

NOTICE OF SETTLEMENT OF PROPOSED CLASS ACTION

TO: ALL PERSONS WHO:

- (1) CONSUMED TOWNSEND FARMS ORGANIC ANTI-OXIDANT BLEND FROZEN BERRY-MIX THAT WAS BOTH PURCHASED AT A COSTCO IN CALIFORNIA AND RECALLED ON EITHER JUNE 4, 2013 OR JUNE 28, 2013, AND
- (2) SUBSEQUENTLY OBTAINED AN IMMUNE GLOBULIN (“IG”) SHOT OR HEPATITIS-A VIRUS (“HAV”) VACCINATION BETWEEN MAY 31, 2013 AND JUNE 13, 2013

THIS NOTICE MAY AFFECT YOUR RIGHTS
PLEASE READ IT CAREFULLY

1. **Why should I read this Notice?**

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

2. **Update on the case?**

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

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

A mediation occurred in New York City on October 10, 2018, where the plaintiffs and the defendants worked with the mediator, Greg Lindstrom, of Phillips ADR. The first mediation involving the present claims and Mr. Lindstrom occurred nearly two years ago, on December 1, 2016. Although that first mediation did not achieve the desired settlement, Mr. Lindstrom stayed involved, worked with counsel for all parties by phone, and continued to act as a go-between for exchanging settlement offers.

Plaintiff’s Counsel proposed that damages for the Class Members were appropriately determined with a claims-made approach, an approach that was then more clearly explained at a Final Pretrial Conference on June 25, 2018. This approach sparked renewed negotiations, and with the continued assistance of Mr. Lindstrom, the Parties were able to make sufficient progress for the Court to grant the

most recent request for a trial continuance to allow for the last mediation to occur. This mediation resulted in settlement.

3. **What are the terms of the Settlement?**

The Plaintiff and class representative for the California subclass, Jacob Petersen, as advised by Class Counsel, has agreed to a settlement that involves solely California Class Members, with such settlement being on a “claims made” basis. Therefore, only eligible claims submitted will be paid under this class settlement, and no settlement funds or advance-funding mechanism will be established. Eligible claims will be paid after the Court gives final approval to the Settlement.

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

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

- 1) If the claimant purchased the Townsend Farms Antioxidant Blend (“Berry Mix”) under his or her Costco member number, the number must be provided;
- 2) If the claimant did not purchase the Berry Mix under his or her Costco member number, the claimant must provide: (a) the Costco member number for the purchaser of the Berry Mix consumed by the claimant; (b) the name of the holder of that Costco member number; and (c) a description of the location and manner of consumption in a declaration made under the penalty of perjury;
- 3) If the claimant received a Hepatitis A vaccination free at Costco, the claimant will be checked against the list of recipients, and the claimant will be eligible only if found to be on the list of recipients;
- 4) If the claimant received a Hepatitis A vaccination or immunoglobulin injection from a commercial entity or private medical provider, the claimant must provide documentary proof of the vaccination or injection; and
- 5) Each claimant must provide a declaration under the penalty of perjury that he or she: (i) received a Hepatitis A vaccination or an immunoglobulin injection between May 31 and June 13, 2013, and (ii) was not immune to Hepatitis A on the date of consumption due to an earlier Hepatitis A vaccination or infection.

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

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

Total Damages and Cap on the Number of Eligible Claimants. For the avoidance of any confusion, no claimant is eligible to receive more than a **total payment of \$200.00** under the proposed class Settlement. The total number of claimants eligible for the class Settlement shall be capped at **3,000**.

4. **Who is covered by the Settlement?**

As originally certified by the Court, the Class was defined to include nine state subclasses: Arizona, California, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, and Washington. In the course of the litigation, it was decided that the California subclass would be the lead-off case and thus the first to be tried. This settlement involves only the California subclass. For purposes of the proposed Settlement, the California subclass could be defined as follows:

All persons who (1) consumed Berry Mix 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.

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

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

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

5. **How do I make a claim?**

To make a claim, you must submit a valid claim form and the necessary documentation, outlined above in **Section 3**, within 21 days of receiving notice, and no later than 30 days after its mailing date. You can obtain a claim form by calling **(833) 402-1729** or by **SUBMITTING** the form at **www.CostcoHepatitisShotSettlement.com**. You must provide the information requested on the claim form and accompanying documentation to support and verify your claim.

The address of the Claims Administrator is:

Costco Hepatitis-Shot Class Action
c/o JND Legal Administration
PO Box 91240
Seattle, WA 98111

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

6. **Can I exclude myself from the Settlement?**

Each member of the California subclass will be bound by all determinations and judgments, whether favorable or unfavorable, concerning the Settlement, if approved by the Court, unless such person or entity mails, by first-class mail (or its equivalent outside the U.S.), or otherwise delivers a written request for exclusion from the Class, addressed to the Claims Administrator at the address listed above. The written request for exclusion must be received by no later than March 27, 2019. Each person's or entity's written request for exclusion must clearly provide their (i) name, (ii) address, (iii) telephone number, and (iv) a statement that the California subclass member wishes to be excluded from the Settlement Class in *Petersen v. Costco Wholesale Corp., et al.*, Case No. CV-13-01292 (C.D. Cal.). Each written request for exclusion must be signed by the person or entity requesting to be excluded. Requests for exclusion will not be valid if they do not include the information set forth above and are not received by the date stated above, unless the Court otherwise determines. Please keep a copy of everything you send by mail, in case it is lost during shipping.

7. **Can I object to the Settlement?**

Any member of the California subclass who did not previously file a written request for exclusion after receiving the Notice of Class Action, and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement must submit a written objection to the Court. Anyone wishing to object must also serve the Court with a notice of intent to appear and/or object, together with serving copies of any papers the member of the Class intends to present to the Court in connection with such objection. These papers must also be served on the Class Counsel and counsel for the defendants. The deadline for filing objections is March 15, 2019.

COURT ADDRESS:

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

CLASS COUNSEL ADDRESS:

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

DEFENDANT'S COUNSEL ADDRESS:

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

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

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

8. **Who represents the Class?**

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

9. **Who pays the attorneys' fees and costs?**

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

10. **Reasons for the Settlement.**

The Class Representative and the Class Counsel support the proposed Settlement because they believe it provides for prompt, efficient, and fair relief to the Class. In ultimately deciding to recommend this settlement, the Class Counsel considered the relative risks, costs, and benefits to the Class of settlement or continuing litigation. The Class Members incur no risk or cost in obtaining the proposed relief.

11. **Settlement approval procedure.**

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

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

The Court's determination on the final approval of the proposed Settlement will be binding on all California Class Members. If the Court grants final approval of the Settlement, the judgment will release the defendants from all claims for damages by persons who meet the class definition.

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

12. **Where do I get additional information?**

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

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

PLEASE DO NOT CONTACT THE COURT