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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.

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

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement” or “Settlement”), dated as of _____, is made and entered into between Jacob Petersen (“Lead Plaintiff”), on behalf of himself and each of the California Class Members (“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 on October 10, 2018 with mediator Gregory Lindstrom of Phillips ADR and the Settling Parties, 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 again amended his complaint to add additional class representatives (collectively, the “Plaintiffs”) and related allegations for Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington (collectively with the “California Subclass,” the “Nine State Subclasses”). Plaintiffs also named Fallon Trading Co., Inc. and United Juice Corp. as defendants.

C. 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.

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

as Exhibit A.

E. 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. Lead Plaintiff and the TFI Defendants recognize, however, that the Action has been prosecuted by Lead Plaintiff 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. Lead Plaintiff has 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 Lead Plaintiff, or any Settlement Class Member, of any infirmity in the claims asserted in this Action. Neither shall this Settlement be construed or deemed to be relevant to, admissible in, or otherwise available for use by any party as evidence in, the litigation of the eight remaining, non-settled subclasses, except for the fact of this Settlement, and citation to any of the Court's orders approving the Settlement that would otherwise be available for citation.

F. 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 Lead Plaintiff and the other Settlement Class Members 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 Lead Plaintiff to verify the reasonableness and adequacy of the Settlement.

G. Based upon their investigation as set forth above, Lead Plaintiff and Lead Class Counsel have concluded that the terms and conditions of this Settlement, as embodied herein, are fair, reasonable, and adequate to Lead Plaintiff 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 Lead Plaintiff 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 Lead Plaintiff 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 B; (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 C, which has become Final.

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

1.10 “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*.

1.11 “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.

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

1.13 “Judgment” means the proposed order and final judgment, substantially in the form attached hereto as Exhibit C, 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.

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

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

liability.

1.16 “Notice” means the Notice of Pendency of Class Action and Proposed Settlement, substantially in the form attached hereto as Exhibit D 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 B, 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 E, 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 Lead Plaintiff, the

Settlement Class Members, or any of them against any of the Released Parties, or (2) could have been asserted in any forum by Lead Plaintiff, 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 (1) claims relating to the enforcement of the Settlement or its terms and (2) the claims of the Eight Remaining Subclasses in this Action.

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 California 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.

Members of the Eight Remaining Subclasses are excluded from the Settlement Class. Also

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 10, below.

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

1.25 “Settling Parties” means the TFI Defendants and Lead Plaintiff, on behalf of himself 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 F, 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 Lead Plaintiff or any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, Lead

Plaintiff and Defendants agree that upon the Effective Date, Lead Plaintiff shall for himself and all persons claiming by, through, or on behalf of him, 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.

Lead Plaintiff 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 is capped at 3,000.

6. Compensation for Class Representative

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

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

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

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 TFI Defendants shall be responsible for fees and charges owed to the Claims Administrator with respect to the foregoing administration of the Settlement, not to exceed \$150,000. 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 B.

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 F; (c) approve the Class Action Notice Claim Form, attached hereto as Exhibit E; (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 D - F) 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.CostcoHepatitisShotSettlement.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.

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 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.

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

If the Court approves of this Agreement and enters a Preliminary Approval Order, the Lead Plaintiff 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 Lead Plaintiff and all other Settlement Class Members, as well as their heirs, executors and administrators, successors and assigns;

C. Find that the Lead Plaintiff and Lead Class Counsel represented the Settlement 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 14 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.

13. **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 Lead Plaintiff 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.

14. Releases

A. Upon payment of the amount agreed upon, Lead Plaintiff 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. Lead Plaintiff 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.

15. 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.

16. 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.

17. 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.

18. Termination of Agreement

This Agreement will terminate at the sole option and discretion of the TFI Defendants or the Lead Plaintiff 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.

19. 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 and 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, Lead 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 Lead Plaintiff or the other Settlement Class Members with respect to the truth of any fact alleged by Lead Plaintiff 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 Lead Plaintiff or any of the other Settlement Class Members as evidence of any infirmity in the claims of Lead Plaintiff and the other Settlement Class Members;

C. Shall not be offered or received against the Released Parties, Lead Plaintiff 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 Lead Plaintiff 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 Lead Plaintiff 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.

20. 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.

21. 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.

22. Authorization of Signatories

The undersigned counsel for Lead Plaintiff represents that (i) they are authorized to enter into this Agreement on behalf of the respective Lead Plaintiff and any other attorneys who have represented or who now represent Lead Plaintiff, 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.

23. 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.

24. Interest of the Settlement Class

Lead Class Counsel and the Lead Plaintiff 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. The Lead Plaintiff 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.

25. 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.

26. 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, Lead Plaintiff 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.

27. 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.

28. The Lead Plaintiff's Assertion of Good Faith

Lead Plaintiff expressly affirms that the allegations he 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.

29. 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.

30. 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.

31. Governing Law

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

32. 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.

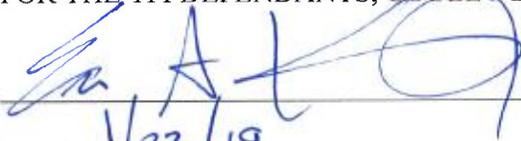
33. Parties Bound

This Agreement shall be binding upon and inure to the benefit of the Lead Plaintiff, 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: _____

FOR THE TFI DEFENDANTS; COOLEY LLP



Dated: 1/23/19

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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.

33. Parties Bound

This Agreement shall be binding upon and inure to the benefit of the Lead Plaintiff, 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: _____

FOR THE TFI DEFENDANTS; COOLEY LLP

Dated: _____