

Nature's Touch Organic Berry Cherry Blend Class Action
Settlement Agreement

Made as of August 21, 2018

In the matter of:

Vivien Summer Kafai, a Minor by her Litigation Guardian, Soheil Kafai and Soheil Kafai

and

**Nature's Touch Frozen Foods Inc., Costco Wholesale Canada Ltd., Costco Canada
Holdings, Inc., Gestion Costco Canada Inc., and Costco Western Holdings Ltd.**

and in the matter of:

Sylvain Gaudette

and

**Nature's Touch Frozen Foods Inc., Costco Wholesale Canada Ltd., Costco Canada
Holdings, Inc., Gestion Costco Canada Inc., and Costco Western Holdings Ltd.**

**NATURE’S TOUCH ORGANIC BERRY CHERRY BLEND CLASS ACTION
SETTLEMENT AGREEMENT**

TABLE OF CONTENTS

NATURE’S TOUCH ORGANIC BERRY CHERRY BLEND CLASS ACTION SETTLEMENT AGREEMENT.....	1
SECTION 1 - RECITALS.....	1
SECTION 2 – DEFINITIONS	2
SECTION 3 – SETTLEMENT APPROVAL.....	7
3.1 Best Efforts	7
3.2 Motion Seeking Approval of Notice.....	7
3.3 Motion for Certification	8
3.4 Motion Seeking Approval Notice and Settlement Approval	8
3.5 Notice of Settlement Approval	8
3.6 Pre-Motion Confidentiality	8
SECTION 4 - SETTLEMENT BENEFITS.....	9
4.1 Payment of Settlement Amount.....	9
4.2 Taxes and Interest	10
4.3 Claims and Claimants	11
4.4 Plan of Allocation	11
4.5 Cy-Près Distribution	11
SECTION 5 - OPTING OUT.....	11
5.1 Procedure	11
SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT.....	13
6.1 Right of Termination.....	13
6.2 If Settlement Agreement Is Terminated.....	14
6.3 Allocation of Settlement Amount Following Termination.....	15
SECTION 7 – RELEASES AND DISMISSALS.....	15
7.1 Release of Defendant	15
7.2 No Further Claims.....	16
7.3 Dismissal of the Proceedings in Ontario and Declaration of Settlement out Court in Québec	16
7.4 Material Term	16

SECTION 8 – EFFECT OF SETTLEMENT	17
8.1 No Admission of Liability	17
8.2 Agreement Not Evidence.....	17
SECTION 9 – NOTICE TO CLASS MEMBERS	17
9.1 Notices Required.....	17
9.2 Form and Distribution of Notices	18
SECTION 10 – ADMINISTRATION AND IMPLEMENTATION	18
10.1 Mechanics of Administration.....	18
10.2 Information and Assistance.....	19
10.3 Confidentiality of Costco Customer Information	20
10.4 Representations and Warranties by the Defendants.....	21
SECTION 11 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST	21
11.1 Plan of Allocation	21
11.2 No Responsibility for Administration or Fees	22
SECTION 12 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES	22
12.1 Responsibility for Fees, Disbursements and Taxes	22
12.2 Responsibility for Costs of Notices and Translation	22
12.3 Court Approval for Class Counsel Fees and Disbursements	22
SECTION 13 - MISCELLANEOUS	23
13.1 Motions for Directions.....	23
13.2 Headings, etc.....	23
13.3 Computation of Time.....	23
13.4 Ongoing Jurisdiction.....	24
13.5 Governing Law	24
13.6 Entire Agreement.....	24
13.7 Amendments	24
13.8 Binding Effect.....	24
13.9 Counterparts.....	25
13.10 Negotiated Agreement	25
13.11 Language.....	25
13.12 Recitals.....	25
13.13 Schedules	26

13.14	Acknowledgements.....	26
13.15	Authorized Signatures.....	26
13.16	Transaction.....	26
13.17	Notice.....	27
13.18	Date of Execution	28

**NATURE'S TOUCH ORGANIC BERRY CHERRY BLEND CLASS ACTION
SETTLEMENT AGREEMENT**

SECTION 1 - RECITALS

A. WHEREAS the Proceedings allege that the Defendants were negligent in the manufacturing and distribution of Recalled Frozen Fruit, as defined herein, and failed to implement adequate food safety control processes to prevent Hepatitis A contamination;

B. WHEREAS the Proceedings were commenced by the Plaintiffs in Ontario and Quebec and the Plaintiffs claim Class-wide damages allegedly caused as a result of the conduct alleged therein;

C. WHEREAS the Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceeding, and otherwise deny all liability and assert that each has complete defences in respect of the merits of the Proceedings;

D. WHEREAS the Plaintiffs, Class Counsel and the Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against, the Defendants, or evidence of the truth of any of the Plaintiffs' allegations, which allegations are expressly denied by the Defendants;

E. WHEREAS the Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted by the Plaintiffs and the Class Members in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

F. WHEREAS Counsel for the Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;

G. WHEREAS, as a result of these settlement discussions and negotiations, the Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendants and the Plaintiffs, both individually and on behalf of the Class they seek to represent, subject to approval of the Court;

H. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiffs and the Class Members, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Class they represent;

I. WHEREAS the Parties therefore wish to and hereby finally resolve, without admission of liability, the Proceedings as against the Defendants;

J. WHEREAS the Parties acknowledge that the Settlement Agreement is contingent on certification and approval by the Courts as provided for in this Settlement Agreement, and entered into with the express understanding that this Settlement shall not derogate from the respective rights of the Parties relating to the Proceedings in the event that certification is denied and/or this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled (and dismissed in Ontario) with prejudice, all without costs as to the Plaintiffs, the Class they seek to represent, or the Defendants, subject to the approval of the Courts, on the following terms and conditions:

SECTION 2 – DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

- (1) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) *Approval Hearing* means the hearing(s) of the Plaintiffs' motions for Approval Orders.

(3) **Approval Hearing Notice** means the notice agreed upon by the Parties or approved by the Courts for the purpose of providing Class Members with detailed information regarding (i) the certification of the Proceedings as a class proceeding for settlement purposes; and (ii) the manner in which and time within which Class Members may opt out, substantially in the form of Schedules “A” and “B” hereto.

(4) **Approval Notice** means the notice agreed upon by the Parties or approved by the Courts for the purpose of providing Class Members with detailed information regarding (i) the approval by the Courts of the Settlement and (ii) the manner in which and time within which Class Members may make claims, substantially in the form of Schedule “C” hereto.

(5) **Approval Orders** means the orders or judgments issued by the Courts, substantially in the form of Schedules “G” and “H” hereto, for the purpose of: (i) approving this Settlement Agreement; (ii) dismissing the Proceedings with prejudice.

(6) **Certification and Notice Approval Order** means the orders or judgments issued by the Courts, substantially in the form of Schedules “E” and “F” hereto, for the purpose of (i) certifying or authorizing the Proceedings as class proceedings, and (ii) approving the Short Form Approval Hearing Notice and the Approval Hearing Notice.

(7) **Claims Administrator** means the firm, subject to approval by the Courts, who has been proposed to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement, and any employees of such firm, or such other firm as may be ordered by the Court for the purposes of administering the Settlement Agreement.

(8) **Class** means the Ontario Class and Quebec Class.

(9) **Class Counsel** means Siskinds LLP and Siskinds Desmeules s.e.n.c.r.l.

(10) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings.

(11) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon.

(12) **Class Member(s)** means any member of either the Ontario Class or the Quebec Class, but does not include any individual that validly opts out of either Class.

(13) **Costco Defendants** means Costco Wholesale Canada Ltd., Costco Canada Holdings, Inc., Gestion Costco Canada Inc., and Costco Western Holdings Ltd.

(14) **Counsel for the Defendants** means counsel for the Costco Defendants, McCarthy Tétrault LLP, and counsel for Nature's Touch Frozen Foods Inc., Dutton Brock LLP (in Ontario) and Robinson Sheppard Shapiro (in Québec).

(15) **Court(s)** means the Ontario Superior Court of Justice and/or the Quebec Superior Court, as appropriate in the context.

(16) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

(17) **Defendants** means Nature's Touch Frozen Foods Inc., and the Costco Defendants.

(18) **Effective Date** means the date when Final Orders have been received from the Courts approving this Settlement Agreement.

(19) **Final Orders** means the final orders pronounced by the Courts approving this Settlement Agreement in accordance with its terms, once the time to appeal such orders has expired without any appeal being taken, if an appeal lies, or if one or both of the orders are appealed, once there has been affirmation of the order(s) upon a final disposition of all appeals.

(20) **Net Settlement Proceeds** means the Settlement Amount less the amounts payable in respect of Class Counsel Fees, Class Counsel Disbursements, Administration Expenses and any amounts payable to the Fonds d'aide aux actions collectives.

(21) **Notice Plan** means the method by which the Short Form Approval Hearing Notice, Approval Hearing Notice and Approval Notice will be provided to Class Members, substantially in the form of Schedule "D" hereto.

(22) **Ontario Class** means:

- (a) All persons in Canada, except residents of Quebec, who consumed Recalled Frozen Fruit and subsequently contracted Hepatitis A as a result of consuming Recalled Frozen Fruit that was contaminated with Hepatitis A; (the “Infected Subclass”).
 - (b) All persons in Canada, except residents of Quebec, who consumed the Recalled Frozen Fruit and subsequently were immunized for Hepatitis A as a result of consuming the Recalled Frozen Fruit (the “Immunized Subclass”).
 - (c) All persons in Canada, except residents of Quebec, with a claim pursuant to the *Family Law Act*, RSO 1990, c F3, s 61 and analogous legislation and common law in other provinces, where applicable (the “Family Law Act Subclass”).
 - (d) All persons in Canada, except residents of Quebec, who purchased the Recalled Frozen Fruit (the “Purchaser Subclass”).
- (23) ***Opt-Out Deadline*** means the date which is sixty (60) days after the publication of the Short Form Approval Hearing Notice;
- (24) ***Party and Parties*** means the Defendant, the Plaintiffs, and, where necessary, the Class Members.
- (25) ***Plaintiffs*** means Vivien Summer Kafai, a Minor by her Litigation Guardian, Soheil Kafai and Soheil Kafai, and Sylvain Gaudette.
- (26) ***Plan of Allocation*** means the plan for distributing the Net Settlement Proceeds and accrued interest, in whole or in part, as approved by the Courts.
- (27) ***Proceedings*** means the actions commenced in the Ontario Superior Court of Justice bearing Court File No. 1085/16CP and the Quebec Superior Court, bearing Court File No. 500-06-000790-168.
- (28) ***Quebec Class*** means:
- (a) All persons in Quebec who consumed Recalled Frozen Fruit and subsequently contracted Hepatitis A as a result of consuming Recalled Frozen Fruit that was contaminated with Hepatitis A, (the “Quebec Infected Subclass”).

- (b) All persons in Quebec who consumed the Recalled Frozen Fruit and subsequently were immunized for Hepatitis A as a result of consuming the Recalled Frozen Fruit (the “Quebec Immunized Subclass”).
- (c) All persons in Quebec with a claim relating to their successors, assigns, heirs, family members and dependants (the “Quebec Successors Subclass”).
- (d) All persons in Quebec who purchased the Recalled Frozen Fruit (the “Quebec Purchaser Subclass”).

(29) **Recalled Frozen Fruit** means Nature’s Touch brand Organic Berry Cherry Blend in 1.5 kg (3.3 lb) bags with best before dates up to and including March 15, 2018 with the universal product code 8 73668 00179 1 which was sold at Costco warehouse locations in Ontario, Quebec, New Brunswick, Nova Scotia, and Newfoundland and Labrador.

(30) **Released Claims** means any and all manner of claims, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers’ fees and disbursements (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Plaintiffs or Class Members ever had, now have or hereafter can, shall or may have, relating in any way to any conduct related to, arising from, or described in the Proceedings or on account of, arising out of, consumption of the Recalled Frozen Fruit or any possible Hepatitis A exposure resulting therefrom.

(31) **Releasees** means, jointly and severally, the Defendants and their respective present and former parents, officers, directors, employees, stockholders, shareholders, agents, lawyers, suppliers, distributors, reorganized successors, spin-offs, assigns, holding companies, related companies, subsidiaries, affiliates, joint ventures, partners, members, divisions, predecessors, servants, representatives, authorized retailers, or insurers.

(32) *Releasors* means, jointly and severally, individually and collectively, the Plaintiffs and the Class Members and their respective successors, heirs, executors, administrators, trustees and assigns.

(33) *Settlement Agreement* means this agreement, including the recitals and schedules.

(34) *Settlement Amount* means CAD \$3,000,000.00.

(35) *Settlement Class* means both the *Ontario Class* and the *Quebec Class* together as combined for Settlement purposes.

(36) *Short Form Approval Hearing Notice* shall mean a summary version of the Approval Hearing Notice, substantially in the form of Schedules “A” and “B” hereto.

(37) *Trust Account* means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Class Counsel or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Defendant, as provided for in this Settlement Agreement.

SECTION 3– SETTLEMENT APPROVAL

3.1 Best Efforts

(1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final implementation of settlement (and dismissal with prejudice in Ontario) of the Proceedings as against the Defendants.

3.2 Motion Seeking Approval of Notice

(1) The Plaintiffs shall file motions before the Courts, as soon as practicable after the Date of Execution, for orders approving the Short Form Approval Hearing Notice and the Approval Hearing Notice described in Section 9.2(1) which shall be substantially in the form attached hereto as Schedules “A” and “B”, respectively.

(2) The notices described in section 9.2(1) will be published in accordance with the Notice Plan, attached hereto as Schedule “D”.

3.3 Motion for Certification

(1) Contemporaneous with the motion for notice approval as described in section 3.2, the Plaintiffs shall file motions for certification in Ontario, and for authorization in Quebec, for Orders certifying the class proceeding for settlement purposes, and setting the opt-out period. The Ontario and Quebec Orders certifying the Proceedings and approving the notices described in section 9.2 shall be substantially in the form as attached hereto as Schedules “E” and “F”, respectively.

3.4 Motion Seeking Approval Notice and Settlement Approval

(1) The Plaintiffs shall file motions before the Courts for the Approval Orders as soon as practicable after:

- (a) the Certification and Notice Approval Orders have been granted; and
- (b) the Approval Hearing Notice has been published in accordance with section 9.2(2).

(2) The Approval Orders shall be substantially in the form attached as Schedules “G” and “H”, respectively.

(3) This Settlement Agreement shall only become final on the Effective Date.

3.5 Notice of Settlement Approval

(1) The Plaintiffs shall seek approval of an Approval Notice, substantially in the form as attached hereto as Schedule “C”, in accordance with section 9.1(1) as part of the Approval Orders, to be heard at the Approval Hearing.

3.6 Pre-Motion Confidentiality

(1) Until the motion required by Section 3.3 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Defendants and Class Counsel, as the case may be, except as required for the

purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

SECTION 4- SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

(1) Nothing in this Settlement Agreement impacts, in any way, any refunds already paid directly to Class Members by the Defendants as a result of Class Members' having purchased the Recalled Frozen Fruit.

(2) Within twenty (20) days of the Date of Execution, the Defendants shall pay the Settlement Amount to Class Counsel, for deposit into the Trust Account.

(3) Payment of the Settlement Amount shall be made by wire transfer. At least ten days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(4) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Defendants.

(5) The Settlement Amount shall be inclusive of all amounts, including, without limitation, interest, costs, Class Counsel Fees and Class Counsel Disbursements and Administration Expenses and any amounts payable to the Fonds d'aide aux actions collectives.

(6) The Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings except that the Defendants have already provided certain refunds to Class Members in accordance with section 4.1(1), which do not form part of this Settlement Agreement. Without restricting the foregoing, the Defendants shall not be required to provide any further refunds to Class Members as of the Date of Execution.

(7) Once the appointment of the Claims Administrator has been approved by the Courts, Class Counsel shall transfer control of the Trust Account to the Claims Administrator.

(8) Class Counsel and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.

(9) Class Counsel and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

4.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to Section 4.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.

4.3 Claims and Claimants

(1) Class Members shall be eligible for the relief provided in this Settlement Agreement, subject to the right to Opt Out in accordance with Section 5.

4.4 Plan of Allocation

(1) Class Counsel will draft a Plan of Allocation, to be approved by the Courts. The Defendants shall have no involvement in the formulation, drafting, or approval of the Plan of Allocation.

(2) Upon the Courts' approval, the Plan of Allocation will be provided to the Claims Administrator for use in determining the amount each Class Member will be entitled to by way of recovery from the Net Settlement Proceeds.

4.5 Cy-Près Distribution

(1) Any funds remaining after distribution of the Net Settlement Proceeds, whether as a result of failure of Class Members to make claims or as a result of cheques having become stale dated, shall be distributed to Food Banks Canada, or such other organization proposed by Class Counsel and approved by the Courts as may be required in the event it is not approved by the Courts.

(2) The Act respecting the Fonds d'aide aux actions collectives, CQLR c F-3.2.0.1.1 will apply to the portion of any remaining balance, if any, attributable to Quebec Class Members.

SECTION 5 - OPTING OUT

5.1 Procedure

(1) Class Counsel will seek approvals from the Courts of the following opt-out process as part of the Certification and Notice Approval Order as contemplated in section 3.2:

- (a) Putative members of the Class seeking to opt out of the Proceedings must do so within sixty (60) days of the publication of the Approval Hearing Notice, by sending a written request to opt out to Ontario Counsel, or where the Class Member resides in Quebec, to Quebec Class Counsel, at an address to be identified in the

notice described in Section 9.1(1), postmarked on or before the Opt-Out Deadline or, in the case of requests sent by facsimile or email, received on or before the Opt-Out deadline. The written election to opt out must be signed by the Class Member or the Class Member's designee and must include the following information:

- (i) the Class Member's full name, current address and telephone number;
 - (ii) a statement to the effect that the Class Member wishes to be excluded from the Proceedings;
 - (iii) which subclass(es) the Class Member purports to belong to;
 - (iv) the reason(s) for opting out; and
 - (v) if the Class Member has retained legal counsel, the name of legal counsel.
- (b) Where the postmark is not visible or legible, the request to opt out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.
- (c) Persons who opt out of the Proceedings are not Class Members, and shall have no further right to participate in the Proceedings or to share in the distribution of funds received as a result of the settlement in the Proceedings.
- (d) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide a report to the Defendants containing the names of each Person who has validly and timely opted out of the Proceedings and a summary of the information delivered by such Persons pursuant to Section 5.1(1)(a) above.
- (2) The Defendants reserve all of their legal rights and defences with respect to any potential Class Member who validly opts out from the Proceedings.
- (3) Under article 580 of the *Code of civil procedure* of Quebec, a Quebec class member who does not discontinue an originating application having the same subject matter as the Proceedings before the time for opting out has expired is deemed to have opted out.

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

- (1) In the event that:
 - (a) the Defendants fail to represent and warrant accurately, the representations and warranties contained in sections 10.2 and 10.4 hereof;
 - (b) the Courts decline to approve this Settlement Agreement or any material part hereof;
 - (c) the Courts approve this Settlement Agreement in a materially modified form;
 - (d) the Courts issue settlement approval orders that are materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedules “G” and “H”; or
 - (e) any order approving this Settlement Agreement made by the Courts does not become a Final Order;

the Plaintiffs and the Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.17, within thirty (30) days following an event described above, subject to the Parties using best efforts and good faith to attempt to resolve any issues in furtherance of resolution of the Proceedings on such modified terms as may be required to obtain the Courts’ approval.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 4.1(2), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 13.17.

(3) Except as provided for in Section 6.1(4), if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason. For greater certainty, in the event of termination, in accordance

with Section 6, the Parties' positions with respect to the Proceedings shall be returned to *status quo ante*.

- (4) Any order, ruling or determination made or rejected by any Court with respect to:
 - (a) Class Counsel Fees or Class Counsel Disbursements;
 - (b) the opt-out process; or
 - (c) the Plan of Allocation

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement Is Terminated

- (1) In the event of termination,
 - (a) within ten (10) days of such termination having occurred, Class Counsel and the Claims Administrator shall destroy all documents or other materials provided by the Defendants, including documents or other materials provided pursuant to Section 10 or containing or reflecting information derived from such documents or other materials. Class Counsel and the Claims Administrator shall provide Counsel for the Defendants with a written certification by each of them of such destruction. Nothing contained in this section shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Defendants in connection with this Settlement Agreement may not be disclosed to any Person in any manner, or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel;
 - (b) no application to certify or authorize any of the Proceedings as a class proceeding on the basis of the Settlement Agreement or to approve the Settlement Agreement that has not been heard shall proceed;

- (c) the Parties will cooperate in seeking to have any prior order certifying or authorizing the Proceedings as a class proceeding on the basis of the Settlement Agreement set aside and declared of no force and effect, and the parties shall be estopped as against each other from relying on any such prior certification order;
- (d) any prior certification or authorisation of the Proceedings as a class proceeding on the basis of the Settlement Agreement, including the definitions of the Settlement Class and the Common Issues pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the parties may later take on any issue in the Proceedings or any other litigation.

6.3 Allocation of Settlement Amount Following Termination

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Class Counsel shall, within thirty (30) days of the written notice pursuant to 6.1(1), return to the Defendants the amount they have paid to Class Counsel, plus all accrued interest thereon, but less the incurred costs of notice required by 12.2(1), or to the extent notice has already been published in accordance with Section 9.2 and any translations required by Section 13.11.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Defendant

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

(2) The Releasors acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement or the Proceedings. Other than as set out in 10.2 and 10.4, which are not modified by this provision, it is the Releasors' intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of new or different facts.

7.2 No Further Claims

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Ontario or elsewhere, on his or her own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against the Releasees, or any other Person who may claim contribution or indemnity, or other claims over, relief from the Releasees, whether pursuant to statute in Ontario, in Québec or elsewhere, to the Code civil of Québec or at common law or equity in respect of any Released Claim. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

7.3 Dismissal of the Proceedings in Ontario and Declaration of Settlement out Court in Québec

(1) Upon the Effective Date, the Proceedings shall be dismissed with prejudice and without costs as against the Defendants in Ontario and declared settled out of court, without costs, in Québec.

(2) Except in Québec, upon the Effective Date, each Class Member in the Proceedings shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its other actions or proceedings against the Releasees related to the Released Claims, excluding the Proceedings, whether such other actions or proceedings are commenced before or after the Effective Date.

7.4 Material Term

(1) The releases, covenants, dismissals, and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases, covenants, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 6 of the Settlement Agreement.

SECTION 8 – EFFECT OF SETTLEMENT

8.1 No Admission of Liability

(1) The Plaintiffs and the Defendants expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiffs.

8.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as may be necessary, or as otherwise required by law.

SECTION 9– NOTICE TO CLASS MEMBERS

9.1 Notices Required

(1) Subject to approval of the Court in accordance with Section 3.2, Class Members shall be notified of: (i) the certification or authorization of the Proceedings as class proceedings as against the Defendants; (ii) the right to opt-out of the Proceedings; (iii) the hearing at which the Courts will be asked to approve the Settlement Agreement; and (iv) if brought with the hearing to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and Class Counsel Disbursements, via Short Form Approval Hearing Notice, published in accordance with

the Notice Plan attached as Schedule “D”. Notice shall inform Class Members that they may request a copy of the Settlement Agreement from Class Counsel and provide direction to the more detailed Approval Hearing Notice where they may obtain further information.

(2) Subject to approval of the Courts in accordance with section 3.5, in the event the Settlement Agreement is approved by the Courts, Class Members will receive a second, direct mailed Approval Notice, advising of the approval and advising of the process for submitting a claim. The Approval Notice shall be disseminated to Class Members by the Claims Administrator in accordance with the Notice Plan appended as Schedule “D” hereto.

9.2 Form and Distribution of Notices

(1) The Short Form Approval Hearing Notice, Approval Hearing Notice and the Approval Notice shall be as agreed upon by the Parties and approved by the Courts substantially in the forms as attached hereto as Schedules “A”, “B”, and “C”, respectively, or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

(2) Subject to Court Approval, notice to Class Members as described in sections 9.1(1) and 9.1(2) shall be published in accordance with Schedule “D”, attached hereto.

(3) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event in the same manner as described in section 9.1(1).

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motions brought by Class Counsel where necessary.

(2) No costs shall be payable by the Defendants on such a motion.

10.2 Information and Assistance

(1) The Costco Defendants represent and warrant that they have, to the extent possible based on reasonable inquiries and data reasonably available to them, accurately represented the approximate number of members belonging to the Purchaser Subclass, the Quebec Purchaser Subclass, the Immunized Subclass and the Quebec Immunized Subclass known to them at the time.

(2) For the purpose of facilitating dissemination of the Approval Notice to Class Members and distribution of benefits to them pursuant to this Settlement Agreement as approved by the Courts, the Plaintiffs shall bring motions before the Courts for orders requiring the Costco Defendants to disclose to the Claims Administrator the names and last known addresses (including any available email addresses) of Costco members who purchased Recalled Frozen Fruit and Costco members belonging to the Immunized Subclass and the Quebec Immunized Subclass, including the members who received refunds for vaccinations, that the Costco Defendants are reasonably able to identify from their records. Such orders shall be sought at the time of the Approval Hearing and shall be substantively in the form set out in the Settlement Approval Orders attached hereto as Schedules "G" and "H". The Plaintiffs will make submissions to the Courts regarding the appropriateness of the disclosure orders contemplated in this Section, including in light of applicable privacy laws, at the time of seeking such orders.

(3) The Plaintiffs will ensure that the Claims Administrator is able to implement appropriate measures to safeguard all information disclosed pursuant to the Court orders contemplated in Section 10.2(2), and is able to securely delete and destroy such information at the conclusion of the claims administration process. The Plaintiffs will file affidavit evidence from the Claims Administrator at the Approval Hearing, in which the Claims Administrator will describe the measures it will implement to safeguard the information and its ability to delete and destroy the information securely at the conclusion of the claims administration process.

(4) The Defendants will not oppose the motions contemplated in section 10.2(2) and brought in accordance with sections 10.2(2) and 10.2(3). No costs shall be payable by the Plaintiffs or Defendants on such motions.

(5) The Costco Defendants will provide the information described in section 10.2(2) only pursuant to orders from the Courts obtained in accordance with section 10.2(2) and 10.2(3) requiring them to do so. The information shall be delivered to the Claims Administrator within thirty (30) days of the Effective Date or the date on which the orders contemplated in Section 10.2(2) are obtained, whichever is later, or at a time mutually agreed upon by the Parties. The information shall be delivered in Microsoft Excel or such other format as may be agreed upon by Counsel for the Costco Defendants and Class Counsel, with input, where required, from the Claims Administrator.

(6) The Claims Administrator shall de-duplicate the data to provide a database of Class Members using any reasonable efforts including the standardization of addresses, the updating of addresses using Canada Post's change of address database and any other sensitive scrubbing recommended by the Claims Administrator.

(7) The Claims Administrator shall use the information solely for the purpose permitted by valid Court Orders obtained in accordance with section 10.2 and applicable privacy laws, and not for any other purpose.

(8) The Costco Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section 10.2 from Class Counsel and/or the Claims Administrator. The Costco Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Costco Defendants' obligations to cooperate pursuant to this Section 10.2 shall cease when all settlement funds have been distributed. However, nothing in this Section shall require the Costco Defendants to provide any information or assistance to the Claims Administrator, Class Counsel or any other Person in violation of any applicable privacy laws.

10.3 Confidentiality of Costco Customer Information

(1) All information provided by the Costco Defendants pursuant to Section 10.2 shall be kept strictly confidential by the recipient Claims Administrator, and, without limiting the generality of the foregoing, shall not be disseminated to, or shared with, any individual, entity,

corporation, or third party, except in accordance with valid Court Orders obtained in accordance with section 10.2 and applicable privacy laws, and not for any other purpose.

10.4 Representations and Warranties by the Defendants

(1) Without limiting the foregoing, the Costco Defendants represent and warrant that refunds of the purchase price of Recalled Frozen Fruit were offered to all Costco members who purchased the Recalled Frozen Fruit, and were paid to all Costco members who purchased the Recalled Frozen Fruit and requested a refund of the purchase price. For greater certainty and in accordance with section 4.1(1), any refunds already paid to Class Members are not considered as part of the Settlement, and no such payment of a refund to a Class Member shall in any way reduce the Settlement Amount, nor affect in any way, the terms of the Settlement Agreement.

(2) The Costco Defendants represent and warrant that Recalled Frozen Fruit was sold at Costco warehouse locations in Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador, and not in any other province or territory in Canada.

(3) The representations and warranties contained in section 10.2(1) and 10.4 are material terms of the Settlement Agreement, breaches of which are grounds for termination of the Settlement Agreement in accordance with Section 6. However, a discrepancy in the number of members belonging to the Purchaser Subclass, the Quebec Purchaser Subclass, the Immunized Subclass and the Quebec Immunized Subclass shall not be grounds for termination of the Settlement Agreement unless the number of such class members was materially underrepresented.

SECTION 11– DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

11.1 Plan of Allocation

(1) Without limiting the generality of sections 4.4(1) and 4.4(2), at a time wholly within the discretion of Class Counsel, but on notice to the Defendants, Class Counsel will bring motions seeking orders from the Courts approving the Plan of Allocation. The motions can be brought before the Effective Date, but the orders approving the Plan of Allocation shall be conditional on the Effective Date occurring.

11.2 No Responsibility for Administration or Fees

(1) Except as otherwise provided for in this Settlement Agreement, the Releasees shall not have any responsibility, financial obligations or liability whatsoever with respect to the administration of the Settlement Agreement or the investment, distribution or administration of monies in the Trust Account including, but not limited to Administration Expenses.

SECTION 12 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

12.1 Responsibility for Fees, Disbursements and Taxes

(1) The Releasees shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Class Members, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

12.2 Responsibility for Costs of Notices and Translation

(1) Class Counsel shall pay the Administration Expenses and any costs of translation required by Section 13.11 from the Settlement Amount, as they become due. Subject to Section 6.3, the Releasees shall not have any responsibility for the costs of the notices or any translation as may be ordered by the Courts in accordance with section 13.11.

12.3 Court Approval for Class Counsel Fees and Disbursements

(1) Class Counsel may seek the Courts' approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

SECTION 13 - MISCELLANEOUS

13.1 Motions for Directions

(1) Class Counsel or the Defendants may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties, except for those applications concerned solely with the implementation and administration of the Plan of Allocation.

13.2 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

13.3 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

13.4 Ongoing Jurisdiction

(1) The Courts shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement.

13.5 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Provinces of Ontario and Québec and the laws of Canada applicable therein.

(2) Notwithstanding Section 13.5(1), for matters relating specifically to the Quebec Action, the Quebec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

13.6 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle, term sheets and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.7 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Courts.

13.8 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, Class Members, the Defendants, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by

the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

13.9 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.10 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

13.11 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required to by the Courts, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

13.12 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

13.13 Schedules

- (1) The schedules annexed hereto form part of this Settlement Agreement.

13.14 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
 - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.15 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

13.16 Transaction

- (1) The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the Civil Code of Quebec, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation

13.17 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceeding:

Siskinds LLP

Barristers & Solicitors
100 Lombard Street, Suite 302
Toronto, ON M5C 1M3

Siskinds Desmeules Avocats s.e.n.c.r.l.

43, rue de Buade, bureau 320
Québec, QC G1R 4A2

Daniel E. H. Bach (LSO #: 52087E)

Tel: (416) 594-4376
Fax: (416) 594-4377

Caroline Perrault

Tel : (418) 694-2009
Fax : (418) 694-0281

680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Elizabeth deBoer (LSO #: 47558Q)

Tel: (519) 660-7814
Fax: (519) 660-7815

For the Defendants:

Dutton Brock LLP

438 University Avenue
Suite 1700
Toronto, ON M5G 2L9

McCarthy Tétrault LLP

Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Paul Tushinski

Stephen Libin
Tel: (416) 593-4411
Fax: (416) 593-5922

Eric Block

Katherine Booth
Tel: 416-362-1812
Fax: 416-868-0673

**Lawyers for the Defendant Nature's Touch
Frozen Foods Inc.**

**Lawyers for the Defendants, Costco
Wholesale Canada Ltd., Costco Canada
Holdings Inc., and Gestion Costco Canada
Inc.**

13.18 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

Soheil Kafai on his own behalf and on behalf of the Class, by his counsel

Name of Authorized Signatory: Elizabeth deBoer

Signature of Authorized Signatory: Elizabeth deBoer
Siskinds LLP
Class Counsel

Sylvain Gaudette on his own behalf and on behalf of the Québec Class, by his counsel

Name of Authorized Signatory: Elizabeth deBoer

Signature of Authorized Signatory: Elizabeth deBoer
Siskinds Desmeules, Avocats, s.e.n.c.r.l.
Class Counsel

Nature's Touch Frozen Foods Inc.

Name of Authorized Signatory: Pan TUSHINSKI

Signature of Authorized Signatory: [Signature]

Costco Wholesale Canada Ltd., Costco Canada Holdings Inc., and Gestion Costco Canada Inc.

Name of Authorized Signatory: Katherine Booth

Signature of Authorized Signatory: [Signature]