

1 William D. Marler, Admitted *Pro Hac Vice*
2 Denis W. Stearns, Admitted *Pro Hac Vice*
3 MARLER CLARK LLP., P.S.
4 1012 First Avenue, Fifth Floor
5 Seattle, WA 98104
6 Phone: 206-346-1888 / Fax: 206-346-1898
7 Email: bmarler@marlerclark.com
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

**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 [423]**

Hearing: None

Trial Date: None

23 This matter came before the Court on the application of Plaintiffs and
24 Representatives of Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon,
25 and Washington (“the Eight State Subclasses”) of this Class Action, having filed the
26 Motion for the Preliminary Approval of Class Action Settlement, Notice of Settlement,
27 and Plan for Notice of Settlement (“Motion for Preliminary Approval”), Dkt. 423 along
28 with the Memorandum in Support of Motion for Preliminary Approval. The motion was

1 considered without oral hearing given the Court’s prior approval of a substantially
2 similar settlement in this action. The Motion for Preliminary Approval was unopposed.

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

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

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

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

23 **Eligibility Requirements:** Each Claimant must meet the following
24 requirements:

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

1 **B. Noneconomic Damages**

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

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

19 **C. Economic Damages**

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

- 25 1) Proof of Actual Cost of Vaccination or Injection: The Claimant must
26 provide legible, documentary proof of the actual cost paid out of
27 pocket by the Claimant for a Hepatitis A vaccination or
28 immunoglobulin injection (not the total cost of any visit, additional
 fees or amounts covered by insurance); and

1 2) Proof of Vaccination or Injection Timeframe: The Proof of Actual
2 Cost of Vaccination or Injection reflects that the Claimant received
3 a Hepatitis A vaccination or immunoglobulin injection between
4 May 31 and June 6, 2013.

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

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

17 **Lead Class-Counsel’s Fees:** Lead Class Counsel waives all attorneys’ fees and
18 costs, and will seek no reimbursement, fees, expenses, or costs from the class
19 settlement, nor from the settling Defendants, Costco Wholesale Corp., Townsend
20 Farms, Inc., and Fallon Trading Co. (“TFI Defendants”).

21 **Claims Administration and Administrative Costs:** Settling Parties agreed to
22 retain JND Legal Administration, 1100 2nd Avenue, Suite 300, Seattle, Washington,
23 98101 as the Claims Administrator to handle administration of the Settlement, including
24 printing, handling, mailing and re-mailing, and administration of the Notice Website,
25 as set forth in the Settlement Agreement. Such administration will also include
26 processing of Claims, requests for exclusion and other documents submitted, as well as
27 distribution of Settlement Payments to Authorized Claimants.

28 The total costs for class notice and class administration for the Nine State

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

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

10 **A. Class List:** Lead Class Counsel and the TFI Defendants will provide the
11 Claims Administrator with the names and addresses of potential Settlement Class
12 Members known to them (the “Class List”) no later than 20 business days of entry of
13 this order.

14 **B. Notice Package & Claims-Submission Website:** The Claims Administrator
15 shall, **no later than 40 business days of entry of this order:** (1) cause the Notice
16 Package to be sent by the United States Postal Service first-class mail, postage prepaid,
17 to all those individuals whose name and address appear on the Class List; and (2)
18 establish online a website at www.ShotClassSettlement.com where Claimants may
19 submit a Claim Form online, swearing under oath that the Eligibility Requirements are
20 met, and submit Required Documentation to prove their entitlement to compensation.

21 **C. Eligibility Period:** All Claimants must submit the Claim Form and any
22 documentation required to support a claim within 21 days of receiving Notice, and not
23 later than 30 days from the date of mailing Notice (the “Eligibility Period Deadline”).

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

25 (1) Following the procedures set forth in the Settlement Agreement, Claims
26 Administrator shall, after reviewing each Claim Form and Required Documentation,
27 and for each that is determined to not meet the Eligibility Requirements, notify the
28 Claimant in writing, by mail, first class postage pre-paid, that the Claims Administrator

1 proposes to reject the Claim, in whole or in part, setting forth the reasons the reasons
2 for the proposed rejection, and of the Claimant’s right to have the Court review the
3 proposed rejection of the Claim, if, and only if, the Claimant meets the requirements of
4 the following subparagraph within twenty (20) days following the mailing-date of the
5 rejection notice by the Claims Administrator.

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

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

18 **E. Approved List of Claimants: No later than 95 days from the end of the**
19 **Eligibility Period**, the Claims Administrator shall provide Lead Class Counsel and TFI
20 Defendants’ Counsel with: (1) a list of Approved Claimants (“Approved Claimant
21 List”); (2) corresponding Claim Forms and Required Documentation, if any; and (3) a
22 corresponding calculation of the total settlement payment approved by the Claims
23 Administrator for each Claimant.

24 **F. TFI Defendants’ Right to Challenge:**

25 1. After verifying submitted claims as allowed by the Settlement Agreement,
26 the TFI Defendants must notify Lead Class Counsel and the Claims Administrator of
27 any Approved Claims they wish to dispute no later than 30 days after receiving the
28 approved claimant list.

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.

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 60 days from the entry of this**
14 **order**, a notice of intention to appear and/or object, together with copies of any papers
15 such Settlement Class Member intends to present to the Court in connection with such
16 objection.

17 2. Settlement Class Members may make such appearances or objections
18 either on their own or through attorneys hired at their own expense. If an attorney will
19 represent any such Settlement Class Member, he or she must, **no later than 60 days**
20 **from the entry of this order**, (a) file an appearance with the Court, and (b) serve on
21 Lead Class Counsel and TFI Defendants’ Counsel a notice of the filing of the
22 appearance. Only those Settlement Class Members who follow these procedures may
23 appear at the Final Approval Hearing and/or have their objections considered by the
24 Court.

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

1 they object to the fairness of this settlement) other than those requesting exclusion
2 pursuant to the procedures described above shall be bound by all the terms of this
3 Agreement and by all proceedings, orders and judgments in this Action.

4 **I. Hearing for Final Approval of Settlement:** The hearing for final approval
5 of class action settlement is set for **8:30AM on a date to be agreed to by counsel.**
6 Counsel should alert the Court of a date for the hearing of final approval of settlement
7 within 7 days of entry of this order.

8 NOW THEREFORE, having reviewed the papers filed in support of the
9 Plaintiff's Motion for the Preliminary Approval and having granted the Motion for
10 Preliminary Approval, the Court hereby FURTHER ORDERS as follows:

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

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

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IT IS SO ORDERED

Dated: November 27, 2019



The Hon. David O. Carter
Judge, United States District Court