forth below, the Settling Parties agree as follows:

2. Recitals and Definitions Incorporated.

The foregoing Recitals and Definitions are hereby expressly incorporated by reference as part of this Settlement between the Settling Parties.

3. Eligibility Requirements

Each Claimant must meet the following Eligibility Requirements:

A. Each Claimant must provide a declaration under the penalty of perjury that he or she: (i) received a Hepatitis A vaccination or an immune globulin injection between May 31 and June 13, 2013, and (ii) was not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination or infection.

B. Noneconomic Damages

Whether a Claimant received a Hepatitis A Vaccination at Costco or a Hepatitis A Vaccination or Immune Globulin Injection from a commercial entity or private medical provider, the Claimant would be eligible for Noneconomic Damages of \$80 provided he/she meets the following requirements:

- 1) Proof of Purchase:
 - a. If the Claimant purchased the Berry Mix under his/her Costco member number, the Claimant must provide his/her Costco member number;
 - b. If the Claimant did not purchase the Berry Mix under his/her Costco member number, the Claimant must provide: (a) the Costco member-number for the purchaser of the Berry Mix consumed by the claimant; (b) the name of the holder of that Costco member number; and (c) a description of the location and manner of consumption in a declaration under the penalty of perjury.
- 2) Proof of Vaccination or Immune Globulin Injection:
 - a. If the Claimant received a Hepatitis A Vaccination free at Costco, the Claims Administrator will check the Claimant against the list of recipients and confirm the Claimant appears on the list of recipients;
 - b. If the Claimant received a Hepatitis A Vaccination or immunoglobulin injection from a commercial entity or private medical provider, the Claimant must provide documentary proof of the vaccination or injection.

C. Economic Damages

If a Claimant received a Hepatitis A Vaccination or Immune Globulin Injection from a commercial entity or private medical provider, the Claimant would be eligible for Economic Damages to reimburse for the actual cost of the Hepatitis A Vaccination

or injection up to a maximum additional amount of \$120.00 provided he/she meets the following requirements:

- 1) **Proof of Actual Cost of Vaccination or Injection:** The Claimant must provide legible, documentary proof of the actual cost paid out of pocket by the Claimant for a Hepatitis A vaccination or immunoglobulin injection (not the total cost of any visit, additional fees or amounts covered by insurance); and
- 2) **Proof of Vaccination or Injection Timeframe:** The Proof of Actual Cost of Vaccination or Injection reflects that the Claimant received a Hepatitis A vaccination or immunoglobulin injection between May 31 and June 6, 2013.

4. Relief to Authorized Claimants

A. Noneconomic Damages

Authorized Claimants shall be awarded \$80 as a recovery for noneconomic damages.

B. Economic Damages

Authorized Claimants shall be awarded an additional payment for economic damages to reimburse for the actual cost of the vaccination or injection, if any, up to a maximum additional amount of \$120.00.

5. Maximum Recovery of Damages and Number of Authorized Claimants

No Claimant is eligible to receive more than a total payment of \$200.00. The total number of Authorized Claimants for all Nine State Subclasses is capped at 3,000 total. For the avoidance of any doubt, the total combined number of Authorized Claimants from Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, Washington, and California, is 3,000 in total.

6. Compensation for Class Representative

In addition to the above, Plaintiffs, Gayle Prather, Suzanne Faber, Leslie Lee, Thomas Fiore, Leslie Straka, David Troutman, Andrea Medrano will each receive an additional \$1,000 in compensation for their role as state representatives. Aerol and

Amy Paden will collectively receive \$1,000 between them for their joint role as state representatives.

7. Lead Class Counsel's Fees

Lead Class Counsel waives all attorneys' fees and costs, and will seek no reimbursement, fees, expenses, or costs from the class settlement, nor from the TFI Defendants.

8. Claims Administration and Administrative Costs

The Claims Administrator in this settlement is JND Legal Administration. The Claims Administrator will handle the administration of the Settlement, as follows: The printing, handling, mailing and re-mailing, and administration of the Notice Website as required by the Notice of Settlement, including all related personnel and operating costs, and the processing of Claims, requests for exclusion and other documents submitted as well as the distribution of Settlement payments to Authorized Claimants.

The total costs for class notice and class administration for all Nine State Subclasses will not exceed \$160,000, in addition to a one-time flat \$3,500 fee for CAFA notices, which in total amounts to \$163,500. The TFI Defendants shall be responsible for fees and charges owed to the Claims Administrator with respect to the foregoing administration of the Settlement of the Nine State Subclasses, not to exceed \$163,500 total. For the avoidance of any doubt, the cap for claims administration for this settlement, as well as for the settlement of the California subclass, is \$163,500 in total. The TFI Defendants shall not be responsible, and shall not pay, for any time or costs incurred by Settlement Class Members or their counsel with respect to the negotiation, implementation, or administration of the Settlement, or any costs incurred by any Settlement Class Member in connection with participating in the Settlement, except as provided above.

9. No Other Financial Obligations of the TFI Defendants

Neither the TFI Defendants nor any of their past, present, or future affiliates shall be liable or obligated to pay any fees, expenses, costs, or disbursements to, or incur any

expense on behalf of, any person, either directly or indirectly, in connection with this Settlement, other than the amount or amounts expressly provided for in this Agreement.

10. Procedure for Implementation of Settlement

After this Agreement has been fully executed, Lead Class Counsel shall present this Settlement, including all attached Exhibits, to the Court for preliminary approval. Specifically, Lead Class Counsel shall file a Motion for Preliminary Class Settlement Approval, which will seek entry of the Preliminary Approval Order in the form attached hereto as Exhibit A.

The Motion for Preliminary Settlement Approval will request that the Court: (a) preliminarily approve the proposed settlement; (b) approve the Notice Postcard attached hereto as Exhibit E; (b) approve the Class Action Notice Claim Form, attached hereto as Exhibit D; (c) direct Lead Class Counsel and the TFI Defendants to provide to the Claims Administrator the names and addresses of potential Settlement Class Members known to them; and (d) conduct the Final Approval Hearing approximately 120 days after the filing of the Preliminary Approval Order, or as the Court were to otherwise order.

11. Class Notice and Claims Administration

The Claims Administrator shall proceed in accordance with the following notification and claims administration process and procedures:

A. Class List.

Within 20 business days of entry of the Preliminary Approval Order, Lead Class Counsel and the TFI Defendants will provide the Claims Administrator with the names and addresses of potential Settlement Class Members known to them (the “Class List”).

B. Notice Package

Within 40 business days of the entry of the Preliminary Approval Order, the Claims Administrator shall cause the Notice Postcard and Class Action Notice Claim Form (“Notice Package” attached here to as Exhibits C - E) to be sent by the United States Postal Service first class mail, postage prepaid, to all potential Settlement Class

Members whose name and address appear on the Class List directing them to the Notice Website.

C. Notice Website

Within 40 business days of entry of the Preliminary Approval Order, the Claims Administrator shall establish a website at www.ShotClassSettlement.com (the “Notice Website”) where Claimants may submit a Claim Form online. In doing so, the Claimant must swear under oath the Eligibility Requirements are met, and submit the Required Documentation to prove their entitlement to compensation, if any.

D. Eligibility Period

All Claimants must submit the Claim Form and any documentation required to support a claim for Non-Economic Damages and/or Economic Damages within 21 days of receiving Notice, and in no case more than 30 days from the date of mailing of the Notice (the “Eligibility Period”).

E. Approved Claimant List

(i) The Claims Administrator shall receive Claims and review each Claimant’s Claim Form and Required Documentation, if any, submitted on the Notice Website, and determine first, whether the Claim is a valid Claim, in whole or part, and second, the amount the Claimant is entitled to as compensation under the Settlement.

(ii) Claim Forms that do not meet the Eligibility Requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, by mail, first class postage pre-paid, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form submitted within a period of twenty (20) days after such communication has been mailed. The Claims Administrator, under supervision of Lead Class Counsel, shall notify, in a timely fashion and in writing, by mail, first-class postage pre-paid, all Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant

whose Claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (iii) below within twenty (20) days following the mailing of the rejection notice by the Claims Administrator;

(iii) If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within the timeframe stated in the notice required in subparagraph (ii) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Lead Class Counsel shall thereafter present the request for review to the Court.

(iv) By submitting a Claim, a Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claim, including, but not limited to, the releases provided for in the Judgment, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the Claimant's status as a Settlement Class Member and the validity and amount of their Claim. No discovery shall be allowed on the merits of this Action or this Settlement in connection with the processing of Proof of Claim Forms. The TFI Defendants shall have no right to take any such discovery.

All proceedings with respect to the administration, processing, and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the exclusive jurisdiction of the Court.

(v) Within 95 days from the end of the Eligibility Period, the Claims Administrator shall provide Lead Class Counsel and TFI Defendants' Counsel with: (1) a list of Approved Claimants ("Approved Claimant List"); (2) corresponding Claim Forms and Required Documentation, if any; and (3) a corresponding calculation

of the total settlement payment approved by the Claims Administrator for each Claimant.

F. TFI Defendants' Right to Challenge

(i) The TFI Defendants may, to the extent possible, attempt to verify that (a) the information set forth in a submitted Claim Form is accurate; and (b) the Claimant is a Settlement Class Member. Within 30 days of receiving the Approved Claimant List, the TFI Defendants must notify Lead Class Counsel and the Claims Administrator of any Approved Claims they wish to dispute.

(ii) If the Settling Parties dispute a Claim Form's timeliness or validity, the Settling Parties must meet and confer in good faith to resolve the dispute. The TFI Defendants' records will be entitled to a rebuttable presumption of accuracy. If a dispute concerning a Claim cannot be otherwise resolved, Lead Class Counsel shall thereafter present the request for review to the Court.

12. Request for Exclusion

A. Any Settlement Class Member shall have the option to request to be excluded from the Settlement online at www.ShotClassSettlement.com instead of submitting a Claim Form during the Eligibility Period. Settlement Class Members may also request to be excluded from the Settlement by mailing a request to the Claims Administrator during the Eligibility Period.

B. The Claims Administrator shall scan and electronically send copies of all requests for exclusion in .pdf format (or such other format as shall be agreed) to the TFI Defendants' Counsel and to Lead Class Counsel expeditiously (and not more than two (2) days) after the Claims Administrator receives such a request.

C. Any potential Settlement Class Member who does not file a timely request for exclusion as provided in the preceding section shall be bound by this Settlement Agreement and all subsequent proceedings, orders, and judgments in this litigation, even if that potential member of the Settlement Class subsequently initiates litigation against the TFI Defendants relating to any of the Released Claims.

D. No Settling Party shall encourage any potential Settlement Class Member to file a request for exclusion or encourage or provide any material assistance for any potential Settlement Class Member to file an objection to this Settlement or to file any other action, except as expressly provided herein.

13. Objection to Settlement

A. Any Settlement Class Member who has not filed a request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement must serve on Lead Class Counsel and on TFI Defendants' Counsel, and must file with the Court, no later than 60 days from the entry of the Preliminary Approval Order or as the Court may otherwise direct, a notice of intention to appear and/or object, together with copies of any papers such Settlement Class Member intends to present to the Court in connection with such objection. Settlement Class Members may make such appearances or objections either on their own or through attorneys hired at their own expense. If an attorney will represent any such Settlement Class Member, he or she must (i) file an appearance with the Court no later than 60 days from the entry of the Preliminary Approval Order or as the Court otherwise may direct, and (ii) serve on Lead Class Counsel and TFI Defendants' Counsel a notice of the filing of the appearance.

B. Only those Settlement Class Members who follow the procedures set forth in the foregoing paragraph may appear at the Final Approval Hearing and/or have their objections considered by the Court, unless otherwise directed by the Court.

C. Any Settlement Class Member who does not appear individually or through counsel and/or who does not challenge or comment upon the fairness and adequacy of this Agreement shall waive and forfeit any and all rights that she or he may have to appear separately and/or object. All Settlement Class Members (whether or not they object to the fairness of this settlement) other than those requesting exclusion pursuant to the procedures described above shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in this Action.

14. Final Approval, Final Approval Order, and Post-Settlement Notice

If the Court approves of this Agreement and enters a Preliminary Approval Order, Plaintiffs shall then seek and use their best efforts to obtain from the Court a “Final Approval Order” which shall, among other things:

A. Find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Agreement and all exhibits thereto;

B. Approve this Agreement and the proposed settlement as fair, reasonable and adequate, and consistent and in compliance with the applicable provisions of the laws of California and the United States Constitution, as to, and in the best interests of, each of the Settling Parties and the Settlement Class Members; direct the Settling Parties and their counsel to implement and consummate this Agreement according to its terms and provisions; and declare this Agreement to be binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of the Plaintiffs and all other Settlement Class Members, as well as their heirs, executors and administrators, successors and assigns;

C. Find that the Plaintiffs and Lead Class Counsel represented the Settling Class for purposes of entering into and implementing the Settlement;

D. Find that the Notice of Settlement and the notice methodology implemented pursuant to this Agreement: (i) constitute the best practicable notice, (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise potential Settlement Class Members of the pendency of the litigation and of their right to object to the proposed settlement and to appear at the Final Approval Hearing; (iii) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States Constitution.

E. Dismiss the Settlement Class claims (including all individual claims and Settlement Class claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in this Agreement;

F. Bar and permanently enjoin all potential Settlement Class Members from (i) filing, commencing, prosecuting, intervening in, or participating (as Settlement Class Members or otherwise) in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action within the scope of the Release (as set out in paragraph 16 below), and (ii) organizing potential Settlement Class Members who have not been excluded from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to the claims and causes of action within the scope of the Release;

G. Authorize the Settling Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement and all exhibits attached hereto as (i) shall be consistent in all material respects with the Final Approval Order, or (ii) do not limit the rights of potential Settlement Class Members;

H. Without affecting the finality of the Final Approval Order for the purposes of appeal, retain the Court's jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Agreement and the Final Approval Order, and for any other necessary purpose; and

I. Incorporate any other provisions as the Court deems necessary and just.

15. Payment of Settlement Checks

GAIC shall send to the Claims Administrator the amount required for distribution within 10 business days after the Final Approval Order becomes final, where final means that the appeal period has passed, and no appeals have been filed or, if filed, such appeals have been dismissed. The Claims Administrator shall mail settlement checks to

Authorized Claimants within 21 calendar days after the Approval Order becomes final. Settlement checks must be cashed within six (6) months of the date of the mailing (the “Payment Period”). Any Authorized Claimant who does not cash his/her check within the Payment Period foregoes his/her claim to the funds. Any proceeds from checks not cashed by the deadline shall be returned to the TFI Defendants.

The Claims Administrator shall send payment to the Plaintiffs within 14 calendar days after the Final Approval Order becomes final, or as soon as practicable thereafter, and provided that such persons or entities shall be required to submit a completed IRS Form W-9 to the Claims Administrator prior to the issuance of such payment.

16. Releases

A. Upon payment of the amount agreed upon, Plaintiffs and each Settlement Class Member (except a Settlement Class Member who has obtained proper and timely exclusion from the class) hereby release the TFI Defendants, and their officers, directors, employees, agents, and insurers, of and from any and all liability for any and all claims, obligations, actions, demands, rights, costs, expenses, compensation, or causes of action of any nature whatsoever, whether based upon tort, contract, statute or any other theory of recovery, and whether for compensatory, punitive, statutory, or any other forms of damage or relief, whether legal or equitable, which currently exist or which may accrue in the future, whether known or unknown, latent or patent, whether asserted or un-asserted in the Action, based upon or arising out of the acts, errors, omissions, and transactions alleged in the Action and/or relating in any way to any alleged exposure to the HAV virus or recovery associated with a vaccination or Immune Globulin injection as set out in the Recitals to this Agreement.

B. Plaintiffs and each Settlement Class Member, make the release of claims in subparagraph A on behalf of themselves, their heirs, beneficiaries, trustees, executors, administrators, predecessors, successors and assigns, and any other person claiming by, through or on behalf of them, and shall be deemed by operation of law to (i) have released, resolved, relinquished, waived, discharged and dismissed each and

every one of the claims in subparagraph A against the Released Parties; (ii) forever be enjoined from commencing, instituting or prosecuting any or all of the claims in subparagraph A against the Released Parties; and (iii) forever be enjoined from instituting, continuing, maintaining or asserting, either directly or indirectly, whether in the United States or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any person or entity who may claim any form of contribution or indemnity from any of the claims in subparagraph A against the Released Parties or any matter related thereto.

17. Class Action Fairness Act of 2005 (“CAFA”) Notice

The TFI Defendants shall serve any notice of the Settlement required pursuant to CAFA, 28 U.S.C. § 1715(b), within the time period set forth in said statute and shall, within five (5) business days after service of such CAFA Notice, certify to Lead Class Counsel in writing that such service has been made. The Settling Parties agree that they will request, pursuant to 28 U.S.C. § 1715(d), that the Final Approval Hearing be scheduled for no earlier than ninety (90) days following the deadline for the TFI Defendants to serve the CAFA Notice as stated in this paragraph. The Settling Parties agree that any delay by the TFI Defendants in timely serving the CAFA Notice will not provide grounds for delay of the Final Approval Hearing or entry of the Judgment. The TFI Defendants shall be responsible for all costs and expenses related to the creation and service of the CAFA Notice.

18. Integration and Drafting

The Settling Parties agree that this Agreement is clear and unambiguous, that it was drafted by respective counsel for the Settling Parties at arm’s length and sets forth the entire agreement among the Settling Parties with respect to its subject matter, and that no parole or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Settling Parties or their counsel, or the circumstances under which the Agreement was made or executed. The Settling Parties further agree that no party shall be deemed to have drafted this Agreement. This Agreement

constitutes and represents the complete and entire agreement among the Settling Parties. This Agreement merges and supersedes any and all prior agreements, discussions, negotiations, and communications among the Settling Parties. The Settling Parties acknowledge and expressly represent and warrant that they have relied solely on their own judgment, together with advice of counsel when deciding whether to enter into this Agreement. Each Settling Party further agrees, acknowledges, and expressly warrants that no information, statement, promise, representation, warranty, condition, inducement, or agreement of any kind, whether oral or written, made by or on behalf of any other party shall be, or has been, relied upon by it unless specifically contained and incorporated herein.

19. Modification, Court Approval, Extensions

This Agreement is not subject to modification without the written consent of the Settling Parties and approval of the Court; provided, however, that, after entry of the Final Approval Order, the Settling Parties may by agreement effect such modification of this Agreement and its implementing documents (including all exhibits hereto) without notice to or approval by the Court if such changes are consistent in all material respects with the Court's Final Approval Order or do not limit the rights of Settlement Class Members. The Settling Parties also reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

20. Termination of Agreement

This Agreement will terminate at the sole option and discretion of the TFI Defendants or Plaintiffs if: (i) the Court, or any appellate court(s), rejects, modifies or denies approval of any portion of this Agreement or the proposed settlement that the terminating party in its (or their) sole judgment and discretion believes is material; or (ii) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating party in its (or their) sole judgment and

discretion believes is material. The terminating party must exercise the option to withdraw from and terminate this Agreement, as provided in this paragraph no later than twenty (20) days after receiving notice of the event described in this paragraph. If the Agreement is terminated, then the Agreement, its terms, and its exhibits shall be null and void and shall have no force or effect, no party shall be bound by any of its terms (except for the terms of this Paragraph) and the Agreement shall not be admissible in any further or different proceedings.

21. No Admission of Wrongdoing

Whether or not the Settlement, as embodied in this Agreement, is approved by the Court, and whether or not this Settlement is consummated, the fact and terms of this Settlement, including the exhibits annexed hereto, the Settlement embodied within it, all negotiations, discussions, drafts, and proceedings in connection with this Settlement, and any act performed or document signed in connection therewith:

A. Shall not be offered or received against the Released Parties, Plaintiffs or the other Settlement Class Members as evidence of, or be deemed to be evidence of, any presumption, concession or admission by any of the Released Parties or by Plaintiffs or the other Settlement Class Members with respect to the truth of any fact alleged by Plaintiffs or the validity, or lack thereof, of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault or wrongdoing of the Released Parties;

B. Shall not be offered or received against the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Released Party, or against Plaintiffs or any of the other Settlement Class Members as evidence of any infirmity in the claims of Plaintiffs and the other Settlement Class Members;

C. Shall not be offered or received against the Released Parties, Plaintiffs or the other Settlement Class Members as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the foregoing parties, in any arbitration proceeding or other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement; provided, however, that if the Settlement is approved by the Court, the Released Parties may refer to this Settlement to effectuate the protection from liability granted them hereunder;

D. Shall not be construed against the Released Parties, the TFI Defendants' Counsel, or Plaintiffs or the other Settlement Class Members as an admission or concession that the consideration to be paid hereunder represents the amount which could be or would have been recovered after trial; and

E. Shall not be construed as or received in evidence as an admission, concession or presumption against Plaintiffs or the other Settlement Class Members or any of them that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the Maximum Recovery of Damages.

22. Exhibits

All of the Exhibits hereto are incorporated herein by reference as if set forth herein verbatim, and the terms of all attachments are expressly made a part of this Agreement.

23. Waiver

The waiver by any Settling Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior or subsequent to, or contemporaneous with, this Agreement.

24. Authorization of Signatories

The undersigned counsel for Plaintiffs represents that (i) they are authorized to enter into this Agreement on behalf of each of the respective Plaintiffs and any other

attorneys who have represented or who now represent each of the respective Plaintiffs, and (ii) they are seeking to protect the interests of the entire Settlement Class. The undersigned counsel for the TFI Defendants represents that he is authorized to enter into this Agreement on behalf of the TFI Defendants.

25. Agreement Executable in Counterparts

This Agreement may be executed in any number of actual or tele-copied counterparts and by each of the different Settling Parties on several counterparts, each of which when so executed and delivered shall be an original. The executed signature page(s) from each actual counterpart may be joined together and attached to one such original and shall constitute one and the same instrument.

26. Interest of the Settlement Class

Lead Class Counsel and Plaintiffs represent that they are seeking to protect the interests of the entire Settlement Class and believe that this Agreement is in the best interests of the Settlement Class. Plaintiffs and Lead Class Counsel agree not to request exclusion from the Settlement Class or to object to the proposed settlement, and they further agree to support and urge the Court to approve the Settlement.

27. No Evidence

In no event shall this Agreement, any of its provisions, or any negotiations, statements, or proceedings relating to it in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this Agreement. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or proceedings shall be construed as, offered as, used as, or deemed to be evidence or an admission or concession by any person of any matter, including but not limited to any liability or wrongdoing on the part of the TFI Defendants or as a waiver by the TFI Defendants of any applicable defense, including without limitation any applicable statute of limitations, or as evidence of the appropriateness of certification of any class or of defense against any such certification.

28. Tax Consequences

No opinions concerning the tax consequences of the proposed settlement to individual claimants is given or will be given by the TFI Defendants, Plaintiffs or Lead Class Counsel, nor are any representations in this regard made by virtue of this Agreement. Each Claimant's tax obligations, if any, and the determination thereof, are the sole responsibility of the Claimant, and the tax consequences, if any, may vary depending on the particular circumstances of each individual Claimant. The TFI Defendants shall act as they determine is required by the United States Internal Revenue Code and the Regulations of the Internal Revenue Service thereunder, and by any applicable state law or regulations thereunder, in reporting any settlement benefit provided to any Authorized Claimant pursuant to this Agreement.

29. Media Communications

The Settling Parties and their counsel agree to cooperate in good faith to ensure that descriptions of the proposed settlement in the media or in any other public forum are fair and accurate.

30. Plaintiffs' Assertions of Good Faith

Plaintiffs expressly affirm that the allegations they each made in pleadings filed in the Action were made in good faith and does not admit or concede that any of the claims alleged in the Complaint lack merit.

31. Cooperation in Effecting Settlement

The Settling Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Agreement in good faith, to use good faith in resolving any disputes that may arise in the implementation of terms of this Agreement, to cooperate fully with one another in seeking Court approval of this Agreement, and to use their best efforts to effect the prompt consummation of this Agreement and the proposed settlement.

32. Conditions to Obligation to Conclude Settlement

The obligation, although not the ability, of the Settling Parties to conclude the

proposed settlement is and will be contingent upon each of the following:

- A. Execution of this Agreement by the Settling Parties;
- B. Entry by the Court of the Final Approval Order approving the Settlement, from which the time to appeal has expired or which has remained unmodified after any appeal(s); and
- C. Any other conditions stated in this Agreement.

33. Governing Law

This Agreement and any ancillary agreements shall be governed by, and interpreted according to, the law of the State of California.

34. Forum for Enforcement of Settlement

Any action to enforce this Agreement shall be commenced and maintained only in the United States District Court Central District of California Southern Division. If any Settlement Class Member hereafter sues or commences an arbitration against the TFI Defendants for the purpose of enforcing any claims that are released under this Agreement, this Agreement shall be and constitute a complete defense thereto.

35. Parties Bound

This Agreement shall be binding upon and inure to the benefit of the Plaintiffs, all potential Settlement Class Members, Lead Class Counsel, the TFI Defendants, and the respective heirs, successors and assigns of each of the foregoing.

FOR PLAINTIFF; MARLER CLARK, LLP



Dated: 7/24/19

FOR THE TFI DEFENDANTS, COOLEY LLP



Dated:

EXHIBIT

A

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2 Denis W. Stearns, Admitted *Pro Hac Vice*
3 MARLER CLARK LLP., P.S.
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8 dstearns@marlerclark.com

9 **Attorneys for the Plaintiffs and Class**

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**

13 **Jacob Petersen, et al.**, individually,
14 and on behalf of all others similarly
15 situated,,
16

17 Plaintiffs,

18 v.

19 **Costco Wholesale Co., Inc.** a
20 Washington corporation doing
21 business in California, **Townsend**
22 **Farms, Inc.**, an Oregon corporation
23 doing business in California, **Fallon**
24 **Trading Co., Inc.**, a Pennsylvania
25 corporation doing business in
26 California, and United Juice Corp., a
27 New Jersey corporation doing business
28 in California,

Defendants.

CASE NO. 8:13-cv-01292 DOC (JCGx)

Assigned To: Hon. David O. Carter –
Dept. 9D

[PROPOSED]
ORDER APPROVING PLAINTIFF’S
MOTION FOR THE PRELIMINARY
APPROVAL OF CLASS-ACTION
SETTLEMENT, NOTICE OF SETTLEMENT
TO CLASS MEMBERS, AND PLAN FOR
NOTICE OF SETTLEMENT

Hearing: None

Trial Date: None

23 This matter came before the Court for hearing on _____ (“Preliminary Approval
24 Hearing”) on the application of Plaintiffs and Representatives of Arizona, Colorado,
25 Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington (“the Eight State
26 Subclasses”) of this Class Action, having filed the Motion for the Preliminary Approval
27 of Class Action Settlement, Notice of Settlement, and Plan for Notice of Settlement
28 (“Motion for Preliminary Approval”), Dkt. _____, along with the Memorandum in

1 Support of Motion for Preliminary Approval, Dkt. _____.

2 In neither pleadings filed, nor in arguments made at the Preliminary Approval
3 Hearing was the Motion for Preliminary Approval opposed. Counsel for Plaintiffs, as
4 well as the settling Defendants, Costco Wholesale Corp., Townsend Farms, Inc., and
5 Fallon Trading Co. (“TFI Defendants”), were present at the Hearing, and all were heard
6 to speak in support of the proposed settlement, and answering the Court’s questions.

7 The Motion for Preliminary Approval asked the Court to determine: (i) whether
8 the terms and conditions of the Settlement Agreement, Appendix _____, and settlement
9 proposed in and by the Agreement, are fair, reasonable, and adequate and should be
10 approved by the Court; and (ii) whether the proposed notices, notice plan, and means
11 of claims-administration are reasonable and sufficient, meeting the requirements of
12 Rule 23 of the Federal Rules of Civil Procedure, U.S. Constitution (including Due
13 Process clause), and other applicable laws, and, as such, constituting the best notice
14 practicable under the circumstances, providing due and sufficient notice to all those
15 entitled.

16 **Summary of the Key Settlement Terms and Deadlines**

17 Although the specific, detailed, and express terms are set forth in the Settlement
18 Agreement included in the Appendix to this Order, key settlement terms and deadlines
19 can be summarized as follows:

20 **Settlement Notice:** (1) Notice Postcard and Class Action Notice Claim Form
21 (“Notice Package”), will be mailed by first-class mail, postage pre-paid, to all potential
22 Settlement Class Members at the address of each such potential Settlement Class
23 Member, as set forth in Costco’s records, or who otherwise could be identified through
24 reasonable effort; (2) Claims Administrator will establish a website where Claimants
25 may submit a Proof of Claim Form online where each Claimant must swear under oath
26 the Eligibility Requirements, are met; and (3) the Notice Package and Proof of Claim
27 Form will be posted to a website dedicated to the administration of the Settlement.

28 **Eligibility Requirements:** Each Claimant must meet the following

1 requirements:

2 **A.** Each Claimant must provide a declaration under the penalty of perjury that
3 he or she: (i) received a Hepatitis A vaccination or an immune globulin injection
4 between May 31 and June 13, 2013, and (ii) was not immune to Hepatitis A on the date
5 of consumption due to an earlier Hepatitis A vaccination or infection.

6 **B. Noneconomic Damages**

7 Whether a Claimant received a Hepatitis A Vaccination at Costco or a Hepatitis
8 A Vaccination or Immune Globulin Injection from a commercial entity or private
9 medical provider, the Claimant would be eligible for Noneconomic Damages of \$80
10 provided he/she meets the following requirements:

11 1) Proof of Purchase:

- 12 a. If the Claimant purchased the Berry Mix under his/her Costco
13 member number, the Claimant must provide his/her Costco
14 member number;
15 b. If the Claimant did not purchase the Berry Mix under his/her
16 Costco member number, the Claimant must provide: (a) the
17 Costco member-number for the purchaser of the Berry Mix
18 consumed by the claimant; (b) the name of the holder of that
19 Costco member number; and (c) a description of the location
20 and manner of consumption in a declaration under the penalty
21 of perjury.

22 2) Proof of Vaccination or Immune Globulin Injection:

- 23 a. If the Claimant received a Hepatitis A Vaccination free at
24 Costco, the Claims Administrator will check the Claimant
25 against the list of recipients and confirm the Claimant appears
26 on the list of recipients;
27 b. If the Claimant received a Hepatitis A Vaccination or
28 immunoglobulin injection from a commercial entity or
private medical provider, the Claimant must provide
documentary proof of the vaccination or injection.

C. Economic Damages

If a Claimant received a Hepatitis A Vaccination or Immune Globulin Injection
from a commercial entity or private medical provider, the Claimant would be eligible
for Economic Damages to reimburse for the actual cost of the Hepatitis A Vaccination
or injection up to a maximum additional amount of \$120.00 provided he/she meets the

1 following requirements:

- 2 1) **Proof of Actual Cost of Vaccination or Injection:** The Claimant must
3 provide legible, documentary proof of the actual cost paid out of
4 pocket by the Claimant for a Hepatitis A vaccination or
immunoglobulin injection (not the total cost of any visit, additional
5 fees or amounts covered by insurance); and
6 2) **Proof of Vaccination or Injection Timeframe:** The Proof of Actual
7 Cost of Vaccination or Injection reflects that the Claimant received
a Hepatitis A vaccination or immunoglobulin injection between
8 May 31 and June 6, 2013.

9 **Available Relief to Authorized Claimants:** For each claimant who meets the
10 relevant eligibility requirements, available relief is: for **Economic Damages**, an award
11 of \$80, and for **Noneconomic Damages**, if any, an award of an additional payment to
12 reimburse for the actual cost of the vaccination or injection, if any, up to a maximum
13 amount of \$120. No claimant is eligible to receive more than a total payment of \$200.
14 The total number of authorized claimants for Arizona, Colorado, Hawaii, Idaho,
15 Nevada, New Mexico, Oregon, Washington and the previously settled California
Subclass (“the Nine State Subclasses”) is capped at 3,000.

16 **Compensation for Class Representatives:** Gayle Prather, Suzanne Faber,
17 Leslie Lee, Thomas Fiore, Leslie Straka, David Troutman, Andrea Medrano will each
18 receive an additional \$1,000 in compensation for the role as state representatives. Aerol
19 and Amy Paden will collectively receive \$1,000 between them for their joint role as
20 state representatives.

21 **Lead Class-Counsel’s Fees:** Lead Class Counsel waives all attorneys’ fees and
22 costs, and will seek no reimbursement, fees, expenses, or costs from the class
23 settlement, nor from TFI Defendants.

24 **Claims Administration and Administrative Costs:** Settling Parties agreed to
25 retain JND Legal Administration, 1100 2nd Avenue, Suite 300, Seattle, Washington,
26 98101 as the Claims Administrator to handle administration of the Settlement, including
27 printing, handling, mailing and re-mailing, and administration of the Notice Website,
28 as set forth in the Settlement Agreement. Such administration will also include

1 processing of Claims, requests for exclusion and other documents submitted, as well as
2 distribution of Settlement Payments to Authorized Claimants.

3 The total costs for class notice and class administration for the Nine State
4 Subclasses (the Eight State Subclasses and California) will not exceed \$163,500 total.
5 The TFI Defendants shall not be responsible, and shall not pay, for any time or costs
6 incurred by Settlement Class Members or their counsel with respect to the negotiation,
7 implementation, or administration of the Settlement, or any costs incurred by any
8 Settlement Class Member in connection with participating in the Settlement, except as
9 provided above.

10 **Class Notice and Claims Administration, including Key Dates:** The Claims
11 Administrator shall proceed in accordance with the following notification and claims
12 administration process, procedures, and deadlines:

13 **A. Class List:** Lead Class Counsel and the TFI Defendants will provide the
14 Claims Administrator with the names and addresses of potential Settlement Class
15 Members known to them (the “Class List”) no later than _____.

16 **B. Notice Package & Claims-Submission Website:** The Claims Administrator
17 shall, **no later than** _____: (1) cause the Notice Package to be sent by the United
18 States Postal Service first-class mail, postage prepaid, to all those individuals whose
19 name and address appear on the Class List; and (2) establish online a website at
20 www.ShotClassSettlement.com where Claimants may submit a Claim Form online,
21 swearing under oath that the Eligibility Requirements are met, and submit Required
22 Documentation to prove their entitlement to compensation.

23 **C. Eligibility Period:** All Claimants must submit the Claim Form and any
24 documentation required to support a claim within 21 days of receiving Notice, and **not**
25 **later than** _____ (the “Eligibility Period Deadline”).

26 **D. Submission, Rejection, and Cure of Claims:**

27 (1) Following the procedures set forth in the Settlement Agreement, Claims
28 Administrator shall, after reviewing each Claim Form and Required Documentation,

1 and for each that is determined to not meet the Eligibility Requirements, notify the
2 Claimant in writing, by mail, first class postage pre-paid, that the Claims Administrator
3 proposes to reject the Claim, in whole or in part, setting forth the reasons the reasons
4 for the proposed rejection, and of the Claimant's right to have the Court review the
5 proposed rejection of the Claim, if, and only if, the Claimant meets the requirements of
6 the following subparagraph within twenty (20) days following the mailing-date of the
7 rejection notice by the Claims Administrator.

8 (2) If any Claimant whose Claim has been rejected in whole or in part desires
9 to contest such rejection, the Claimant must, within the timeframe stated in the notice,
10 serve upon the Claims Administrator: (a) a notice and statement of reasons indicating
11 the Claimant's grounds for contesting the rejection; (b) any supporting documentation;
12 and (c) a request for Court-review. If a dispute concerning a Claim cannot be otherwise
13 resolved, Lead Class Counsel shall present the request for review to the Court.

14 (3) By submitting a Claim, a Claimant shall be deemed to have submitted to
15 the jurisdiction of the Court with respect to the Claim, including, but not limited to, the
16 releases provided for in the Judgment, and the Claim will be subject to investigation
17 and discovery under the Federal Rules of Civil Procedure, provided that such
18 investigation and discovery shall be limited to the Claimant's status as a Settlement
19 Class Member and the validity and amount of their Claim.

20 **E. Approved List of Claimants: No later than _____, the Claims**
21 **Administrator shall provide Lead Class Counsel and TFI Defendants' Counsel with: (1)**
22 **a list of Approved Claimants ("Approved Claimant List"); (2) corresponding Claim**
23 **Forms and Required Documentation, if any; and (3) a corresponding calculation of the**
24 **total settlement payment approved by the Claims Administrator for each Claimant.**

25 **F. TFI Defendants' Right to Challenge:**

26 1. After verifying submitted claims as allowed by the Settlement Agreement,
27 the TFI Defendants must notify Lead Class Counsel and the Claims Administrator of
28 any Approved Claims they wish to dispute no later than _____.

1 2. If the Settling Parties dispute a Claim Form’s timeliness or validity, the
2 Settling Parties must meet and confer in good faith to resolve the dispute. The TFI
3 Defendants’ records will be entitled to a rebuttable presumption of accuracy. If a dispute
4 concerning a Claim cannot be otherwise resolved, Lead Class Counsel shall thereafter
5 present the request for review to the Court.

6 **G. Request for Exclusion:** The Settlement Website shall provide the option
7 for any Settlement Class Member to request to be excluded from the Settlement by the
8 Eligibility Period Deadline, which is no later than _____.

9 **H. Objections to Settlement:**

10 1. Any Settlement Class Member who has not filed a request for exclusion
11 and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement
12 or the proposed settlement must serve on Lead Class Counsel and on TFI Defendants’
13 Counsel, and must file with the Court, **no later than** _____, a notice of intention to
14 appear and/or object, together with copies of any papers such Settlement Class Member
15 intends to present to the Court in connection with such objection.

16 2. Settlement Class Members may make such appearances or objections
17 either on their own or through attorneys hired at their own expense. If an attorney will
18 represent any such Settlement Class Member, he or she must, **no later than** _____,
19 (a) file an appearance with the Court, and (b) serve on Lead Class Counsel and TFI
20 Defendants’ Counsel a notice of the filing of the appearance. Only those Settlement
21 Class Members who follow these procedures may appear at the Final Approval Hearing
22 and/or have their objections considered by the Court.

23 3. Any Settlement Class Member who does not appear individually or
24 through counsel and/or who does not challenge or comment upon the fairness and
25 adequacy of this Agreement shall waive and forfeit any and all rights that she or he may
26 have to appear separately and/or object. All Settlement Class Members (whether or not
27 they object to the fairness of this settlement) other than those requesting exclusion
28

1 pursuant to the procedures described above shall be bound by all the terms of this
2 Agreement and by all proceedings, orders and judgments in this Action.

3 **I. Hearing for Final Approval of Settlement:** The hearing for final approval
4 of class action settlement is set for _____ at _____ **a.m.**

5 NOW THEREFORE, having previously reviewed the papers filed in support of
6 the Plaintiff's Motion for the Preliminary Approval, and having heard the argument of
7 counsel on record on behalf of the Lead Plaintiff and TFI Defendants, and having
8 granted the Motion for Preliminary Approval by an Order dated _____, Dkt. _____, the
9 Court hereby FURTHER ORDERS as follows:

10 1. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil
11 Procedure, the Court HEREBY FINDS that the Settlement Agreement, as set forth in
12 the Appendix, and incorporated here by this reference, is fair, reasonable, and adequate,
13 and in the best interests of the Settlement Class Members, including Lead Plaintiff. This
14 Court FURTHER FINDS that the Settlement is the result of arm's length negotiations
15 between experienced counsel representing the interests of the Settling Parties and that
16 it was negotiated with assistance of an experienced mediator. Accordingly, the
17 Settlement as proposed is hereby approved in all respects and is to be put into effect and
18 followed in accordance with the terms and provisions of the Settlement Agreement.

19 2. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil
20 Procedure, the Court hereby finds proposed notices, notice plan, and means of claims-
21 administration are reasonable and sufficient, meeting the requirements of Rule 23 of the
22 Federal Rules of Civil Procedure, U.S. Constitution (including Due Process clause), and
23 other applicable laws, and, as such, constituting the best notice practicable under the
24 circumstances, providing due and sufficient notice to all those entitled. Accordingly,
25 the proposed notices, notice plan, and means of claims administration, including all
26 stated deadlines, due dates, and time periods, as summarized above, and set forth in the
27 terms of the Settlement Agreements, are hereby adopted and approved.

28

1 IT IS SO ORDERED

2 Dated:

3 _____
4 The Hon. David O. Carter
5 Judge, United States District Court
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EXHIBIT B

William D. Marler, Admitted *Pro Hac Vice*
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dstearns@marlerclark.com

Attorneys for Plaintiffs and Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Jacob Petersen, *et al.*, individually,
and on behalf
of all others similarly situated,

Plaintiffs,

v.

Costco Wholesale Co., Inc. a
Washington corporation doing business
in California, **Townsend Farms, Inc.**,
an Oregon corporation doing business
in California, **Fallon Trading Co.,
Inc.**, a Pennsylvania corporation doing
business in California, and **United
Juice Corp.**, a New Jersey corporation
doing business in California,

Defendants.

CASE NO. 8:13-cv-01292 DOC (JCGx)

Assigned To: Hon. David O. Carter –
Dept. 9D

**[PROPOSED] ORDER AND FINAL
JUDGMENT**

WHEREAS, this matter came before the Court for hearing on _____,
2019 (the “Final Approval Hearing”), on the application of Gayle Prather, Suzanne
Faber, Leslie Lee, Thomas Fiore, Leslie Straka, David Troutman, Andrea Medrano,
Aerol and Amy Paden (“Plaintiffs”), and Costco Wholesale Corp., Townsend Farms,
Inc., and Fallon Trading Co. (collectively “the TFI Defendants”), to determine (i)
whether the terms and conditions of the Agreement of Settlement, dated as of

_____ (the “Settlement”), annexed hereto as Exhibit ___, and the proposed settlement embodied therein are fair, reasonable, and adequate and should be approved by the Court; and (ii) whether a Judgment providing, among other things, for the dismissal with prejudice of the claims of the Settlement Class Members, against the TFI Defendants as provided for in the Settlement, should be entered; and

WHEREAS, the Court, in its Order dated _____ (the “Preliminary Approval Order”), directed that the Notice Postcard and Class Action Notice Claim Form (“Notice Package”), will be mailed by first-class mail, postage pre-paid, to all potential Settlement Class Members at the address of each such potential Settlement Class Member as set forth in Costco’s records, or who otherwise could be identified through reasonable effort, and that the Claims Administrator will establish a website where Claimants may submit a Proof of Claim Form online where each Claimant must swear under oath the Eligibility Requirements, are met; and that the Notice Package and Proof of Claim Form be posted to a website dedicated to the administration of the Settlement; and

WHEREAS, the provisions of the Preliminary Approval Order and the Court’s Order dated _____ as to notice were complied with; and

WHEREAS, the Notice Package advised Settlement Class Members of the date, time, place and purpose of the Final Approval Hearing, and further advised that any requests for exclusion from the Settlement Class were required to be made within 21 days of receiving the Notice Package, and no later than 30 days from its mailing date; and

WHEREAS, the Notice Package advised Settlement Class Members that any objections to the Settlement must be filed with the Court and served on counsel for all Settling Parties by the date set forth in the Preliminary Approval Order;

WHEREAS, on _____, Plaintiffs, joined by Defendants, moved for final approval of the Settlement, as set forth in the Court’s Order dated _____;

WHEREAS, the Final Approval Hearing was duly held before this Court on

_____, at which time all interested persons were afforded the opportunity to be heard; and

WHEREAS, this Court has considered all matters submitted to it at the Final Approval Hearing and all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. This Judgment hereby incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms, unless otherwise defined herein, shall have the same meanings as set forth in the Settlement Agreement.

2. This Court has jurisdiction over the subject matter of the Action and over all Settling Parties to the Action, including all Settling Class Members and the Claims Administrator.

3. The notice of the pendency of the proposed Settlement, including the Notice Package, was given to all Settlement Class Members who could be identified with reasonable effort, consistent with the terms of the Preliminary Approval Order. The form and method of notifying the Settlement Class of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure; the Constitution of the United States (including the due process clause); and all other applicable laws. Such notice constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that due and adequate notice of these proceedings was directed to all persons and entities who are Settlement Class Members, advising them of their right to seek to exclude themselves from the Settlement Class, of the Settlement and of their right to object thereto, and a full and fair opportunity was accorded to all persons and entities who are Settlement Class Members to be heard with respect to the Settlement. Thus, it is hereby determined that all Settlement Class

Members who did not timely and properly elect to exclude themselves from the Settlement Class by written communication postmarked or otherwise delivered on or before the date set forth in the Court's Order dated _____ and the Notice are bound by this Judgment. Those persons and entities who timely and properly requested to be excluded from the Settlement Class are set forth on Exhibit ___ annexed hereto.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court finds that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class Members, including Plaintiffs. This Court further finds that the Settlement is the result of arm's length negotiations between experienced counsel representing the interests of the Settling Parties and that it was negotiated with the assistance of an experienced mediator. Accordingly, the Settlement is hereby approved in all respects and shall be consummated in accordance with the terms and provisions of the Settlement Agreement.

6. The Court finds and concludes that the Settling Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense and settlement of the claims of the Settlement Class Members.

7. The Claims of the Settlement Class Members are dismissed with prejudice. The Settling Parties are to bear their own costs, except for the payments expressly provided for in the Settlement Agreement.

8. Upon the Effective Date, Plaintiffs and each Settlement Class Member, on behalf of themselves, their heirs, beneficiaries, trustees, executors, administrators, predecessors, successors and assigns, and any other person claiming by, through or on behalf of them, shall be deemed by operation of law to (a) have released, resolved, relinquished, waived, discharged and dismissed each and every one of the Released Claims against the Released Parties; (b) forever be enjoined from commencing, instituting or prosecuting any or all of the Released Claims against any of the Released Parties; and (c) forever be enjoined from instituting, continuing, maintaining or

asserting, either directly or indirectly, whether in the United States or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any person or entity who may claim any form of contribution or indemnity from any of the Released Parties in respect of any Released Claim or any matter related thereto.

9. Notwithstanding any of the releases above, nothing in this Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Settlement Agreement, the Preliminary Approval Order, or this Judgment.

10. The fact and terms of the Settlement Agreement, including the exhibits thereto, this Judgment, all negotiations, discussions, drafts and proceedings in connection with the Settlement Agreement, and any act performed or document signed in connection with the Settlement Agreement:

a. Shall not be offered or received against the Released Parties, Plaintiffs or the other Settlement Class Members as evidence of, or be deemed to be evidence of, any presumption, concession or admission by any of the Released Parties or by Plaintiffs or the other Settlement Class Members with respect to the truth of any fact alleged by Plaintiffs or the validity, or lack thereof, of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault or wrongdoing of the Released Parties;

b. Shall not be offered or received against the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Released Party, or against Plaintiffs or any of the other Settlement Class Members as evidence of any infirmity in the claims of Plaintiffs and the other Settlement Class Members;

c. Shall not be offered or received against the Released Parties, Plaintiffs or the other Settlement Class Members as evidence of a presumption,

concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the foregoing parties, in any arbitration proceeding or other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if the Settlement Agreement is approved by the Court, the Released Parties may refer to this Settlement Agreement to effectuate the protection from liability granted them hereunder;

d. Shall not be construed against the Released Parties, TFI Defendants' Counsel, Plaintiffs' Counsel or Plaintiffs or the other Settlement Class Members as an admission or concession that the consideration to be paid hereunder represents the amount which could be or would have been recovered after trial; and

e. Shall not be construed as or received in evidence as an admission, concession or presumption against Plaintiffs or the other Settlement Class Members or any of them that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

11. No Settlement Class Member shall have any claim against Plaintiffs, Plaintiffs' Counsel, or against any of the TFI Defendants, the Released Parties or the TFI Defendants' Counsel based on the investments, costs, expenses, administration, allocations, payments, and distributions that are made substantially in accordance with the Settlement, this Judgment or further order of the Court.

12. The Court reserves jurisdiction, without affecting in any way the finality of this Judgment, over: (a) implementation and enforcement of the Settlement; (b) the allowance, disallowance or adjustment of any Settlement Class Member's Claim on equitable grounds and any award to Authorized Claimants; (c) enforcing and administering this Judgment, including the releases entered herein; (d) enforcing and administering the Settlement; and (e) any other matters related or ancillary to the foregoing.

13. In the event that the Effective Date of the Settlement does not occur or the

Settlement Agreement is terminated pursuant to its terms, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement, and shall be vacated to the extent provided by the Settlement Agreement and, in such event: (a) all Orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement; and (b) the fact of the Settlement shall not be admissible in any trial of this Action and the Settling Parties shall be deemed to have reverted to their respective status in this Action immediately prior to June 26, 2019.

14. Without further Order of the Court, the Settling Parties may agree to reasonable extensions of time or other reasonable modifications necessary to carry out any of the provisions of the Settlement Agreement.

15. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED, DATED:

DATED: _____

THE HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

EXHIBIT __

Persons and entities timely and properly requesting exclusion from the Class:

- 1.

EXHIBIT C

NOTICE OF SETTLEMENT OF PROPOSED CLASS ACTION

TO: ALL PERSONS WHO:

- (1) CONSUMED TOWNSEND FARMS ORGANIC ANTI-OXIDANT BLEND FROZEN BERRY-MIX THAT WAS BOTH (a) PURCHASED AT A COSTCO IN ARIZONA, COLORADO, HAWAII, IDAHO, NEVADA, NEW MEXICO, OREGON, OR WASHINGTON; AND (b) RECALLED ON EITHER JUNE 4, 2013 OR JUNE 28, 2013, AND
- (2) SUBSEQUENTLY OBTAINED AN IMMUNE GLOBULIN (“IG”) SHOT OR HEPATITIS-A VIRUS (“HAV”) VACCINATION BETWEEN MAY 31, 2013 AND JUNE 13, 2013

THIS NOTICE MAY AFFECT YOUR RIGHTS
PLEASE READ IT CAREFULLY

1. Why should I read this Notice?

This Notice explains your rights and options in the proposed settlement of the lawsuit entitled *Petersen et al. v. Costco Wholesale Co. et al.*, Civil Action No. CV-13-01292 pending in the U.S. District Court, Central District of California, Southern Division (the “Settlement”). **This settlement applies to Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington Class Members**, as described above. To submit a claim, or object to the terms of the settlement, you must follow the steps described in this Notice within 21 days of receiving notice of the proposed settlement, and, in no case, more than 30 days after its mailing date.

2. Update on the Case?

The Court granted class certification on January 25, 2016, and subsequently approved the plaintiffs’ Plan for Notice and Form of Notice on October 7, 2016. The Court approved Amended Notices to Class Members and Continuance of Trial Date and such notices were provided to potential class members subsequent to their modification by the Court’s Order to Extend the Opt-Out Deadline for Notice to Class members on February 2, 2018. That order issued an extended deadline by which class members could request to opt-out of participation in the class action lawsuit, with the new date being April 13, 2018. Postcard notices consistent with the Court’s order were mailed to potential class members on March 7, 2018. As of April 25, 2018, the Claims Administrator received 68 requests for exclusion postmarked before the April 13, 2018 deadline, and 4 requests for exclusion postmarked after the deadline.

Over the course of the litigation, the Court ordered the plaintiffs and defendants to mediation many times, and many times the pending litigation deadlines were extended to accommodate the continuation of negotiations.

A mediation occurred in New York City on October 10, 2018, where the plaintiffs and the defendants worked with the mediator, Greg Lindstrom, of Phillips ADR. The first mediation involving the present claims and Mr. Lindstrom occurred nearly two years ago, on December 1, 2016. Although that first mediation did not achieve the desired settlement, Mr. Lindstrom stayed

involved, worked with counsel for all parties by phone, and continued to act as a go-between for exchanging settlement offers.

Plaintiffs' Counsel proposed that damages for the class members were appropriately determined with a claims-made approach, an approach that was then more clearly explained at a Final Pretrial Conference on June 25, 2018. This approach sparked renewed negotiations, and with the continued assistance of Mr. Lindstrom, the parties were able to make sufficient progress for the Court to grant the most recent request for a trial continuance to allow for the last mediation to occur. That mediation resulted in settlement of the California subclass only.

Plaintiffs' Counsel and the TFI Defendants' Counsel then met in Washington, DC on June 26, 2019 to negotiate settlement of the eight remaining state subclasses: Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington ("Eight State Subclasses"). This negotiation resulted in the settlement of the remaining Eight State Subclasses.

3. What are the terms of the settlement?

The Eight State Subclass Representatives, as advised by class counsel, have agreed to a settlement that involves Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington class members, with such settlement being on a "claims made" basis. Therefore, only eligible claims submitted will be paid under this class settlement, and no settlement funds or advance-funding mechanism will be established. Eligible claims will be paid after the Court gives final approval to the settlement.

The **Maximum Amount Available** to each eligible claimant under this proposed class settlement will be **\$200.00**, with separate limits for the non-economic and economic damage components as defined below.

Non-Economic Damages: For each eligible claimant, whether they received a Hepatitis A vaccination at Costco, or a Hepatitis A vaccination or immunoglobulin injection from a commercial entity or private medical-provider, the claimant will receive a payment of **\$80.00** as a recovery for non-economic damages under the proposed class settlement provided that the claimant meets the following requirements:

- 1) If the claimant purchased the Townsend Farms Antioxidant Blend ("Berry Mix") under his or her Costco member number, the number must be provided;
- 2) If the claimant did not purchase the Berry Mix under his or her Costco member number, the claimant must provide: (a) the Costco member-number for the purchaser of the Berry Mix consumed by the claimant; (b) the name of the holder of that Costco member number; and (c) a description of the location and manner of consumption in a declaration made under the penalty of perjury;
- 3) If the claimant received a Hepatitis A vaccination free at Costco, the claimant will be checked against the list of recipients, and the claimant will be eligible only if found to be on the list of recipients;
- 4) If the claimant received a Hepatitis A vaccination or immunoglobulin injection from a commercial entity or private medical-provider, the claimant must provide documentary proof of the vaccination or injection; and

- 5) Each claimant must provide a declaration under the penalty of perjury that he or she:
 - (i) received a Hepatitis A vaccination or an immunoglobulin injection between May 31 and June 13, 2013, and
 - (ii) was not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination or infection.

Economic Damages. If a claimant received a Hepatitis A vaccination or immunoglobulin injection from a commercial entity or private medical-provider, the claimant would be eligible for an additional payment for economic damages to reimburse for the actual cost of the vaccination or injection up to a maximum additional amount of **\$120.00**. To be eligible for this additional amount, the claimant must meet the following requirements:

- 1) The claimant must provide legible, documentary proof of the actual cost paid out-of-pocket by the claimant for a Hepatitis A vaccination or immunoglobulin injection (not the total cost of any visit, additional fees or amounts covered by insurance); and
- 2) The claimant received a Hepatitis A vaccination or immunoglobulin injection between May 31, 2013 and June 6, 2013, the latter being the date Costco started to offer free vaccinations.

Total Damages and Cap on the Number of Eligible Claimants. For the avoidance of any confusion, no claimant is eligible to receive more than a **total payment of \$200.00** under the proposed class settlement. The total number of claimants eligible for the class settlement of all certified subclasses (including Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, or Washington and California) shall be capped at **3,000**.

4. Who is covered by the Settlement?

As originally certified by the Court, the class was defined to include nine state subclasses: Arizona, California, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington. The claims of the California subclass settled in October 2018 and are pending final approval in the United States District Court Central District of California Southern Division. This settlement involves only the Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington subclasses. For purposes of the proposed settlement, the Eight State Subclasses are defined as follows:

All persons who (1) consumed Berry Mix that had been purchased at Costco in Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, or Washington prior to June 4, 2013, (2) were not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination or infection, and (3) received a Hepatitis A vaccine or immunoglobulin shot between May 31 and June 13, 2013.

The definition of the Settlement Class is more specific, and it has two components that determine eligibility for Non-Economic Damages and eligibility for Economic Damages. These components only partly overlap, with fewer persons eligible for Non-Economic Damages.

Settlement Class for Non-Economic Damages: Individuals who purchased the Berry Mix at a Costco in Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, or Washington and consumed Berry Mix and (a) received a Hepatitis A vaccination or an immunoglobulin

injection between May 31 and June 13, 2013, and (b) were not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination or infection.

Settlement Class for Economic Damages: Individuals who meet all the requirements of the Settlement Class for Non-Economic Damages and paid out of pocket for a Hepatitis A vaccination or immunoglobulin injection between May 31 and June 6, 2013 from commercial entity or private medical provider other than Costco.

5. How do I make a claim?

To make a claim, you must submit a valid claim form and the necessary documentation, outlined above in **Section 3**, within 21 days of receiving notice, and no later than 30 days after its mailing-date. You can obtain a claim form by calling [**PHONE NUMBER**] or by SUBMITTING the form at **www.ShotClassSettlement.com**. You must provide the information requested on the claim form and accompanying documentation to support and verify your claim.

The address of the Claims Administrator is:

JND Legal Administration | 1100 2nd Ave, Suite 300, Seattle, WA 98101

You must complete and submit a separate claim form for each person who obtained an IG shot or Hepatitis-A vaccination. FAILURE TO SUBMIT A VALID AND TIMELY CLAIM FORM WILL BAR YOU FROM RECEIVING A PORTION OF THE SETTLEMENT AND BAR YOU FROM PROCEEDING ON ANY CLAIM ARISING OUT OF THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH 2.

6. Can I exclude myself from the settlement?

Each member of the Eight State Subclasses will be bound by all determinations and judgments, whether favorable or unfavorable, concerning the Settlement, if approved by the Court, unless such person or entity mails, by first class mail (or its equivalent outside the U.S.), or otherwise delivers a written request for exclusion from the Class, addressed to JND Legal Administration | 1100 2nd Ave, Suite 300, Seattle, WA 98101. The written request for exclusion must be received by no later than _____, 2019. Each person's or entity's written request for exclusion must clearly provide their (i) name, (ii) address, (iii) telephone number, and (iv) a statement that the sub-class member wishes to be excluded from the Settlement Class in *Petersen v. Costco Wholesale Corp., et al.*, Case No. CV-13-01292 (C.D. Cal.). Each written request for exclusion must be signed by the person or entity requesting to be excluded. Requests for exclusion will not be valid if they do not include the information set forth above and are not received by the date stated above, unless the Court otherwise determines. Please keep a copy of everything you send by mail, in case it is lost during shipping.

7. Can I object to the settlement?

Any member of the Eight State Subclasses who did not previously file a written request for exclusion after receiving the notice of class action, and who wishes to object to the fairness, reasonableness, or adequacy of the settlement must submit a written objection to the Court. Anyone wishing to object must also serve the Court with a notice of intent to appear and/or object,

together with serving copies of any papers the member of the Class intends to present to the Court in connection with such objection. These papers must also be served on the Class Counsel and counsel for the defendants. The deadline for filing objections is the same as that for filing a claim.

COURT ADDRESS:

U.S. District Court for California, Central District of California, Southern Division
Honorable David O. Carter, Judge
411 West 4th Street, Dept. 9D
Santa Ana, California 92701-4750

CLASS COUNSEL ADDRESS:

William D. Marler, Esquire
MARLER CLARK, L.L.P., P.S.
1012 First Avenue, Fifth Floor
Seattle, WA 98104

DEFENDANTS' COUNSEL ADDRESS:

Eric A. Kuwana, Esq.
COOLEY LLP
1299 Pennsylvania Ave., NW, Suite 700
Washington, D.C. 20004

Only those Class Members who follow the procedures set forth above may appear at the Final Approval Hearing and/or have their objections considered by the Court.

Any Class Member who does not appear individually or through counsel and/or who does not challenge the fairness, reasonableness or adequacy of the settlement shall waive and forfeit any and all rights that he or she may have to appear separately and/or object.

8. Who represents the class?

The Eight State Subclass Representatives have been designated by the Court as follows: Gayle Prather, on behalf of herself and each of the Arizona Class Members; Suzanne Faber, on behalf of herself and each of the Colorado Class Members; Leslie Lee, on behalf of herself and each of the Idaho Class Members; Thomas Fiore, on behalf of himself and each of the Nevada Class Members; Leslie Straka, on behalf of herself and each of the Oregon Class Members; David Troutman, on behalf of himself and each of the New Mexico Class Members; Andrea Medrano, on behalf of herself and each of the Hawaii Class Members; and Aerol and Amy Paden, on behalf of themselves and each of the Washington Class Members.

The Court has appointed Marler Clark, LLP, PS, as the Class Counsel. If you have any questions for the Class Counsel, you may write to them at the address listed above.

9. Who pays the attorneys' fees and costs?

No attorney fees or expenses will be paid by Class members. To make this settlement possible, counsel for plaintiffs and the Eight State Subclasses waive all attorneys' fees and costs, and have agreed that they will not seek reimbursement, fees, expenses or costs from the class settlement or from the defendants.

10. Reasons for the settlement.

The Eight State Subclass Representatives and the Class Counsel support the proposed settlement because they believe it provides for prompt, efficient, and fair relief to the Class. In

ultimately deciding to recommend this settlement, the Class Counsel considered the relative risks, costs, and benefits to the Class of settlement or continuing litigation. The Class members incur no risk or cost in obtaining the proposed relief.

11. Settlement approval procedure.

The Court will hold a Final Approval Hearing on a date that will be posted online once the date is set. By filing a timely objection, you will also be notified of the time and date of the hearing. The address of the Court is 411 West 4th Street, Room 1053, Santa Ana, California 92701. At the hearing, the Court will consider whether the proposed settlement should be granted final approval as fair, adequate, and reasonable, and in the best interests of the Class as a whole. The Parties will request that the Court enter a Final Approval Order.

You may attend this hearing if you wish, but you are not required to do so in order to participate in the Settlement. You may also seek to intervene individually or to object to the settlement. If you do not file a timely objection, you will not be entitled to be heard at the Final Approval Hearing, or to otherwise contest the approval of the settlement, or to appeal from any orders or judgments of the Court entered thereon.

The Court's determination on the final approval of the proposed settlement will be binding on all of the Eight State Subclass members. If the Court grants final approval of the settlement, the judgment will release the defendants, from all claims for damages by persons who meet the class definition.

If the Court does not approve the settlement, the case will proceed as active litigation.

12. Where do I get additional information?

The foregoing is only a summary of the circumstances surrounding the litigation, the claims asserted, the proposed settlement, and related matters. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire.

If you wish to communicate with the Class Counsel identified above or wish to obtain relevant Court documents, you may do so by writing to the Class Counsel at the address listed above.

PLEASE DO NOT CONTACT THE COURT

EXHIBIT D

NOTICE OF SETTLEMENT OF
CLASS ACTION LAWSUIT

Shot Class Settlement
c/o JND Legal Administration
#8585
PO Box 91240
Seattle, WA 98111

**This Legal Notice May
Affect Your Rights.
Please Read It Carefully.**

Submit a Claim Online:

www.[website].com

PARTIAL SETTLEMENT
has been reached in the
lawsuit known as

***Petersen et al. v. Costco
Wholesale Co. et al.,***

No CV-13-01292,
by the Honorable David O. Carter
of the U.S. District Court for the
Central District of California

[Mailing Barcode]

[QR] [NAME]

[ADDR1]

[ADDR2]

[CITY], [ST] [ZIP]

8:13-cv-01292-DOC-JFG Document 423-2 Filed 10/28/19 Page 59 of 65 Pa
#16506

Who is Eligible for the Settlement? Only Class Members from Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington are eligible. Claimants must provide required information (see below) that shows purchase and consumption of Townsend Farms Antioxidant Blend (Berry Mix) followed by the claimant having obtained a Hepatitis A vaccination or immune-globulin injection ("IG"). Eligible claimants will fall in one or both of the following settlement classes:

Settlement Class for Non-Economic Damages: Individuals who consumed Berry Mix purchased at a Costco in Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, or Washington and (a) received a Hepatitis A vaccination or an IG injection between May 31 and June 13, 2013, and (b) were not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination or infection.

Settlement Class for Economic Damages: Individuals who meet all the requirements of the Settlement Class for Non-Economic Damages and cost paid out of pocket for a Hepatitis A vaccination or IG injection received between May 31 and June 6, 2013, from a commercial entity or private medical provider other than Costco.

If eligible, what can be recovered? Claimants who submit eligible claims may be awarded a maximum amount of **\$200.00** with separate limits for the non-economic and economic damage components. Eligible claimants will receive a payment of **\$80.00** as recovery for non-economic damages. Claimants who paid out-of-pocket for their shot between May 31 and June 6, 2013, are also eligible for an additional payment for economic damages to reimburse the actual cost of the vaccination or IG up to a maximum amount of **\$120.00**. No claimant is eligible to receive more than a total of \$200.00.

How do I submit a claim? Each claimant must submit a claim form online at [www.\[WEBSITE\].com](http://www.[WEBSITE].com). In doing so, the claimant must swear under oath the eligibility requirements are met, and submit the documentation required to prove the claim for damages, if any.

Can I exclude myself from the settlement? Yes. The written request must be received no later than _____, and include your (i) name, (ii) address, your telephone number, (iv) a statement that you wish to be excluded from the Class, and (v) your signature.

What if I do not submit a claim? Failure to submit a claim form and necessary documentation within 21 days of receiving this notice, and in no event later than 30 days from the date this notice was mailed, will permanently bar your claim.

Can I object to the settlement? Yes. Instead of, or in addition to, submitting a claim, you can object to the settlement with the Court, and all objections will be presented to the Court before final approval of the settlement.

How Do You Obtain More Information? You may contact Class Counsel: William Marler, 1012 1st Avenue, 5th Floor, Seattle, WA, 98104, Tel. 1-866-770-2032. You may obtain more information, including a detailed notice, by calling 1-833-402-1729 or visiting [www.\[WEBSITE\].com](http://www.[WEBSITE].com). **Register Online to Receive Updated Information.**

Do NOT write or call the Court.

8:13-cv-01292-DOC-JCG Document 423-2 Filed 10/28/19 Page 60 of 65 Pa
#:6537

CLAIM FORM

8:13-cv-01292-DOC-JCG Document 423-2 Filed 10/28/19 Page 61 of 65 Pa

NAME: _____
#6538

ADDRESS: _____

EMAIL: _____ PHONE: _____

Proof of Purchase – Costco Member Number used to purchase the Berry Mix: _____

If you did *not* use your own member number, you must provide the name of the Costco member number holder and describe the location and manner of consumption of Berry Mix.

Name: _____ Description: _____

Proof of Vaccination or Injection – Did you receive a Hepatitis A vaccination for free at Costco? **YES / NO**

If you answered "No" because you received a Hepatitis A vaccination or immunoglobulin injection from a commercial entity or private medical provider, you must provide proof. Additionally, to qualify for reimbursement for the cost of the vaccination or injection (up to a maximum of \$120.00 and not including the total cost of any visit, additional fees, or amounts covered by insurance), you must provide proof of the cost paid out-of-pocket and proof that you received the injection between May 31 and June 6, 2013.

I declare under penalty of perjury that I received a Hepatitis A vaccination or an immune globulin injection between May 31 and June 13, 2013, that I was not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination or infection, and that all information provided on this claim form is true and correct to the best of my knowledge.

Signature: _____ Date: _____

This Claim Form is postage pre-paid and must be postmarked no later than [MONTH DAY], 2019.

You may also submit a claim online no later than [MONTH DAY], 2019, at www.[WEBSITE].COM.



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 985 SEATTLE, WA

POSTAGE WILL BE PAID BY ADDRESSEE



SHOT CLASS SETTLEMENT
C/O JND LEGAL ADMINISTRATION
PO BOX 91240
SEATTLE WA 98111

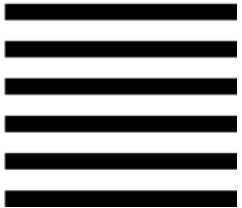


EXHIBIT E

NOTICE OF **SETTLEMENT** OF
CLASS ACTION LAWSUIT

**This Legal Notice May
Affect Your Rights.
Please Read It Carefully**

**Submit a Claim online
at _____ .com**

**PARTIAL SETTLEMENT has
been reached in the lawsuit
known as**

***Petersen et al. v. Costco
Wholesale Co. et al.,***
No CV-13-01292, by the
Honorable David O. Carter of
the U.S. District Court for the
Central District of California

Costco Hepatitis-Shot Class Action
c/o [CLAIMS ADMINISTRATOR]

Who is Eligible for the Settlement? Only California class members are eligible. Claimants must provide required information (see below) that shows purchase and consumption of Townsend Farms Antioxidant Blend ("Berry Mix") followed by the Claimant having obtained a Hepatitis A vaccination or immune-globulin injection ("IG").

Eligible claimants will fall in one or both of the following settlement classes:

Settlement Class for Non-Economic Damages: Individuals who consumed Berry Mix purchased at a Costco in California and (a) received a Hepatitis A vaccination or an IG injection between May 31 and June 13, 2013, and (b) were not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination or infection.

Settlement Class for Economic Damages: Individuals who meet all the requirements of the Settlement Class for Non-Economic Damages and paid out of pocket for a Hepatitis A vaccination or IG injection received between May 31 and June 6, 2013 from a commercial entity or private medical provider other than Costco.

If eligible, what can be recovered? Claimants who submit eligible claims may be awarded a maximum amount of **\$200.00** with separate limits for the non-economic and economic damage components. Eligible claimants will receive a payment of **\$80.00** as recovery for non-economic damages. Claimants who paid out of pocket for their shot between May 31 and June 6, 2013, are also eligible for an additional payment for economic damages to reimburse the actual cost of the shot up to a maximum amount of **\$120.00**. No claimant is eligible to receive more than a total of \$200.00.

How do I submit a claim? Each claimant must submit a claim form online at www.ClaimHepA.com. In doing so, the claimant must swear under oath the eligibility requirements are met, and submit the documentation required to prove the claim for economic damages, if any.

What if I do not submit a claim? Failure to submit a claim form and necessary documentation within 21 days of receiving this notice, and in no event later than 30 days from the date this notice was mailed, will permanently bar your claim.

Can I exclude myself from the settlement? Yes. The written request must be received by no later than _____, 2019 and include (i) your name, (ii) your address, (iii) your telephone number, (iv) a statement that you wish to be excluded from the Class, and (v) your signature.

Can I object to the settlement? Yes. Instead of, or in addition to, submitting a claim, you can object to the settlement with the Court, and all objections will be presented to the Court before final approval of the settlement.

How Do You Obtain More Information? You may contact Class Counsel: William Marler, 1012 1st Avenue, 5th Floor, Seattle, WA, 98104, Tel. 1-866-770-2032. You may obtain more information, including a detailed notice, by calling [TBD] or visiting www._____.com. **Register Online To Receive Updated Information. Do NOT write or call the Court.**