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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 Plaintiffs,

17 v.

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

28 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 [403]**

Hearing: January 14, 2019 at 8:30 AM

Trial Date: None

23 This matter came before the Court for hearing on January 14, 2019 (“Preliminary
24 Approval Hearing”) on the application of Plaintiff and Representative of the California
25 subclass of this Class Action, Jacob Petersen (“Lead Plaintiff”), having filed the Motion
26 for the Preliminary Approval of Class Action Settlement, Notice of Settlement, and Plan
27 for Notice of Settlement (“Motion for Preliminary Approval”), Dkt. 400, along with the

1 Memorandum in Support of Motion for Preliminary Approval, Dkt. 400-1.

2 Prior to the hearing, Lead Plaintiff filed a Supplement to Motion for Preliminary
3 Approval, Dkt. 401, attaching final versions of the following:
4

- 5 (1) proposed summary (“postcard”) notice to class members, Exhibit A;
6 (2) proposed long-form notice (to be posted online at the claims-website and
7 available for mailing, Exhibit B;
8 (3) postcard notice and claims-form, Exhibit C; and
9 (4) final Settlement Agreement setting forth the specific and agreed upon terms of
10 the settlement, including notice and claims-administration plans, Exhibit D. (A
11 copy of this Settlement Agreement is included in the Appendix to this Order.
12
13

14 In neither pleadings filed, nor in arguments made at the Preliminary Approval
15 Hearing was the Motion for Preliminary Approval opposed. Counsel for Lead Plaintiff,
16 as well as the settling Defendants, Costco Wholesale Corp., Townsend Farms, Inc., and
17 Fallon Trading Co. (“TFI Defendants”), were present at the Hearing, and all were heard
18 to speak in support of the proposed settlement, and answering the Court’s questions.
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21 The Motion for Preliminary Approval asked the Court to determine: (i) whether
22 the terms and conditions of the Settlement Agreement, Appendix 1-31, and settlement
23 proposed in and by the Agreement, are fair, reasonable, and adequate and should be
24 approved by the Court; and (ii) whether the proposed notices, notice plan, and means of
25 claims-administration are reasonable and sufficient, meeting the requirements of Rule
26 23 of the Federal Rules of Civil Procedure, U.S. Constitution (including Due Process
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28

1 clause), and other applicable laws, and, as such, constituting the best notice practicable
2 under the circumstances, providing due and sufficient notice to all those entitled.

3
4 **Summary of the Key Settlement Terms and Deadlines**

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

8
9 **Settlement Notice:** (1) Notice Postcard and Class Action Notice Claim Form
10 (“Notice Package”), will be mailed by first-class mail, postage pre-paid, to all potential
11 Settlement Class Members at the address of each such potential Settlement Class
12 Member, as set forth in Costco’s records, or who otherwise could be identified through
13 reasonable effort; (2) Claims Administrator will establish a website where Claimants
14 may submit a Proof of Claim Form online where each Claimant must swear under oath
15 the Eligibility Requirements, are met; and (3) the Notice Package and Proof of Claim
16 Form will be posted to a website dedicated to the administration of the Settlement
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19 **Eligibility Requirements:** Each Claimant must meet the following requirements:
20
21 **A.** Each Claimant must provide a declaration under the penalty of perjury
22 that he or she: (i) received a Hepatitis A vaccination or an immune globulin injection
23 between May 31 and June 13, 2013, and (ii) was not immune to Hepatitis A on the date of
24 consumption due to an earlier Hepatitis A vaccination or infection.

25
26 **B. Noneconomic Damages**

27 Whether a Claimant received a Hepatitis A Vaccination at Costco or a Hepatitis A
28

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

5 1) Proof of Purchase:

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

16 2) Proof of Vaccination or Immune Globulin Injection:

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

25 **C. Economic Damages**

26 If a Claimant received a Hepatitis A Vaccination or Immune Globulin Injection
27 from a commercial entity or private medical provider, the Claimant would be eligible for
28 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.

Available Relief to Authorized Claimants: For each claimant who meets the relevant eligibility requirements, available relief is: for **Economic Damages**, an award of \$80, and for **Noneconomic Damanges**, if any, an award of an additional payment to reimburse for the actual cost of the vaccination or injection, if any, up to a maximum amount of \$120. No claimant is eligible to receive more than a total payment of \$200. The total number of authorized claimants is capped at 3,000.

Compensation for Class Representative: As and for being Lead Plaintiff and Class Representative, Jacob Petersen, will receive an additional \$2,500 in compensation.

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 TFI Defendants.

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

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

3
4 The TFI Defendants will be responsible for fees and charges owed to the Claims
5 Administrator with respect to administration of the Settlement, not to exceed \$150,000.
6 The TFI Defendants shall not be responsible, and shall not pay, for any time or costs
7 incurred by Settlement Class Members or their counsel with respect to the negotiation,
8 implementation, or administration of the Settlement, or any costs incurred by any
9 Settlement Class Member in connection with participating in the Settlement, except as
10 provided in the Settlement Agreement.
11

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

16
17 A. Class List. Lead Class Counsel and the TFI Defendants will provide the
18 Claims Administrator with the names and addresses of potential Settlement Class
19 Members known to them (the “Class List”) **no later than February 4, 2019.**

20
21 B. Notice Package & Claims-Submission Website: The Claims Administrator
22 shall, **no later than February 25, 2019:** (1) cause the Notice Package to be sent by the
23 United States Postal Service first-class mail, postage prepaid, to all those individuals
24 whose name and address appear on the Class List; and (2) establish online a website at
25 www.CostcoHepatitisShotSettlement.com where Claimants may submit a Claim Form
26 online, swearing under oath that the Eligibility Requirements are met, and submit
27
28

1 Required Documentation to prove their entitlement to compensation.

2 C. Eligibility Period: All Claimants must submit the Claim Form and any
3 documentation required to support a claim within 21 days of receiving Notice, and **not**
4 **later than March 27, 2019** (the “Eligibility Period Deadline”).

6 D. Submission, Rejection, and Cure of Claims:

7 (1) Following the procedures set forth in the Settlement Agreement, Claims
8 Administrator shall, after reviewing each Claim Form and Required Documentation,
9 and for each that is determined to not meet the Eligibility Requirements, notify the
10 Claimant in writing, by mail, first class postage pre-paid, that the Claims Administrator
11 proposes to reject the Claim, in whole or in part, setting forth the reasons the reasons
12 for the proposed rejection, and of the Claimant’s right to have the Court review the
13 proposed rejection of the Claim, if, and only if, the Claimant meets the requirements of
14 the following subparagraph within twenty (20) days following the mailing-date of the
15 rejection notice by the Claims Administrator.

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

27 (3) By submitting a Claim, a Claimant shall be deemed to have submitted to
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1 the jurisdiction of the Court with respect to the Claim, including, but not limited to, the
2 releases provided for in the Judgment, and the Claim will be subject to investigation and
3 discovery under the Federal Rules of Civil Procedure, provided that such investigation
4 and discovery shall be limited to the Claimant's status as a Settlement Class Member
5 and the validity and amount of their Claim.
6

7 E. Approved List of Claimants: **No later than July 1, 2019**, the Claims
8 Administrator shall provide Lead Class Counsel and TFI Defendants' Counsel with: (1)
9 a list of Approved Claimants ("Approved Claimant List"); (2) corresponding Claim
10 Forms and Required Documentation, if any; and (3) a corresponding calculation of the
11 total settlement payment approved by the Claims Administrator for each Claimant.
12

13 F. TFI Defendants' Right to Challenge:

14 1. After verifying submitted claims as allowed by the Settlement Agreement,
15 the TFI Defendants must notify Lead Class Counsel and the Claims Administrator of
16 any Approved Claims they wish to dispute **no later than July 31, 2019**.
17

18 2. If the Settling Parties dispute a Claim Form's timeliness or validity, the
19 Settling Parties must meet and confer in good faith to resolve the dispute. The TFI
20 Defendants' records will be entitled to a rebuttable presumption of accuracy. If a
21 dispute concerning a Claim cannot be otherwise resolved, Lead Class Counsel shall
22 thereafter present the request for review to the Court.
23

24 G. Request for Exclusion: The Settlement Website shall provide the option
25 for any Settlement Class Member to request to be excluded from the Settlement by the
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1 Eligibility Period Deadline, which is **no later than March 27, 2019**.

2 H. Objections to Settlement:

3
4 1. Any Settlement Class Member who has not filed a request for exclusion
5 and who wishes to object to the fairness, reasonableness, or adequacy of this
6 Agreement or the proposed settlement must serve on Lead Class Counsel and on TFI
7 Defendants' Counsel, and must file with the Court, **no later than March 15, 2019**, a
8 notice of intention to appear and/or object, together with copies of any papers such
9 Settlement Class Member intends to present to the Court in connection with such
10 objection.
11

12
13 2. Settlement Class Members may make such appearances or objections
14 either on their own or through attorneys hired at their own expense. If an attorney will
15 represent any such Settlement Class Member, he or she must, **no later than March 15,**
16 **2019**, (a) file an appearance with the Court, and (b) serve on Lead Class Counsel and
17 TFI Defendants' Counsel a notice of the filing of the appearance. Only those
18 Settlement Class Members who follow these procedures may appear at the Final
19 Approval Hearing and/or have their objections considered by the Court.
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21

22 3. Any Settlement Class Member who does not appear individually or
23 through counsel and/or who does not challenge or comment upon the fairness and
24 adequacy of this Agreement shall waive and forfeit any and all rights that she or he may
25 have to appear separately and/or object. All Settlement Class Members (whether or not
26 they object to the fairness of this settlement) other than those requesting exclusion
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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
4 I. Hearing for Final Approval of Settlement: The hearing for final approval
5 of class action settlement is set for **September 3, 2019 at 8:30 a.m.**

6 NOW THEREFORE, having previously reviewed the papers filed in support of
7 the the Plaintiff's Motion for the Preliminary Approval, and having heard the argument
8 of counsel on record on behalf of the Lead Plaintiff and TFI Defendants, and having
9 granted the Motion for Preliminary Approval by an Order dated January 14, 2019, Dkt.
10 402, the Court hereby FURTHER ORDERS as follows:

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

22
23
24 2. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil
25 Procedure, the Court hereby finds proposed notices, notice plan, and means of claims-
26 administration are reasonable and sufficient, meeting the requirements of Rule 23 of the
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1 Federal Rules of Civil Procedure, U.S. Constitution (including Due Process clause), and
2 other applicable laws, and, as such, constituting the best notice practicable under the
3 circumstances, providing due and sufficient notice to all those entitled. Accordingly, the
4 proposed notices, notice plan, and means of claims administration, including all stated
5 deadlines, due dates, and time periods, as summarized above, and set forth in the terms
6 of the Settlement Agreements, are hereby adopted and approved.
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8

9 IT IS SO ORDERED

10 Dated:

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13 _____
14 The Hon. David O. Carter
15 Judge, United States District Court
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1 APPENDIX

2 SETTLEMENT AGREEMENT

3 This Settlement Agreement (the “Agreement” or “Settlement”), dated as of
4 _____, is made and entered into between Jacob Petersen (“Lead Plaintiff”), on behalf
5 of himself and each of the California Class Members (“Settling Class Members”), and Costco
6 Wholesale Corp., Townsend Farms, Inc., and Fallon Trading Co. (the “TFI Defendants,” and
7 collectively with the Settling Class Members, the “Settling Parties”) by and through their
8 undersigned respective counsel and subject to the approval of the United States District Court
9 for the Central District of California pursuant to Rule 23(a) of the Federal Rules of Civil
10 Procedure.
11

12
13 This Agreement is intended by the Settling Parties to fully, finally, and forever
14 compromise, resolve, discharge, and settle the Released Claims as against the Released Parties
15 (as those terms are defined below) with prejudice, upon and subject to the terms and conditions
16 herein.
17

18 WHEREAS, the TFI Defendants and those individuals currently or formerly affiliated
19 with the TFI Defendants named as defendants in the Action, deny any and all allegations of
20 wrongdoing and any and all liability as to them with respect to the Action;
21

22 WHEREAS, counsel for the Settling Class Members have conducted extensive
23 investigation of the allegations in the Action, including the alleged harm caused by the TFI
24 Defendants;
25

26 WHEREAS, the Settling Parties engaged in settlement negotiations on October 10,
27 2018 with mediator Gregory Lindstrom of Phillips ADR and the Settling Parties, through their
28

1 respective counsel, have conditionally agreed to the terms set forth in this Agreement;

2 NOW, THEREFORE, in consideration of the foregoing premises, which are an integral
3 part of this Agreement, and intending for their clients to be mutually bound hereby, the
4 undersigned counsel on behalf of the TFI Defendants and the Settling Class Members agree,
5 subject to Court approval of this Agreement as a good faith, fair, reasonable, and adequate
6 settlement under Rule 23(e) of the Federal Rules of Civil Procedure, on the following terms
7 and conditions:
8

9
10 **RECITALS**

11 **B.** On June 3, 2013, Lead Plaintiff, Jacob Petersen, represented by Marler Clark LLP PS
12 (“Lead Class Counsel”), filed a Class Action Complaint alleging claims for Strict Products Liability,
13 Negligence, Negligence Per Se, and Breach of Warranties against Townsend Farms, Inc. in the
14 Superior Court of California County of Orange in a case styled: *Jacob Petersen, and others similarly*
15 *situated v. Townsend Farms, Inc., an Oregon Corporation doing business in California, and Does 1-*
16 *100, Defendants:* Case No. 30-2013-00654042-CU-MT-CXC.

17
18 **C.** In July 2013, Lead Plaintiff filed an amended complaint and added Purely Pomegranate
19 Inc. as a “Doe” defendant. In August 2013, Purely Pomegranate Inc. removed the Action to the United
20 States District Court for the Central District of California, Southern Division. In November 2013,
21 Lead Plaintiff again amended his complaint to add additional class representatives (collectively, the
22 “Plaintiffs”) and related allegations for Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico,
23 Oregon, and Washington (collectively with the “California Subclass,” the “Nine State Subclasses”).
24 Plaintiffs also named Fallon Trading Co., Inc. and United Juice Corp. as defendants.

25
26 **D.** The Court certified the Nine State Subclasses as to liability only and allowed Plaintiffs
27 to proceed without determination as to whether the Nine State Subclasses could be certified as to
28 damages. Plaintiffs eventually abandoned their negligence claims and breach of warranty claims and

1 dismissed Purely Pomegranate Inc. as a defendant. The litigation proceeded with Nine State
2 Subclasses certified as to liability only on a single strict products liability claim against the TFI
3 Defendants and United Juice Corp.

4 **E.** On October 10, 2018, Lead Plaintiff, Lead Class Counsel, the TFI Defendants, and
5 certain of the TFI Defendants' insurance carriers, participated in a full-day mediation session with
6 Gregory P. Lindstrom, Esq. of Phillips ADR. At the conclusion of the mediation session, the Settling
7 Parties agreed in principle to settle the Action, subject to the negotiation of this Agreement and Court
8 approval. This settlement in principle was memorialized in a term sheet attached hereto as Exhibit .

10 **F.** The TFI Defendants deny any wrongdoing whatsoever and this Settlement shall in no
11 event be construed or deemed to be evidence of or an admission or concession on the part of any of
12 the TFI Defendants with respect to any claim or of any fault or liability or wrongdoing or damage
13 whatsoever, or any infirmity in the defenses that the TFI Defendants have asserted. Lead Plaintiff and
14 the TFI Defendants recognize, however, that the Action has been prosecuted by Lead Plaintiff and
15 Lead Class Counsel and defended by the TFI Defendants and TFI Defendants' Counsel in good faith
16 and in compliance with Rule 11 of the Federal Rules of Civil Procedure, and that the Action is being
17 voluntarily settled after receiving advice of counsel. Lead Plaintiff has concluded that the Settlement,
18 as embodied herein, is fair, reasonable, and adequate. This Settlement shall not be construed or deemed
19 to be a concession by Lead Plaintiff, or any Settlement Class Member, of any infirmity in the claims
20 asserted in this Action. Neither shall this Settlement be construed or deemed to be relevant to,
21 admissible in, or otherwise available for use by any party as evidence in, the litigation of the eight
22 remaining, non-settled subclasses, except for the fact of this Settlement, and citation to any of the
23 Court's orders approving the Settlement that would otherwise be available for citation.

26 **G.** Lead Counsel has conducted extensive investigation relating to the claims and the
27 underlying events and transactions alleged in the operative complaint. Lead Class Counsel has
28

1 analyzed the evidence adduced through discovery in this Action and has researched the applicable law
2 with respect to the claims of Lead Plaintiff and the other Settlement Class Members against the TFI
3 Defendants and potential defenses thereto. The Settling Parties have engaged in extensive discovery
4 during the course of this Action, which has allowed Lead Class Counsel and Lead Plaintiff to verify
5 the reasonableness and adequacy of the Settlement.
6

7 **H.** Based upon their investigation as set forth above, Lead Plaintiff and Lead Class
8 Counsel have concluded that the terms and conditions of this Settlement, as embodied herein, are fair,
9 reasonable, and adequate to Lead Plaintiff and to the other Settlement Class Members, and in their
10 best interests, and have agreed to settle the claims raised in the Action pursuant to the terms and
11 provisions of this Agreement, after considering: (1) the monetary benefit the Settlement Class
12 Members will receive from the Settlement; (2) the attendant risk of litigation; and (3) the desirability
13 of permitting the proposed settlement to be consummated as provided by the terms of this Agreement.
14

15 NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff
16 of any lack of merit of the Action whatsoever, and without any admission or concession of any
17 liability or wrongdoing or lack of merit in the defenses whatsoever by the TFI Defendants, it
18 is hereby AGREED, by and among the Settling Parties, through their respective counsel,
19 subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure,
20 and in consideration of the benefits flowing to Lead Plaintiff and the Settlement Class
21 Members that all Released Claims shall be compromised, settled, released, and dismissed with
22 prejudice, upon and subject to the following terms and conditions:
23
24

25 **DEFINITIONS**

26 **1.1** “Action” means the action pending in this Court under the caption *Jacob Petersen, et*
27 *al. v. Costco Wholesale Co., Inc., et al.*, Case No. 8:13-cv-01292-DOC-JCG.
28

1 **1.2** “Approved Claimant” means a Settlement Class Member who submits a timely Proof
2 of Claim Form to the Claims Administrator, that the Claims Administrator has found satisfies all the
3 requirements set forth on the Proof of Claim Form in accordance with the requirements established by
4 this Settlement.

5
6 **1.3** “Authorized Claimant” means a Settlement Class Member who submits a timely proof
7 of Claim Form to the Claims Administrator that the Claims Administrator has found satisfies all the
8 requirements set forth on the Proof of Claim Form in accordance with the requirements established by
9 this Settlement, and whose Claim neither Settling Party disputes. Subject to Court approval of the
10 Settlement, an Authorized Claimant will be entitled to a payment of damages from the settlement.

11
12 **1.4** “Berry Mix” means the Townsend Farms Organic Antioxidant Blend.

13
14 **1.5** “Claim” means a completed and signed Proof of Claim Form submitted by a
15 Settlement Class Member, or on their behalf, to the Claims Administrator in accordance with the
16 instructions on the Proof of Claim Form.

17
18 **1.6** “Claimant” means a person or entity that submits a Claim.

19
20 **1.7** “Claims Administrator” means JND Legal Administration | 1100 2nd Ave, Suite 300,
21 Seattle, WA 98101.

22 **1.8** “Effective Date” means the first date by which all of the following shall have occurred:
23 (1) the Court has entered the Preliminary Approval Order, substantially in the form annexed hereto as
24 Exhibit __; (2) the Court has approved all the material terms set forth in this Agreement and the
25 proposed settlement embodied herein, following the provision of Notice to the Settlement Class and a
26 Final Approval Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; (3) the time
27 to exercise the termination rights provided for in this Agreement has expired or otherwise been waived;
28

1 and (4) the Court has entered the Judgment, substantially in the form annexed hereto as Exhibit ___,
2 which has become Final.

3
4 **1.9** “Eight Remaining Subclasses” means the single-state subclasses as certified by the
5 Court for Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington, which
6 are not included in the terms of this Settlement.

7
8 **1.10** “Final” when referring to an order or judgment means: (1) that the time for appeal or
9 appellate review of the order or judgment has expired, and no appeal has been taken; or (2) if there
10 has been an appeal, (i) that the appeal has been decided by all appellate courts and affirmed; or (ii)
11 that the order or judgment has been affirmed on appeal and is no longer subject to appellate review by
12 further appeal or writ of *certiorari*.

13
14 **1.11** “Final Approval Hearing” means the hearing set by the Court in the Preliminary
15 Approval Order pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to consider, among
16 other things, final approval of the Settlement.

17
18 **1.12** “GAIC” shall refer to the TFI Defendants’ insurer, Great American Insurance
19 Company.

20
21 **1.13** “Judgment” means the proposed order and final judgment, substantially in the form
22 attached hereto as Exhibit [REDACTED], to be entered by the Court pursuant to Rule 54(b) of the Federal Rules
23 of Civil Procedure approving the Agreement and the proposed settlement embodied herein.

24
25 **1.14** “Lead Class Counsel” means Marler Clark, LLP.

26
27 **1.15** “Nine State Subclasses” means the subclasses for Arizona, California, Colorado,
28 Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington that the Court has certified as to

1 liability.

2
3 **1.16** “Notice” means the Notice of Pendency of Class Action and Proposed Settlement,
4 substantially in the form attached hereto as Exhibit [REDACTED], which is to be sent to members of the
5 Settlement Class.

6
7 **1.17** “Notice and Administration Costs” means (1) the costs, fees and expenses that are
8 reasonably incurred by the Claims Administrator, as described herein and in the Preliminary Approval
9 Order, in connection with (i) providing Notice to the Class and (ii) administering the claims process;
10 and (2) any Tax Expenses incurred by the Claims Administrator.

11
12 **1.18** “Preliminary Approval Order” means the order, substantially in the form attached
13 hereto as Exhibit [REDACTED], to be entered by the Court preliminarily approving the Agreement and the
14 proposed settlement embodied therein.

15
16 **1.19** “Proof of Claim Form” means the form, substantially in the form attached hereto as
17 Exhibit [REDACTED], which a Settlement Class Member must complete should that Settlement Class Member
18 seek compensation.

19
20 **1.20** “Released Claims” means any and all claims, debts, demands, rights or causes of action
21 or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’
22 fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based
23 on federal, state, local, statutory, or common law or any other law, rule or regulation, whether fixed
24 or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or
25 unmatured, whether class or individual in nature, including both known claims and Unknown Claims,
26 that (1) have been asserted in this Action by Lead Plaintiff, the Settlement Class Members, or any of
27 them against any of the Released Parties, or (2) could have been asserted in any forum by Lead
28

1 Plaintiff, the Settlement Class Members or any of them against any of the Released Parties which in
2 any way arise out of, are related to, or are based upon (i) the allegations, transactions, facts, matters or
3 occurrences, representations or omissions involved, set forth, or referred to in any of the complaints
4 filed in this Action. Notwithstanding the foregoing, “Released Claims” does not include (1) claims
5 relating to the enforcement of the Settlement or its terms and (2) the claims of the Eight Remaining
6 Subclasses in this Action.
7

8 **1.21** “Released Party” and “Released Parties” means any and all of the TFI Defendants, each
9 of the TFI Defendants’ respective past and present subsidiaries, parents, successors, predecessors,
10 assigns, affiliates, controlled persons, controlling persons, family members and partners, and as to
11 each of the foregoing, their legal representatives, heirs, executors, administrators, trustees,
12 beneficiaries, managers, officers, directors, agents, employees, and attorneys.
13

14 **1.22** “Required Documentation” means any documentation required to establish proof of
15 purchase of the Berry Mix and/or proof of Hepatitis A Vaccination or immune globulin injection as
16 described in Section ____.

17
18 **1.23** “Settlement Class Member” means all persons who: (1) consumed the Townsend
19 Farms Antioxidant Blend that had been purchased at Costco in California prior to June 4, 2013, (2)
20 were not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination
21 or infection, and (3) received a Hepatitis A vaccine or immunoglobulin shot between May 31 and June
22 13, 2013.
23

24 Members of the Eight Remaining Subclasses are excluded from the Settlement Class. Also
25 excluded from the Settlement Class are any putative Settlement Class Members who exclude
26 themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice
27 of Pendency of Class Action and paragraph ____, below.
28

1 **1.24** “Settlement Notices” means the Notice and Summary Notice.

2
3 **1.25** “Settling Parties” means the TFI Defendants and Lead Plaintiff, on behalf of himself
4 and the Settlement Class Members.

5 **1.26** “Summary Notice” means the Summary Notice of Pendency of Class Action and
6 Proposed Settlement, substantially in the form attached hereto as Exhibit [REDACTED], to be published as set
7 forth in the Preliminary Approval Order.
8

9 **1.27** “Tax Expenses” means any expenses and costs reasonably incurred by the Claims
10 Administrator in connection with determining the amount of, and paying, any Taxes (including,
11 without limitation, reasonable expenses of tax attorneys and/or accountants and/or other advisors and
12 reasonable expenses relating to the filing of or failure to file all necessary or advisable tax returns).
13

14 **1.28** “TFI Defendants” means Costco Wholesale Corp., Townsend Farms, Inc., and Fallon
15 Trading Co.
16

17 **1.29** “TFI Defendants’ Counsel” means the law firm of Cooley LLP.
18

19 **1.30** “Unknown Claims” means any and all Released Claims that Lead Plaintiff or any
20 Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the
21 release of the Released Parties, which if known by him, her or it might have affected his, her or its
22 decision(s) with respect to the Settlement. With respect to any and all Released Claims, Lead Plaintiff
23 and Defendants agree that upon the Effective Date, Lead Plaintiff shall for himself and all persons
24 claiming by, through, or on behalf of him, expressly waive, and each Settlement Class Member shall
25 be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all
26 provisions, rights and benefits conferred by any law of any state or territory of the United States,
27 principle of common law, or any other law, rule or regulation that is similar, comparable, or equivalent
28

1 to Cal. Civ. Code § 1542, which provides:

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

5 Lead Plaintiff and the TFI Defendants acknowledge, and the Settlement Class
6 Members' and the TFI Defendants' successors and assigns and any persons or entities claiming
7 through or on their behalf shall, by operation of law, be deemed to have acknowledged, that
8 the inclusion of "Unknown Claims" in the definition of Released Claims was separately
9 bargained for and was a material element of this Settlement.
10

11 **THE SETTLEMENT**

12 In consideration of the respective covenants and undertakings set forth below, the
13 Settling Parties agree as follows:
14

15 **2. Recitals and Definitions Incorporated.**

16 The foregoing Recitals and Definitions are hereby expressly incorporated by reference
17 as part of this Settlement between the Settling Parties.
18

19 **3. Eligibility Requirements**

20 Each Claimant must meet the following Eligibility Requirements:

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

26 **B. Noneconomic Damages**

27 Whether a Claimant received a Hepatitis A Vaccination at Costco or a Hepatitis A
28 Vaccination or Immune Globulin Injection from a commercial entity or private medical

1 provider, the Claimant would be eligible for Noneconomic Damages of \$80 provided he/she
2 meets the following requirements:

3 1) Proof of Purchase:

- 4 a. If the Claimant purchased the Berry Mix under his/her Costco member
5 number, the Claimant must provide his/her Costco member number;
- 6 b. If the Claimant did not purchase the Berry Mix under his/her Costco
7 member number, the Claimant must provide: (a) the Costco member-
8 number for the purchaser of the Berry Mix consumed by the claimant;
9 (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.

10 2) Proof of Vaccination or Immune Globulin Injection:

- 11 a. If the Claimant received a Hepatitis A Vaccination free at Costco, the
12 Claims Administrator will check the Claimant against the list of
13 recipients and confirm the Claimant appears on the list of recipients;
- 14 b. If the Claimant received a Hepatitis A Vaccination or immunoglobulin
15 injection from a commercial entity or private medical provider, the
Claimant must provide documentary proof of the vaccination or
injection.

16 **C. Economic Damages**

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

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

28 **4. Relief to Authorized Claimants**

1 **A. Noneconomic Damages**

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

3 **B. Economic Damages**

4 Authorized Claimants shall be awarded an additional payment for economic damages to
5 reimburse for the actual cost of the vaccination or injection, if any, up to a maximum additional amount
6 of \$120.00.
7

8 **5. Maximum Recovery of Damages and Number of Authorized Claimants**

9 No Claimant is eligible to receive more than a total payment of \$200.00. The total
10 number of Authorized Claimants is capped at 3,000.

11 **6. Compensation for Class Representative**

12 In addition to the above, Class Representative, Jacob Petersen, will receive an additional
13 \$2,500 in compensation.
14

15 **7. Lead Class Counsel's Fees**

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

18 **8. Claims Administration and Administrative Costs**

19 Lead Class Counsel will hire a firm to provide class notice and class administration. To do so,
20 the Settling Parties will solicit bids from at least three qualifying firms and confer before selecting a
21 firm. In the event of a dispute over which firm to hire, the firm with the lowest bid shall become the
22 Claims Administrator. In any event, the total costs for class notice and class administration will not
23 exceed \$150,000.
24

25 The Claims Administrator will handle the administration of the Settlement, as follows: The
26 printing, handling, mailing and re-mailing, and administration of the Notice Website as required by
27 the Notice of Settlement, including all related personnel and operating costs, and the processing of
28

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

3 The TFI Defendants shall be responsible for fees and charges owed to the Claims
4 Administrator with respect to the foregoing administration of the Settlement, not to exceed \$150,000.
5 The TFI Defendants shall not be responsible, and shall not pay, for any time or costs incurred by
6 Settlement Class Members or their counsel with respect to the negotiation, implementation, or
7 administration of the Settlement, or any costs incurred by any Settlement Class Member in connection
8 with participating in the Settlement, except as provided above.
9

10 **9. No Other Financial Obligations of the TFI Defendants**

11 Neither the TFI Defendants nor any of their past, present, or future affiliates shall be liable
12 or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf
13 of, any person, either directly or indirectly, in connection with this Settlement, other than the amount
14 or amounts expressly provided for in this Agreement.
15

16 **10. Procedure for Implementation of Settlement**

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

21 The Motion for Preliminary Settlement Approval will request that the Court: (a) preliminarily
22 approve the proposed settlement; (b) approve the Notice Postcard attached hereto as Exhibit [REDACTED]; (b)
23 approve the Class Action Notice Claim Form, attached hereto as Exhibit [REDACTED]; (c) direct Lead Class
24 Counsel and the TFI Defendants to provide to the Claims Administrator the names and addresses of
25 potential Settlement Class Members known to them; and (d) conduct the Final Approval Hearing
26 approximately 120 days after the filing of the Preliminary Approval Order, or as the Court were to
27 otherwise order.
28

1 **11. Class Notice and Claims Administration**

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

4 **A. Class List.**

5 Within 20 business days of entry of the Preliminary Approval Order, Lead Class Counsel and
6 the TFI Defendants will provide the Claims Administrator with the names and addresses of potential
7 Settlement Class Members known to them (the “Class List”).
8

9 **B. Notice Package**

10 Within 40 business days of the entry of the Preliminary Approval Order, the Claims
11 Administrator shall cause the Notice Postcard and Class Action Notice Claim Form (“Notice
12 Package” attached here to as Exhibits [redacted] - [redacted]) to be sent by the United States Postal Service
13 first-class mail, postage prepaid, to all potential Settlement Class Members whose name and
14 address appear on the Class List directing them to the Notice Website.
15

16 **C. Notice Website**

17 Within 40 business days of entry of the Preliminary Approval Order, the Claims
18 Administrator shall establish a website at www.CostcoHepatitisShotSettlement.com (the
19 “Notice Website”) where Claimants may submit a Claim Form online. In doing so, the
20 Claimant must swear under oath the Eligibility Requirements are met, and submit the Required
21 Documentation to prove their entitlement to compensation, if any.
22

23 **D. Eligibility Period**

24 All Claimants must submit the Claim Form and any documentation required to support
25 a claim for Non-Economic Damages and/or Economic Damages within 21 days of receiving
26 Notice, and in no case more than 30 days from the date of mailing of the Notice (the “Eligibility
27
28

1 Period”).

2 **E. Approved Claimant List**

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

7
8 ii. Claim Forms that do not meet the Eligibility Requirements may be rejected.
9 Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the
10 Claimant in writing, by mail, first class postage pre-paid, to give the Claimant the chance to remedy
11 any curable deficiencies in the Claim Form submitted within a period of twenty (20) days after such
12 communication has been mailed. The Claims Administrator, under supervision of Lead Class Counsel,
13 shall notify, in a timely fashion and in writing, by mail, first-class postage pre-paid, all Claimants
14 whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons
15 therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right
16 to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph
17 (iii) below within twenty (20) days following the mailing of the rejection notice by the Claims
18 Administrator;
19

20
21 iii. If any Claimant whose Claim has been rejected in whole or in part desires to
22 contest such rejection, the Claimant must, within the timeframe stated in the notice required in
23 subparagraph (ii) above, serve upon the Claims Administrator a notice and statement of reasons
24 indicating the Claimant’s grounds for contesting the rejection along with any supporting
25 documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot
26 be otherwise resolved, Lead Class Counsel shall thereafter present the request for review to the Court.

27
28 iv. By submitting a Claim, a Claimant shall be deemed to have submitted to the

1 jurisdiction of the Court with respect to the Claim, including, but not limited to, the releases provided
2 for in the Judgment, and the Claim will be subject to investigation and discovery under the Federal
3 Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the
4 Claimant's status as a Settlement Class Member and the validity and amount of their Claim. No
5 discovery shall be allowed on the merits of this Action or this Settlement in connection with the
6 processing of Proof of Claim Forms. The TFI Defendants shall have no right to take any such
7 discovery.
8

9 All proceedings with respect to the administration, processing, and determination of Claims
10 and the determination of all controversies relating thereto, including disputed questions of law and
11 fact with respect to the validity of Claims, shall be subject to the exclusive jurisdiction of the Court.
12

13 v. Within 95 days from the end of the Eligibility Period, the Claims Administrator
14 shall provide Lead Class Counsel and TFI Defendants' Counsel with: (1) a list of Approved Claimants
15 ("Approved Claimant List"); (2) corresponding Claim Forms and Required Documentation, if any;
16 and (3) a corresponding calculation of the total settlement payment approved by the Claims
17 Administrator for each Claimant.

18 **F. TFI Defendants' Right to Challenge**

19 i. The TFI Defendants may, to the extent possible, attempt to verify that (a) the
20 information set forth in a submitted Claim Form is accurate; and (b) the Claimant is a Settlement Class
21 Member. Within 30 days of receiving the Approved Claimant List, the TFI Defendants must notify
22 Lead Class Counsel and the Claims Administrator of any Approved Claims they wish to dispute.
23

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

A. Any Settlement Class Member shall have the option to request to be excluded from the Settlement online at www.CostcoHepatitisShotSettlement.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.

11. 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

1 otherwise direct, a notice of intention to appear and/or object, together with copies of any papers such
2 Settlement Class Member intends to present to the Court in connection with such objection. Settlement
3 Class Members may make such appearances or objections either on their own or through attorneys
4 hired at their own expense. If an attorney will represent any such Settlement Class Member, he or she
5 must (i) file an appearance with the Court no later than 60 days from the entry of the Preliminary
6 Approval Order or as the Court otherwise may direct, and (ii) serve on Lead Class Counsel and TFI
7 Defendants' Counsel a notice of the filing of the appearance.
8

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

12 **C.** Any Settlement Class Member who does not appear individually or through
13 counsel and/or who does not challenge or comment upon the fairness and adequacy of this
14 Agreement shall waive and forfeit any and all rights that she or he may have to appear separately
15 and/or object. All Settlement Class Members (whether or not they object to the fairness of this
16 settlement) other than those requesting exclusion pursuant to the procedures described above shall
17 be bound by all the terms of this Agreement and by all proceedings, orders and judgments in this
18 Action.
19

20 **12. Final Approval, Final Approval Order, and Post-Settlement Notice**

21 If the Court approves of this Agreement and enters a Preliminary Approval Order, the Lead
22 Plaintiff shall then seek and use their best efforts to obtain from the Court a "Final Approval Order"
23 which shall, among other things:
24

25 **A.** Find that the Court has personal jurisdiction over all Settlement Class
26 Members and that the Court has subject matter jurisdiction to approve this Agreement and all exhibits
27 thereto;
28

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

10 **C.** Find that the Lead Plaintiff and Lead Class Counsel represented the Settling
11 Class for purposes of entering into and implementing the Settlement;

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

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

22 **F.** Bar and permanently enjoin all potential Settlement Class Members from (i)
23 filing, commencing, prosecuting, intervening in, or participating (as Settlement Class Members or
24 otherwise) in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action
25 within the scope of the Release (as set out in paragraph below), and (ii) organizing potential
26
27
28

1 Settlement Class Members who have not been excluded from the Settlement Class into a separate
2 class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend
3 a pending complaint to include class allegations, or seeking class certification in a pending action)
4 based on or relating to the claims and causes of action within the scope of the Release;

5
6 **G.** Authorize the Settling Parties, without further approval from the Court, to
7 agree to and adopt such amendments, modifications, and expansions of this Agreement and all
8 exhibits attached hereto as (i) shall be consistent in all material respects with the Final Approval
9 Order, or (ii) do not limit the rights of potential Settlement Class Members;

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

14
15 **I.** Incorporate any other provisions as the Court deems necessary and just.

16 **13. Payment of Settlement Checks**

17 GAIC shall send to the Claims Administrator the amount required for distribution within 10
18 business days after the Final Approval Order becomes final, where final means that the appeal period
19 has passed, and no appeals have been filed or, if filed, such appeals have been dismissed. The Claims
20 Administrator shall mail settlement checks to Authorized Claimants within 21 calendar days after the
21 Approval Order becomes final. Settlement checks must be cashed within six (6) months of the date of
22 the mailing (the "Payment Period"). Any Authorized Claimant who does not cash his/her check within
23 the Payment Period foregoes his/her claim to the funds. Any proceeds from checks not cashed by the
24 deadline shall be returned to the TFI Defendants.

25
26 The Claims Administrator shall send payment to the Lead Plaintiff within 14 calendar days
27 after the Final Approval Order becomes final, or as soon as practicable thereafter, and provided that
28

1 such persons or entities shall be required to submit a completed IRS Form W-9 to the Claims
2 Administrator prior to the issuance of such payment.

3 **14. Releases**

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

17 **B.** Lead Plaintiff and each Settlement Class Member, make the release of claims
18 in subparagraph A on behalf of themselves, their heirs, beneficiaries, trustees, executors,
19 administrators, predecessors, successors and assigns, and any other person claiming by, through or on
20 behalf of them, and shall be deemed by operation of law to (i) have released, resolved, relinquished,
21 waived, discharged and dismissed each and every one of the claims in subparagraph A against the
22 Released Parties; (ii) forever be enjoined from commencing, instituting or prosecuting any or all of
23 the claims in subparagraph A against the Released Parties; and (iii) forever be enjoined from
24 instituting, continuing, maintaining or asserting, either directly or indirectly, whether in the United
25 States or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit,
26 cause of action, claim or demand against any person or entity who may claim any form of contribution
27
28

1 or indemnity from any of the claims in subparagraph A against the Released Parties or any matter
2 related thereto.

3 **15. Class Action Fairness Act of 2005 (“CAFA”) Notice**

4 The TFI Defendants shall serve any notice of the Settlement required pursuant to
5 CAFA, 28 U.S.C. § 1715(b), within the time period set forth in said statute and shall, within
6 five (5) business days after service of such CAFA Notice, certify to Lead Class Counsel in
7 writing that such service has been made. The Settling Parties agree that they will request,
8 pursuant to 28 U.S.C. § 1715(d), that the Final Approval Hearing be scheduled for no earlier
9 than ninety (90) days following the deadline for the TFI Defendants to serve the CAFA Notice
10 as stated in this paragraph. The Settling Parties agree that any delay by the TFI Defendants in
11 timely serving the CAFA Notice will not provide grounds for delay of the Final Approval
12 Hearing or entry of the Judgment. The TFI Defendants shall be responsible for all costs and
13 expenses related to the creation and service of the CAFA Notice.
14
15
16

17 **16. Integration and Drafting**

18 The Settling Parties agree that this Agreement is clear and unambiguous, that it was
19 drafted by respective counsel for the Settling Parties at arm’s length and sets forth the entire
20 agreement among the Settling Parties with respect to its subject matter, and that no parole or
21 other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent
22 of the Settling Parties or their counsel, or the circumstances under which the Agreement was
23 made or executed. The Settling Parties further agree that no party shall be deemed to have
24 drafted this Agreement. This Agreement constitutes and represents the complete and entire
25 agreement among the Settling Parties. This Agreement merges and supersedes any and all prior
26 agreements, discussions, negotiations, and communications among the Settling Parties. The
27
28

1 Settling Parties acknowledge and expressly represent and warrant that they have relied solely
2 on their own judgment, together with advice of counsel when deciding whether to enter into
3 this Agreement. Each Settling Party further agrees, acknowledges, and expressly warrants that
4 no information, statement, promise, representation, warranty, condition, inducement, or
5 agreement of any kind, whether oral or written, made by or on behalf of any other party shall
6 be, or has been, relied upon by it unless specifically contained and incorporated herein.
7

8 **17. Modification, Court Approval, Extensions**

9
10 This Agreement is not subject to modification without the written consent of the
11 Settling Parties and approval of the Court; provided, however, that, after entry of the Final
12 Approval Order, the Settling Parties may by agreement effect such modification of this
13 Agreement and its implementing documents (including all exhibits hereto) without notice to
14 or approval by the Court if such changes are consistent in all material respects with the Court's
15 Final Approval Order or do not limit the rights of Settlement Class Members. The Settling
16 Parties also reserve the right, subject to the Court's approval, to make any reasonable
17 extensions of time that might be necessary to carry out any of the provisions of this Agreement.
18

19 **18. Termination of Agreement**

20
21 This Agreement will terminate at the sole option and discretion of the TFI Defendants
22 or the Lead Plaintiff if: (i) the Court, or any appellate court(s), rejects, modifies or denies
23 approval of any portion of this Agreement or the proposed settlement that the terminating party
24 in its (or their) sole judgment and discretion believes is material; or (ii) the Court, or any
25 appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the
26 Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the
27 terminating party in its (or their) sole judgment and discretion believes is material. The
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1 terminating party must exercise the option to withdraw from and terminate this Agreement, as
2 provided in this paragraph no later than twenty (20) days after receiving notice of the event
3 described in this paragraph. If the Agreement is terminated, then the Agreement, its terms, and
4 its exhibits shall be null and void and shall have no force or effect, no party shall be bound by
5 any of its terms (except for the terms of this Paragraph) and the Agreement shall not be
6 admissible in any further or different proceedings.
7

8 **19. No Admission of Wrongdoing**
9

10 Whether or not the Settlement, as embodied in this Agreement, is approved by the Court, and
11 whether or not this Settlement is consummated, the fact and terms and of this Settlement, including
12 the exhibits annexed hereto, the Settlement embodied within it, all negotiations, discussions, drafts,
13 and proceedings in connection with this Settlement, and any act performed or document signed in
14 connection therewith:
15

16 **A.** Shall not be offered or received against the Released Parties, Lead Plaintiffs or
17 the other Settlement Class Members as evidence of, or be deemed to be evidence of, any presumption,
18 concession or admission by any of the Released Parties or by Lead Plaintiff or the other Settlement
19 Class Members with respect to the truth of any fact alleged by Lead Plaintiff or the validity, or lack
20 thereof, of any claim that has been or could have been asserted in the Action or in any litigation, or
21 the deficiency of any defense that has been or could have been asserted in the Action or in any
22 litigation, or of any liability, negligence, fault or wrongdoing of the Released Parties;
23

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

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

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

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

20 **20. Exhibits**

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

24 **21. Waiver**

25 The waiver by any Settling Party of any breach of this Agreement shall not be deemed
26 or construed as a waiver of any other breach, whether prior or subsequent to, or
27 contemporaneous with, this Agreement.
28

1 **22. Authorization of Signatories**

2 The undersigned counsel for Lead Plaintiff represents that (i) they are authorized to
3 enter into this Agreement on behalf of the respective Lead Plaintiff and any other attorneys
4 who have represented or who now represent Lead Plaintiff, and (ii) they are seeking to protect
5 the interests of the entire Settlement Class. The undersigned counsel for the TFI Defendants
6 represents that he is authorized to enter into this Agreement on behalf of the TFI Defendants.
7

8 **23. Agreement Executable in Counterparts**

9 This Agreement may be executed in any number of actual or tele-copied counterparts
10 and by each of the different Settling Parties on several counterparts, each of which when so
11 executed and delivered shall be an original. The executed signature page(s) from each actual
12 counterpart may be joined together and attached to one such original and shall constitute one
13 and the same instrument.
14

15 **24. Interest of the Settlement Class**

16 Lead Class Counsel and the Lead Plaintiff represent that they are seeking to protect the
17 interests of the entire Settlement Class and believe that this Agreement is in the best interests
18 of the Settlement Class. The Lead Plaintiff and Lead Class Counsel agree not to request
19 exclusion from the Settlement Class or to object to the proposed settlement, and they further
20 agree to support and urge the Court to approve the Settlement.
21

22 **25. No Evidence**

23 In no event shall this Agreement, any of its provisions, or any negotiations, statements,
24 or proceedings relating to it in any way be construed as, offered as, received as, used as, or
25 deemed to be evidence of any kind in the Action, any other action, or in any judicial,
26 administrative, regulatory, or other proceeding, except in a proceeding to enforce this
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28

1 Agreement. Without limiting the foregoing, neither this Agreement nor any related
2 negotiations, statements, or proceedings shall be construed as, offered as, used as, or deemed
3 to be evidence or an admission or concession by any person of any matter, including but not
4 limited to any liability or wrongdoing on the part of the TFI Defendants or as a waiver by the
5 TFI Defendants of any applicable defense, including without limitation any applicable statute
6 of limitations, or as evidence of the appropriateness of certification of any class or of defense
7 against any such certification.
8

9
10 **26. Tax Consequences**

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

24 The Settling Parties and their counsel agree to cooperate in good faith to ensure that
25 descriptions of the proposed settlement in the media or in any other public forum are fair and
26 accurate.
27

28 **28. The Lead Plaintiff's Assertion of Good Faith**

1 Lead Plaintiff expressly affirms that the allegations he made in pleadings filed in the
2 Action were made in good faith and does not admit or concede that any of the claims alleged
3 in the Complaint lack merit.

4
5 **29. Cooperation in Effecting Settlement**

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

11
12 **30. Conditions to Obligation to Conclude Settlement**

13 The obligation, although not the ability, of the Settling Parties to conclude the proposed
14 settlement is and will be contingent upon each of the following:

15 A. Execution of this Agreement by the Settling Parties;

16 B. Entry by the Court of the Final Approval Order approving the Settlement, from
17 which the time to appeal has expired or which has remained unmodified after any appeal(s); and

18 C. Any other conditions stated in this Agreement.

19
20 **31. Governing Law**

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

23
24 **32. Forum for Enforcement of Settlement**

25 Any action to enforce this Agreement shall be commenced and maintained only in the United
26 States District Court Central District of California Southern Division. If any Settlement Class Member
27 hereafter sues or commences an arbitration against the TFI Defendants for the purpose of enforcing
28

1 any claims that are released under this Agreement, this Agreement shall be and constitute a complete
2 defense thereto.

3 **33. Parties Bound**

4 This Agreement shall be binding upon and inure to the benefit of the Lead Plaintiff, all
5 potential Settlement Class Members, Lead Class Counsel, the TFI Defendants, and the
6 respective heirs, successors and assigns of each of the foregoing.
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10 Dated: January 17, 2019

David O. Carter

DAVID O. CARTER
U.S. District Judge

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