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STATE OF HAWAII
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D'ANN RAMOS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

IN RE:

HEPATITIS A CASES

This Document Applies To:

BRYAN CUEHLO
STANLEY SATO

)
) CIVIL NO. 17-1-HEP (JHA)
) (Product Liability)
)
) **STIPULATION FOR ORDER TO AMEND**
) **PROPOSED NOTICE PLAN, RELATED**
) **DEADLINES, FOR A HIPAA QUALIFIED**
) **ORDER AND APPOINTING A THIRD-**
) **PARTY ADMINSTRATOR**

2018 DEC 11 AM 9:09

1ST JUDICIAL CIRCUIT
STATE OF HAWAII
JULIA H. HARRIS
JULIA H. HARRIS

D'ANN RAMOS

)
)
) **No Trial Date Set**
)
) Hon. Judge James H. Ashford
)
) CIVIL NO.
) 16-1-1612
) 16-1-1641
) 16-1-1702

STIPULATION FOR ORDER TO AMEND PROPOSED NOTICE PLAN, RELATED DEADLINES, FOR A HIPAA QUALIFIED ORDER, AND APPOINTING A THIRD-PARTY ADMINSTRATOR

COME NOW the plaintiffs identified in the caption above, by and through their attorneys of record, and by this Stipulated Motion, to respectfully request that the Court enter an order amending portions of the Order Certifying Class and For Preliminary Approval of Class Settlement signed and entered in this matter on October 12, 2018 as necessary to allow for the following:

1. Amendment of the forms of notice of settlement to class members to be substantially in the forms as attached to this Stipulation;
2. Amendment of the form of claims form to be submitted by class members to be substantially in the form as attached to this Stipulation;
3. Amendment to the manner of notice to class members to include email and mail of notices to those potential class members insured by Kaiser, HMSA, UHA and HMAA as identified in greater detailed herein.
4. Amendment to February 15, 2019 of the time for filing timely claims, to timely opt out of the class action, or to timely object to the parties' settlement, and to March 6, 2019 at 9:00 a.m. for the hearing on final approval of the class action settlement.

5. Continuing the appointment of The Notice Company as Class Administrator.
6. Directing and authorizing Kaiser, HMSA, UHA and HMAA to disclose to the Class Administrator information which may be deemed Protected Health Information under the privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as described in greater detail herein.

I. BRIEF STATEMENT OF UNDISPUTED FACTS

The plaintiffs and defendants entered into a Settlement Agreement, subject to court approval, including the documents and exhibits incorporated therein (together, the Settlement Agreement, Exhibit 1 to the Stipulation for Order Certifying Class and for Preliminary Approval of Class Settlement), to settle the above-captioned litigation. The Settlement Agreement sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the litigation. On October 12, 2018, this Court entered an Order Certifying Class and For Preliminary Approval of Class Settlement. The Final Approval Hearing is scheduled for December 11, 2018.

The parties have amended the Settlement Agreement to provide for the Proposed Amended Notice Plan and Related Deadlines described herein. A copy of the Amendment to the Settlement Agreement is attached hereto as **Exhibit A**.

A. Background Information on the Subject Outbreak.

Starting on June 12, 2016, Hawai’i residents began testing positive for hepatitis A virus (HAV). The number of cases increased over the next couple of months, and on August 15, 2016, the Hawai’i Department of Health (hereafter “the Department”) identified raw scallops served at Genki Sushi restaurants as the source of the outbreak. As a result of the outbreak and investigation, the Department advised “Anyone who consumed products, specifically scallops,

prepared or served at Genki Sushi on Oahu or Kauai should consider contacting their healthcare provider about the possibility of receiving a vaccine or immune globulin (IG).” On Monday, August 15, 2016, Dr. Sarah Park, state epidemiologist, was quoted in news reports as advising “anyone who ate at Genki Sushi on Oahu and Kauai in the last two weeks should consult a healthcare provider and seek a vaccine.” As a result of these announcements, people who had eaten at Genki Sushi restaurants followed the Department’s recommendation and received HAV vaccinations or IG shots. Between June 12 and October 9, 2016, 292 people were confirmed to be infected with HAV; 74 people required hospitalization, and 2 people died. Over the next three months, the Department made announcements regarding varying risks of exposure for at least sixteen other restaurants or food vendors. As a result of these announcements, people who were potentially secondarily-exposed to HAV followed the Department’s recommendation and received post-exposure preventative treatment.

B. According to insurance company records, over 125,000 Hawai’i Residents received preventative HAV treatment between June and November 2016.

From June 2016 until November 2016, insurance records show that over 125,000 Hawai’i residents received the HAV vaccine or IG shot. This is based on the responses of Kaiser, HMSA, UHA, and HMAA to subpoenas plaintiffs served seeking data regarding the number of HAV vaccine or IG shots those insurers paid for during the specified time periods. See Declaration of William D. Marler filed herewith. The following is a summary of the testimony from the major insurers who paid for treatment:

Kaiser

1. Declaration of Donald Chock – July 12 to October 2 and October 19 to November 2 – 27,722 HAV and 7 Immune Globulin (“IG”)
2. Declaration of Donald Chock – August 16 to August 30 – 9,270 HAV and 1 IG

HMAA

1. Declaration of Paul Kaiser – July 12 to October 2 and October 19 to November 2 – 4,725 HAV
2. Declaration of Paul Kaiser – August 16 to August 30 – 1,886 HAV

UHA

1. Declaration of Alyson Estrella – July 12 to October 2 and October 19 to November 2 – 7,633 HAV and 5 IG
2. Declaration of Alyson Estrella – August 16 to August 30 – 3,840 HAV and 5 IG

HMSA

1. Declaration of Catherine Ceko Charpie – July 12 to October 2 and October 19 to November 2 – 92,857 HAV and 27 IG
2. Declaration of Catherine Ceko Charpie – August 15 to August 29 – 35,853 HAV and 14 IG

C. To Date Only 2,192 Potential Class Members Have Filed Claims

After the Court issued its preliminary approval order, counsel for the Class and the Notice Company provided notice to potential class members per the terms of the parties' agreement and the Court's order. A website for this Settlement at www.HawaiiHep.com was developed and brought online, a media campaign surrounding the settlement provided information as to how to qualify as a class member and how to make a claim, advertisements were placed for two consecutive weeks in the Honolulu Star-Advertiser on Oahu, Hawai'i, and Maui as a paid legal advertisement, Google Adwords were purchased, press releases were circulated and social media was engaged. *See* Declaration of Joseph M. Fisher filed herewith. Where class counsel had names and addresses of known people who had become sick, mailings were provided to these sick individuals to disseminate to those who may have been exposed from contact with them. And, in addition, where possible class members had contacted class counsel previously, those individuals were sent a claim form and the short and long form notices. Those

efforts resulted in the submission of 2,192 claim forms as of November 30, 2018. *See* Declarations of William D. Marler and Joseph M. Fisher.

II. THE PARTIES HAVE AGREED TO AN AMENDED PROPOSED NOTICE

The parties to this litigation have agreed on an extended claim submission, opt-out, and objection deadline and on an amended proposed notice plan involving direct mailing and emailing to individuals identified by insurance companies as having received an HAV vaccine or IG shot between July 15, 2016 and October 25, 2016. *See* Declaration of William D. Marler and Amended Settlement Agreement, **Exhibit 1**.

A. The Amended Proposed Notice Plan Is Sufficiently Comprehensive.

After issuance of the Order Approving Stipulation to Amend Proposed Notice Plan and Related Deadlines and no later than January 4, 2019, the Class Administrator, working with the insurers Kaiser, HMSA, UHA and HMAA, will email the Short Form Notice to those potential class members who received either a HAV vaccine or IG shot between July 15, 2016 and October 25, 2016, and for whom the insurers have a deliverable email address and will mail the Short Form Notice to those potential class members who received either a HAV vaccine or IG shot between July 15, 2016 and October 25, 2016 and for whom the insurers do not have a deliverable email address but do have a mailing address. The Revised Claim Form intended to be used by the parties is attached hereto as **Exhibit B** and Short and Long Form Notices of Settlement are attached hereto as **Exhibit C and Exhibit D**. In the Short Form email notices, the link to www.HawaiiHepA.com will be live, along with a link to the claim form, so the notices may be read and the claim form either downloaded or filled out online. In the direct mailing, the Short Form notice will state the address for the website and the specific URL through which the claim form can be either downloaded or filled out online.

B. The Claim, Opt-Out, and Objection Deadline will be Extended to February 15, 2019.

The deadline for Class Members to request exclusion from the Class, to file objections to the Settlement, or to submit a Claim Form shall be amended to be February 15, 2019 (the “Response Deadline”) due to the additional time necessary to email or mail potential class members and to provide time to respond.

C. The Date for Hearing of Final Approval to be March 6, 2019

Due to the additional work necessary to provide the amended notice described herein, the parties stipulate that the Court hold the final hearing on March 6, 2019 at 8:30 a.m.

III. A HIPAA QUALIFIED ORDER SHOULD BE ISSUED DIRECTING THE RELEASE OF RELEVANT HEALTH DEPARTMENT RECORDS.

The parties agree that the amended notice described herein may result in more potential class members receiving notice of the class action settlement. Because the potential class members are being identified by health insurance records that indicate receipt of a particular treatment—HAV vaccines or IG shots—those records and the information they contain may be subject to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. §§ 1320d - 1320d-9. For that reason, Kaiser, HMSA, UHA and HMAA will not provide the information necessary to send the proposed amended notice to which the parties have agreed without a court order so directing them, which is a situation HIPAA contemplates.

B. HIPAA Authorizes the Restricted Release of Protected Records.

HIPAA establishes national privacy standards and fair information practices regarding health information. *Brende v. Hara*, 113 Haw. 424, 429, 153 P.3d 1109 (2007). As to judicial proceedings, HIPPA applies only to the parties involved in the proceeding and to health information obtained in discovery directly from health care entities. *Id.* HIPAA also requires

such health information be returned to health care entities or destroyed at the end of the proceeding. *Id.* (citing 45 C.F.R. §164.512).

HIPAA regulations serve as a "federal floor of privacy protections." 65 Fed. Reg. 82,462 (Dec. 28, 2000). In Hawai'i, "a medical information protective order issued in a judicial proceeding must, at a minimum, provide the protections of the HIPAA." *Brende v. Hara*, 113 Haw. 424, 429 (2007). There is no need to exceed the protections of HIPAA when issuing a medical information protective order unless "good cause" is shown that extra requirements are necessary "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* See Haw. R. Civ. P. 26(c).

HIPAA sets the standards by which certain medical or health information may be transmitted from health care providers, clearinghouses, health plans, employers, life insurers, schools, and the like to others. See 42 U.S.C. § 1320d (definitions). Health information means "any information, whether oral or recorded in any form or medium, [which may include electronic] that is created or received by health care provider[s] . . . and relates to the past, present, or future physical or mental health or condition of an individual, [or] the provision of health care to an individual." 42 U.S.C. § 1320d(4); see also 42 U.S.C. § 1320d(6) (regarding individually identifiable health information)

Further, 42 U.S.C. § 1320d-2 directs the Secretary of Health and Human Services ("HHS") to promulgate rules and regulations for transactions of such health information and to establish regulations that will safeguard and protect the privacy of the medical records. Under that authority, in 2001, HHS promulgated rules and regulations to secure the privacy of an individual's identifiable health information and to control their release and transmittal by covered entities. 45 C.F.R. § 164.500-534 & 164.512.

With regard to 45 C.F.R. § 164.512, these rules and regulations set forth how health information may be used and disclosed “for which an authorization or opportunity to agree or object is not required.” *Id.* Specifically, 45 C.F.R. § 164.512(e)(1)(i) provides that a “covered entity may disclose protected health information in the course of any judicial or administrative proceeding . . . [i]n response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order.” 45 C.F.R. 164.512(e)(1)(i). Additionally, HIPAA permits a covered entity to disclose protected health information “in response to a subpoena, discovery request, or other lawful process.” 45 C.F.R. 512(e)(1)(ii).

Courts have applied such regulations to require non-parties to litigation, such as Kaiser, HMSA, UHA, and HMAA in this case, to produce protected health information without the individual’s consent. *See, e.g., Mezu v. Morgan State Univ.*, 495 Fed. Appx. 286, 289 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 991, 184 L. Ed. 763 (2013) (affirming district court’s order overruling objections to the magistrate judge’s discovery order denying motion to quash a subpoena issued to a non-party requesting protected health information); *Cunningham v. Fleet-Car Lease, Inc.*, 2009 U.S. Dist. LEXIS 108588, 2009 WL 4030936, (E.D. Mo. Nov. 20, 2009) (denying non-party’s motion to quash subpoena for protected health information, reasoning that “HIPAA regulations authorize a covered entity to disclose protected health information for judicial proceedings, without requiring the individual’s permission,” citing to 45 C.F.R. 164.512(e)(1)(i)); *Bayne v. Provost*, 359 F. Supp. 2d 234, 2005 U.S. Dist. LEXIS 6935 (N.D.N.Y. 2005) (“[45 C.F.R.] § 164.512(e) unequivocally permits health care providers and other covered entities to disclose protected health information without patient consent in judicial proceedings.”) (citing *Northwestern Mem. Hosp. v. Ashcroft*, 362 F.3d 923, 925 (7th Cir. 2004);

Nat'l Abortion Fed'n v. Ashcroft, No. 03 Civ. 8695, 2004 U.S. Dist. LEXIS 4530, 2004 WL 555701, at *2 (S.D.N.Y. Mar. 19, 2004)).

C. Article 1, Section 6 of the Hawai'i Constitution Does Not Prohibit the Restricted Release Information Requested by Plaintiffs

In addition to the protections provided under HIPAA, article 1, section 6 of the Hawai'i Constitution states "The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right." The Supreme Court of Hawai'i has held that health information is "highly personal and intimate" information that is protected under this section of the Hawai'i constitution. *Brende v. Hara*, 113 Haw. 424, 430, 153 P.3d 1109 (2007); *Cohan v. Ayabe*, 132 Haw. 408, 432, 322 P.3d 948 (2014). Specifically, this constitutional provision protects private health information obtained in discovery from disclosure outside of the underlying litigation. *Id.* In contrast, the *Brende* Court noted that HIPAA applies only to health information obtained in discovery directly from health care entities. Therefore, article 1, section 6 is more protective of private health information than HIPAA. *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 138 Haw. 14, 19, 375 P.3d 1252 (2016).

While *Brende* and *Cohan* dealt with parties seeking to protect their records from disclosure outside of the immediate litigation, the Supreme Court of Hawai'i has also held that, pursuant to article 1, section 6, parties cannot use, or be compelled to produce, confidential patient medical records in litigation where the patient is not a party and no compelling state interest has been shown. *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 138 Haw. 14, 20, 375 P.3d 1252 (2016); *Naipo v. Border*, 125 Haw. 31, 37, 251 P.3d 594 (2011). As explained below, Plaintiffs' request in this case does not run afoul of either HIPAA or article 1, section 6.

D. An Order to Produce Contact Information in These Circumstances is Appropriate for Providing the Amended Notice.

In this case, the plaintiffs request that the Court order Kaiser, HMSA, UHA, and HMAA to disclose only a list of the names and addresses of the people who received IG shots or HAV vaccinations between July 15, 2016 and October 25, 2016 to the appointed Class Administrator. This information will not be filed with the Court, provided to the parties' attorneys, or otherwise disclosed beyond the Class Administrator. The Class Administrator will use the information solely to give notice of the class action settlement to the people on the list as described herein. At the end of these proceedings, the Class Administrator will destroy this contact information.

Plaintiffs are requesting this contact information solely to notify potential class members of their status as parties to this litigation. Thus, these potential class members are not non-parties as contemplated by the court in *Pac. Radiation Oncology, LLC*. Indeed, the "purpose of Rule 23(e) is to protect the unnamed members of the class." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 593 (3d Cir. 2010). Once notified of the current litigation, potential class members will have the choice whether to submit a claim form or not, in which case no further information would be disclosed.

The plaintiffs propose that Kaiser, HMSA, UHA, and HMAA provide the designated Class Administrator, exclusively, with a list containing the names, email addresses, and addresses of those individuals identified by Kaiser, HMSA, UHA, and HMAA as having received an HAV vaccine or IG shot between July 15, 2016 and October 25, 2016. The designated Class Administrator would have exclusive access to that information, preserving the confidentiality of the original records. The Class Administrator would then mail the Court-approved notice to the potential class members, or assist the insurers in sending the approved notice by email as described above.

The potential class members would then be able to choose whether to submit a claim and thereby disclose to the defendants and counsel that they had obtained an IG shot or HAV vaccine. Potential class members who wish to submit a claim would have until the new claim submission deadline, February 15, 2019, to timely submit a properly completed claims form to the Class Administrator. No such disclosures would be made with respect to those potential class members who do not submit a claim form to the Class Administrator.

The parties and the Claims Administrator would be expressly prohibited from using or disclosing the protected health information obtained pursuant to this order for any purpose other than this action. Further, the Class Administrator would be ordered to destroy all protected health information received from Kaiser, HMSA, UHA, and HMAA (including all copies made) within ten (10) days following the conclusion of this action.¹ *See* 45 C.F.R. 164.512(e)(1)(v).

In this manner, the agreed-upon additional notice of the class action can be effected while also putting in place measures to protect the privacy interests any potential class member could have in the information contained in the records.

D. Other Courts Have Authorized Similar Disclosures in Similar Circumstances.

Plaintiffs' counsel have prosecuted other claims on behalf of classes, like the instant one, where the alleged injury involved potential exposure to a pathogen and subsequent vaccination. Plaintiffs' counsel represent that in those cases, the courts authorized the disclosure of information (names and last known addresses) to facilitate class notice.

Plaintiffs' counsel represent that in the following five other foodborne illness class

¹ This stipulation and requested order contemplate that the parties will not be in possession of any of the protected information and thus the destruction order applies only to the Class Administrator.

actions in which the plaintiffs' counsel has represented similar classes, courts in North Carolina, South Carolina, Illinois, Massachusetts, and Delaware also authorized to disclose the names and addresses of persons who received an immunization/vaccination to the appointed Claims Administrator;

* *Werkmeister v. Hardee's Restaurants, LLC* (Spartanburg County, SC)

In a Modified Order Conditionally Approving Class Certification and Class Action Settlement and Qualified HIPAA Order dated January 11, 2017, the Court of Common Pleas in the Seventh Judicial District of South Carolina directed the South Carolina Department of Health and Environmental Control to disclose the names and last known address of all individuals who received immune globulin immunization shots or Hepatitis-A vaccinations provided by the health department to the parties' designated administrator, The Notice Company, Inc.

* *Cagler v. Papa John's USA, Inc.* (W.D. NC)

In a Preliminary Approval Order and HIPAA Protective Order dated October 20, 2014, the U.S. District Court for the Western District of North Carolina appointed The Notice Company to provide notice and settlement administration services in a case involving persons who consumed food and drink at a Papa John's store in Charlotte, North Carolina, and who may have been exposed to Hepatitis A. Pursuant to the Court's order, the Mecklenburg County Health Department, North Carolina, and the Cabarrus Health Alliance, which is the Public Health Authority of Cabarrus County, North Carolina, provided to The Notice Company the names and addresses of 1,656 persons who had received immunoglobulin shots or

Hepatitis-A vaccinations at the public health departments as a result of the alleged incident.

* *Prescott v. GMRI, Inc. d/b/a The Olive Garden Italian Restaurant*

(Cumberland County, NC)

On August 8, 2012, the Superior Court in the County of Cumberland, North Carolina, preliminarily approved a class action settlement involving persons who had consumed food and drink at The Olive Garden restaurant in Fayetteville, North Carolina, and who may have been exposed to Hepatitis A. Pursuant to the Court's Order, the Cumberland County Health Department provided to The Notice Company a list of the names and addresses of 3,086 persons identified as having received immunoglobulin shots or Hepatitis A vaccines at the Cumberland Health Department as a result of the alleged incident.

* *Foster v. Friendly Ice Cream Corporation* (Middlesex County, MA)

On February 8, 2005, the Middlesex County Superior Court, Massachusetts, issued its Order preliminarily approving a class action involving persons who were allegedly exposed to the Hepatitis A virus and received an immunoglobulin shot as a result of their consumption of food at the Friendly's restaurant in Arlington, Massachusetts. Pursuant to the Court's Order, The Notice Company received from the Town of Arlington Board of Health the names and addresses of 2, 633 persons who had received an immunoglobulin shot at a public health facility as a result of the alleged incident.

* *Johnson v. Houlihan's Restaurants, Inc.* (Kane County, IL)

On July 12, 2007, the Kane County Circuit Court in Illinois provisionally certified a class action involving persons who were allegedly exposed to the Hepatitis A virus while consuming food and drink at the Houlihan's restaurant in Geneva, Illinois. Pursuant to the Court's Order, The Notice Company prepared 3,500 notices, claim forms and mailing envelopes. These documents were provided to the Kane County Health Department, which then mailed the documents to persons who had obtained immunoglobulin shots at the Health Department as a result of the alleged incident. The mailing envelopes showed The Notice Company's return address.

* *In re Chi-Chi's, Inc.* (Bankr. D. DE)

On July 26, 2005, the U.S. Bankruptcy Court in Delaware administering the bankruptcy of Chi-Chi's, Inc., preliminarily approved a class action settlement involving Hepatitis A outbreaks associated with Chi-Chi's Beaver Valley Mall restaurant in Pennsylvania. Pursuant to the Court's Order, The Notice Company prepared 9,500 notices, claim forms and mailing envelopes. These documents were provided to the Pennsylvania Department of Health, which then mailed the documents to persons who had obtained immunoglobulin shots at the Health Department in connection with the alleged incident. The mailing envelopes showed The Notice Company's return address.

Counsel hereby accordingly request that the Court enter a HIPAA Qualified Order, compliant with the HIPAA requirements, specifically authorizing Kaiser, HMSA, UHA, and HMAA to release to the Class Administrator the names and addresses of those potential class

members who received either a HAV vaccine or IG shot between July 15, 2016 and October 25, 2016, and for whom Kaiser, HMSA, UHA, or HMAA do not have an email address.

IV. CONCLUSION

For the reasons set forth above, the parties to this action request:

1. Amendment of the forms of notice of settlement to potential class members to be substantially in the forms as attached to this Stipulation;
2. Amendment of the form of claim form to be submitted by potential class members to be substantially in the form as attached to this Stipulation;
3. Amendment to the notice to potential class members to include emailing or mailing of notices to those class members insured by Kaiser, HMSA, UHA and HMAA and as to whom their records show that Kaiser, HMSA, UHA and HMAA paid for an HAV vaccine or IG shot received between July 15, 2016 and October 25, 2016.
4. Amendment to February 15, 2019 of the time for filing timely claims, to timely opt out of the class action, or to timely object to the parties' settlement and to March 6, 2019 at 8:30 a.m. for the hearing on final approval of the class action settlement.
5. Continuation of the appointment of The Notice Company as Class Administrator.
6. An Order directing and authorizing Kaiser, HMSA, UHA and HMAA to disclose to the Class Administrator the names and addresses of those potential class members who received either a HAV vaccine or IG shot between July 15, 2016 and October 25, 2016, and for whom Kaiser, HMSA, UHA, or HMAA do not have a deliverable email address, and to send notice by email to those potential

class members who received either a HAV vaccine or IG shot between July 15, 2016 and October 25, 2016, and for whom Kaiser, HMSA, UHA, or HMAA has an email address.

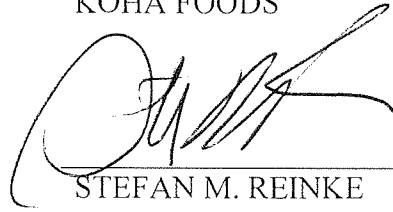
Dated this 11th day of December 2018



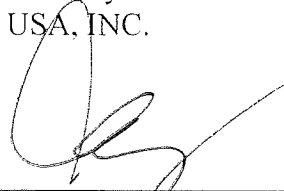
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AMENDMENT TO SETTLEMENT AGREEMENT

This Amendment to Settlement Agreement (“Amendment”) is entered into by plaintiffs Bryan Cuelho, D’Ann Ramos, and Stanley Sato (collectively “Plaintiffs”), on behalf of themselves and all those similarly situated, and Genki Sushi, Inc., HNK, Inc., and Sea Port Products Corp. (collectively “Defendants”). Collectively, Plaintiffs and Defendants shall be referred to as the “Parties.”

By this Amendment, the Parties hereby agree to amend the Settlement Agreement the parties entered into on or about October 10, 2018, and which the Circuit Court of the First Circuit, Hawai’i (“Court”) preliminarily approved by Order signed and entered on or about October 12, 2018 (“Settlement Agreement”). In consideration of the respective covenants and undertakings set forth below, NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Plaintiffs and Defendants, acting in good faith and subject to the approval of the Court, that the Settlement Agreement be amended as follows:

1. Amended Notice Plan and Revised Short Form Notice:

In addition to the Class Notice provided for in paragraph 10 of the Settlement Agreement, which the Parties acknowledge and agree has been provided, the Class Administrator,¹ upon entry of an Order approving this Amended Notice Plan and the new deadlines set forth in Section 4 of this Amendment, and working with the insurers Kaiser Foundation Health Plan, Hawai’i Medical Services Association, University Health Alliance, and Hawai’i Medical Assurance Association (collectively “Insurers”), shall:

(a) Email the Short Form Notice of Settlement (“Short Form Notice”) in substantially the form attached hereto as **Exhibit A** to individuals the Insurers identify from their records as

¹ Terms defined in the Settlement Agreement and used herein shall have the same meaning as defined in the Settlement Agreement.

having received either a Hepatitis A virus (“HAV”) vaccine or immune globulin (“IG”) shot between July 15, 2016 and October 25, 2016, and for whom the Insurers have an email address; and

(b) Mail the Short Form Notice to those individuals the Insurers identify from their records as having received either an HAV vaccine or IG shot between July 15, 2016 and October 25, 2016, and for whom the Insurers do not have an email address. The mailing of the Short Form Notice shall be in the form of a self-mailer closed with a wafer seal or similar method of closure.

2. Revised Detailed Notice of Settlement:

Upon entry of an Order approving this Amended Notice Plan and the new deadlines set forth in Section 4 of this Amendment, the Detailed Notice of Settlement currently in use shall be replaced by the Detailed Notice of Settlement in substantially the form attached hereto as **Exhibit B**.

3. Revised Claim Form:

Upon entry of an Order approving this Amended Notice Plan and the new deadlines set forth in Section 4 of this Amendment, the Claim Form currently in use shall be replaced by a Claim Form in substantially the form attached hereto as **Exhibit C** (“Revised Claim Form”). For those individuals who receive email notice as provided for in Section 1(a), the Revised Claim Form shall be made available via an active link directly to the Revised Claim Form, which link shall be embedded in the emailed Short Form Notice. For those individuals who receive mail notice as provided for in Section 1(b), the Revised Claim Form shall provide the URL through which the recipient may directly access the Revised Claim Form. For those individuals who receive notice via email or mail as provided for in Section 1, the Revised Claim Form shall be

made available in a form that can be either downloaded and printed or completed and submitted online. The Revised Claim Form also shall be made generally available for download on the settlement website, www.HawaiiHepA.com, but the generally available Revised Claim Form shall not be in a form that can be completed and submitted online.

4. Revised Deadlines:

The deadline for Class Members to requested exclusion from the Class, file objections to the Settlement (including to this Amendment), or submit a Revised Claim Form shall be February 15, 2019.

5. Costs of Amended Notice:

Notwithstanding Section 6 or any other provision of the Settlement Agreement the cost of mailing the Short Form Notice as provided for in Section 1(b) shall be borne equally by Plaintiffs and Defendants. For the avoidance of doubt, this means that Plaintiffs collectively shall pay fifty percent (50%) of the mailing cost and Defendants collectively shall pay fifty percent (50%) of the mailing cost. Plaintiffs shall pay for any administrative, employee, or similar costs or charges the Insurers incur in connection with collecting the information necessary to provide the Amended Notice provided for in Section 1 and for which the Insurers seek reimbursement or require payment. By his signature below, William D. Marler agrees that he personally shall be responsible for satisfying Plaintiffs' payment obligations set forth in this Section.

6. Integration and Drafting:

The Parties agree that this Amendment is clear and unambiguous, that it was drafted by respective counsel for the Parties at arm's length and, together with the Settlement Agreement, sets forth the entire agreement among the Parties with respect to its subject matter. The Parties further agree that no Party shall be deemed to have drafted this

Amendment. This Amendment, together with the Settlement Agreement merges and supersedes any and all prior agreements, discussions, negotiations, and communications among the Parties. The 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 Amendment.

7. Settlement Agreement Remains in Full Force and Effect:

Except as expressly modified herein, the Settlement Agreement and all terms therein remain in full force and effect. To the extent there is any conflict between any term in this Amendment and any term in the Settlement Agreement, the terms of this Amendment control.

PLAINTIFF BRYAN CUELHO:

Bryan Cuelho

Dated: 12/8/2018

PLAINTIFF D'ANN RAMOS:

D'Ann Ramos

Dated: 12/7/2018

PLAINTIFF STANLEY SATO:

Stanley Sato

Dated: 12/8/2018

PLAINTIFF'S COUNSEL WILLIAM D. MARLER (AS TO SECTION 5 ONLY):

William D. Marler

Dated: 12/7/2018


DEFENDANT HNK, INC DBA KOHA FOODS.:

Douglas

Its: President

Dated: 12/7/2018

DEFENDANT SEA PORT PRODUCTS CORPORATION:



Its: President
Dated: 12/7/2018

DEFENDANT GENKI SUSHI USA, INC.:

Its: _____
Dated: _____

DEFENDANT SEA PORT PRODUCTS CORPORATION:

Calvin Young, Esq on behalf of William Dresser

Its: President

Dated: _____

DEFENDANT GENKI SUSHI USA, INC.:

Mary E. Hansen

Its: Vice President and CAO

Dated: 12/7/2018

EXHIBIT A

CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

Deadline Extended to FEBRUARY 15, 2019

UPDATED CLASS NOTICE

You may have read or received a prior notice regarding this class action settlement. The filing deadline has been extended. You now have until FEBRUARY 15, 2019 to file a claim form. ACT NOW to ensure your claim is timely.

If you were exposed to the Hepatitis A virus (“HAV”) as a result of the 2016 Hepatitis A Outbreak linked to consuming food at thirteen Genki Sushi restaurants located on the islands of Oahu, Kauai, and Maui, and as a result you obtained preventative medical treatment, a Class Action Settlement may affect your rights.

Qualified Class Members can make a claim for payment of \$150, \$250, or \$350 if they submit a claim by February 15, 2019.

A Settlement has been reached in the lawsuits entitled *Cuehlo, et al., v. HNK, Inc., et al., Sato v. Genki Sushi USA, Inc. et al.*, and *Ramos v. Genki Sushi USA, Inc.* (consolidated as CIVIL NO. 17-1-HEP (JHA)) pending in the Circuit Court of the First Circuit, State of Hawai'i. Visit www.HawaiiHepA.com for complete information.

What Is This Case About?

This lawsuit asserts class claims for strict liability and negligence per se to recover damages for physical injury and economic loss arising from obtaining IG immunization shots and HAV vaccinations, in response to an alert by the Hawai'i Department of Health that the Plaintiffs were allegedly exposed to the HAV virus by consuming food from Genki Sushi restaurants, from contact with HAV-infected persons, or from other establishments.

Who Is Included in the Settlement?

The Class includes all persons who: (1) as a result of the 2016 Hepatitis A Outbreak infections linked to consuming food at thirteen Genki Sushi restaurants located on the islands of Oahu, Kauai, and Maui, were exposed to the hepatitis A virus (“HAV”) through one of three exposure-mechanisms, but did not become infected, and (2) as a result of such exposure, after learning of the requirement of treatment from an announcement of public health officials or a medical professional, obtained preventative medical treatment, such as receiving immune globulin (“IG”), HAV vaccine, or blood test within 14 days of exposure.

There are three Subclasses associated with the exposure-mechanisms:

Exposure Subclass 1: All Class Members who were in contact with one of the 292 persons who the Hawai'i Department of Health identified as infected with HAV as part of the 2016 Hepatitis A Outbreak.

Exposure Subclass 2: All Class Members who as a result of consuming food on or between August 1 to August 16, 2016, were exposed to HAV at one of the thirteen restaurants located on the islands of Oahu, Kauai, and Maui, implicated in the summer 2016 outbreak of HAV.

Exposure Subclass 3: All Class Members who as a result of consumption of food or drink from one or more of Secondary Establishments, where an employee infected as part of the 2016 Hepatitis A Outbreak (one of the 292 persons) was found to have worked on the Identified Dates, were exposed as a result of consuming food or drink at the Secondary Establishment during one or more of the Identified Dates.

Visit **www.HawaiiHepA.com** for a list of the thirteen Genki Sushi restaurants and a list of the Secondary Establishments and the Identified Dates.

What Does the Settlement Provide?

Each member of Subclass 1 will be awarded \$350, each member of Subclass 2 will be awarded \$250, and each member of Subclass 3 will be awarded \$150. The Aggregate Limit for all claims and payments will not exceed \$4,500,000.00 for the entire Class. The Aggregate Limit includes (i) payments to each member of the Subclasses, (ii) compensation to each of the Class Representatives, (iii) payments to identified insurers in settlement of subrogation liens and (iv) Class Counsel's fees and costs.

How Do I Receive Payment?

To receive payment, you must submit a claim form by February 15, 2019. If you do not submit a complete and timely claim form, you will not be entitled to payment. Claim forms and instructions are available at **www.HawaiiHepA.com**.

What Are Your Rights?

If you do nothing, Class Members will be bound by the Court's decisions. If you do not want the benefits of the Settlements and, instead, you want to keep your right to sue the Defendants, you must exclude yourself from the Settlement Class by writing to the Class Administrator at the following address:

Hawai'i Hep-A Exclusions
c/o The Notice Company
P.O. Box 455
Hingham, MA 02043

The Court will exclude from the Class any Class Member who submits a timely, written exclusion request, which must be signed, dated and state that you want to be excluded from the

Hawai'i Hepatitis-A Class Action (Civil No. 17-1-HEP (JHA)) in the State of Hawai'i. **To be valid, exclusion requests must be postmarked on or before February 15, 2019.**

If you do not exclude yourself, you may object to the Settlement, or enter an appearance through counsel, by filing an objection with the Court and sending copies to Class Counsel and Defendant's Counsel. See the instructions at www.HawaiiHepA.com. **The deadline to file objections or a notice of appearance is February 15, 2019.**

When Is the Final Hearing?

The Court will hold a Final Approval Hearing on **March 6, 2019, at 8:30 a.m.** with the Honorable Judge James H. Ashford at the Circuit Court of the First Circuit, State of Hawai'i, Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, HI 96813 to consider whether to approve the Settlements and a request for attorneys' fees. This date may change so please check the website. You or your own lawyer may appear and speak at the hearing at your own expense.

How Do I Get Additional Information?

This is only a summary notice of the proposed settlement. You may obtain a detailed notice, the claim form, and other Settlement information by visiting www.HawaiiHepA.com, calling toll free 1-800-532-9250, or writing to Hawai'i Hep-A Administrator, c/o The Notice Company, P.O. Box 455, Hingham, MA 02043.

EXHIBIT B

Deadline Extended to FEBRUARY 15, 2019

UPDATED CLASS NOTICE

You may have read or received a prior notice regarding this class action settlement. The filing deadline has been extended. You now have until FEBRUARY 15, 2019 to file a claim form. ACT NOW to ensure your claim is timely.

If you were exposed to the hepatitis A virus (“HAV”) as a result of the 2016 Hepatitis A Outbreak linked to consuming food at thirteen Genki Sushi restaurants located on the islands of Oahu, Kauai, and Maui, and as a result you obtained preventative medical treatment, a Class Action Settlement may affect your rights.

A court ordered this notice. This is not a solicitation from a lawyer.

- You can make a claim for payment of \$150, \$250, or \$350 if you submit a claim by **FEBRUARY 15, 2019**, and qualify as a Class Member.
- Please read this notice carefully. Your legal rights may be affected whether or not you act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM BY FEBRUARY 15, 2019	You must submit a claim to receive a payment from the Settlement. See Questions 4, 5 and 9 below.
EXCLUDE YOURSELF BY FEBRUARY 15, 2019	Excluding yourself from the Settlement Class is the only option that allows you individually to sue the Defendants about the claims in this case. See Questions 11 and 16 for specifics. If you do not exclude yourself from the Class, you cannot individually sue the Defendants.
OBJECT BY FEBRUARY 15, 2019	You can file an objection with the Court explaining why you disagree with the Settlement, the requested attorneys’ fees and litigation expenses, and/or the Class Representative awards. See Questions 12 and 16 for specifics.
GO TO THE HEARING ON MARCH 6, 2019	You can ask to speak to the Court about the Settlement. See Questions 12 and 16.
DO NOTHING	If you do nothing, then you will not receive any payment from the Settlement and you will give up any rights you currently may have separately to sue the Defendants for the conduct that is the subject of this litigation.

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

This Notice explains your rights and options in the proposed settlement of the lawsuits entitled *Cuehlo, et al., v. HNK, Inc., et. al., Sato v. Genki Sushi USA, Inc. et al.,* and *Ramos v. Genki*

Sushi USA, Inc. (consolidated as CIVIL NO. 17-1-HEP (JHA) (Product Liability)), pending in the Circuit Court of the First Circuit, State of Hawai'i (the "Settlement"). To submit a claim you must follow the steps described in this Notice by no later than **FEBRUARY 15, 2019**. To ask to be excluded (opt out) or to object to the Settlement, you must follow the steps described in this Notice by no later than FEBRUARY 15, 2019.

2. What is the lawsuit about?

Starting on June 12, 2016, Hawai'i residents began testing positive for hepatitis A virus (HAV). The number of cases increased over the next couple of months, and on August 15, 2016, the Hawai'i Department of Health identified raw scallops served at Genki Sushi restaurants as the source of the outbreak. As a result of the outbreak and investigation, the Department advised "Anyone who consumed products, specifically scallops, prepared or served at Genki Sushi on Oahu or Kauai should consider contacting their healthcare provider about the possibility of receiving a vaccine or immune globulin (IG)." On Monday, August 15, 2016, Dr. Sarah Park, state epidemiologist, was quoted in news reports as advising "anyone who ate at Genki Sushi on Oahu and Kauai in the last two weeks should consult a healthcare provider and seek a vaccine." As a result of these announcements, people who had eaten at Genki Sushi restaurants followed the Department's recommendation and received HAV vaccinations or IG shots.

Over the next three months, the Department made announcements regarding varying risks of exposure for at least sixteen other restaurants or food vendors. As a result of these announcements, people who were potentially secondarily-exposed to HAV followed the Department's recommendation and received post-exposure preventative treatment.

The Plaintiffs, Bryan Cuelho, D'Ann Ramos, and Stanley Sato, acting on behalf of themselves and all those similarly situated, have asserted in this litigation class claims for strict liability and negligence per se to recover damages for physical injury and economic loss arising from obtaining IG immunization shots and HAV vaccinations, in response to an alert by the Hawai'i Department of Health that the Plaintiffs were allegedly exposed to the HAV virus by consuming food or drink, specifically scallops, from Genki Sushi restaurants, from contact with HAV-infected persons, or from one or more of the Secondary Establishments identified below.

The Defendants expressly deny any wrongdoing and do not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against them in the litigation but consider it desirable for this litigation to be settled and dismissed.

3. Who are the Defendants?

The Defendants are Genki Sushi USA, Inc., HNK, Inc. dba Koha Foods, and Sea Port Products Corporation.

4. Who is covered by the Class?

For purposes of the Settlement, the Class is defined as follows:

All persons who: (1) as a result of the 2016 Hepatitis A Outbreak infections linked to consuming food at thirteen Genki Sushi

restaurants located on the islands of Oahu, Kauai, and Maui, were exposed to the hepatitis A virus (“HAV”) through one of three exposure-mechanisms (defined in the Exposure Subclasses), but did not become infected, and (2) as a result of such exposure, after learning of the requirement of treatment from an announcement of public health officials or a medical professional, obtained preventative medical treatment, such as receiving immune globulin (“IG”), HAV vaccine, or blood test within fourteen days of exposure.

The thirteen Genki Sushi restaurants implicated in the HAV outbreak are located at the following addresses:

- (1) 3-2600 Kaunaulii Hwy, Kauai, HI 96766
- (2) 820 West Hind Drive, # 102, Honolulu, HI 96821
- (3) 1450 Ala Moana Blvd #2096, Honolulu, HI 96814
- (4) 91-1401 Fort Weaver Rd. D-102, Ewa Beach, HI 96706
- (5) 45-480 Kaneohe Bay Drive, Kaneohe, HI 96744
- (6) 888 Kapahulu Ave, Honolulu, HI 96816
- (7) 4450 Kapolei Parkway, Kapolei, HI 96707;
- (8) 98-1005 Moanalua Road, Ste.801, Aiea, HI 96701
- (9) 94-799 Lumiaina St., Waipahu, HI 96797
- (10) 98-430 Kamehameha Hwy, Pearl City, HI 96782
- (11) 1200 Ala Moana Blvd, Honolulu, HI 96814
- (12) 70 E. Kaahumanu Ave, Kahului, HI 96732
- (13) 435 Keawe St., Lahaina, HI 96761

Persons who qualify as members of the Class will consist of three subclasses based on the manner in which the Class Members were exposed to HAV.

5. What are the Subclasses?

Your membership in a Subclass will determine the amount of money you will be paid. There are three subclasses, which are defined as followed:

Exposure Subclass 1: All Class Members who were in contact with one of the 292 persons who the Hawai’i Department of Health identified as infected with HAV as part of the 2016 Hepatitis A Outbreak. A contact is defined as:

- All household members of one of the 292 persons
- All sexual contacts with one of the 292 persons
- Anyone sharing illicit drugs with one of the 292 persons
- Anyone sharing food or eating or drinking utensils with one of the 292 persons
- Anyone consuming ready-to-eat foods prepared by one of the 292 persons

Exposure Subclass 2: All Class Members who as a result of consuming food on or between August 1 to August 16, 2016, were exposed to HAV at one of the thirteen Genki

Sushi restaurants located on the islands of Oahu, Kauai, and Maui, implicated in the summer 2016 outbreak of HAV.

Exposure Subclass 3: All Class Members who as a result of consumption of food or drink from one or more of the Secondary Establishments identified below, where an employee infected as part of the 2016 Hepatitis A Outbreak (one of the 292 persons) was found to have worked on the Identified Dates, were exposed as a result of consuming food or drink at the Secondary Establishment during one or more of the Identified Dates. The Secondary Establishments and Identified Dates are as follows:

- Baskin Robbins located at Waikele Center, HI 96797: June 30 and July 1, 2, 2016;
- Taco Bell located at 94-790 Uke'e St., Waipahu, HI 96797: July 1, 3, 4, 6, 7, 11, 2016;
- Sushi Shiono located at 69-201 Waikoloa Beach Drive, Waikoloa, HI 96738: July 12, 13, 14, 15, 18, 19, 20, 21, 2016;
- Chili's Grill & Bar located at 590 Farrington Hwy, Kapolei, HI 96707: July 20, 21, 22, 23, 25, 26, 27, 2016;
- Twelve Hawaiian Airlines flights: flight 118 on July 24; flight 117 on July 24; flight 382 on July 24; flight 383 on July 24; flight 396 on July 24; flight 365 on July 24; flight 273 on July 25; flight 68 on July 25; flight 65 on July 25; flight 147 on July 26; flight 18 on August 10; and flight 17 on August 12, 2016;
- Tamashiro Market located at 802 N. King St., Honolulu, HI 96817: July 23, 2016;
- Papa John's located at 94-1012 Waipahu St., Waipahu, HI 96797: August 2, 2016;
- New Lin Fong Bakery located at 1132 Maunakea St., Honolulu, HI 96817: July 27, 29, 30, and August 1, 3, 5, 6, 2016;
- Hokkaido Ramen Santouka, located at 801 Kaheka St., Honolulu, HI 96814: August 3, 4, 5, 6, 9, 10, 11, 2016;
- Kipapa Elementary School located at 95-76 Kipapa Dr., Mililani, HI 96789: August 10, 11, 12, 13, 14, 15, 16, 2016;
- Zippy's Restaurant located at 950 Kamokila Blvd., Kapolei, HI 96707: August 14, 18, 19, 21, 23, 25, 26, 2016;
- Harbor Restaurant at Pier 38 located at 1133 North Nimitz Hwy, Honolulu, HI 96817: August 30-31 and September 1- 12, 2016;
- Ohana Seafood at Sam's Club located at 1000 Kamehameha Hwy., Pearl City, HI 96782: September 1- 11, 2016;
- Chart House Restaurant located at 1765 Ala Moana Boulevard, Honolulu, HI 96815: September 4, 8, 9, 10, 11, 2016; and
- McDonald's Restaurant located at 4618 Kilauea Avenue, Honolulu, HI 96816: October 5, 7, 11, 2016.

6. How Much Money Will I Receive?

The General Damages Settlement provides for an award of General Damages to be paid to each member of one of the subclasses, but only to Qualified Claimants, as follows:

- \$350.00 for each member of Subclass 1.
- \$250.00 for each member of Subclass 2.
- \$150.00 for each member of Subclass 3.
- No Qualified Claimant may be paid an award in more than one Subclass.
- A Qualified Claimant who belongs to more than one Subclass shall be paid only for that Subclass with the largest award.

The Aggregate Limit for all claims and payments may not exceed \$4,500,000.00 for the entire Class. The Aggregate Limit includes (i) payments to each member of the Subclasses, (ii) compensation to each of the Class Representatives, (iii) payments to identified insurers in settlement of subrogation liens as described below (Question 7) and (iv) Class Counsel's fees and costs (see Question 14).

To be a Qualified Claimant, you must (a) submit a complete claim form and sign it as a declaration under penalty of perjury attesting to facts showing your membership in the exposure subclasses listed above; (b) show receipt of IG, HAV vaccine, or blood tests by providing date of treatment and documentation from a medical provider if the treatment was not covered by insurance or if the claimant does not identify an insurer who covered the treatment; and (c) attest that you had not previously had HAV or previously received a HAV vaccination. You must also follow the instructions listed below in Question 9.

If payment of the total number of timely claims submitted by Qualified Claimants, combined with payment of the other components of the Aggregate Limit would require exceeding the Aggregate Limit, then the per claim amounts identified for each of the three subclasses will be reduced proportionately to the extent needed to avoid exceeding the Aggregate Limit and each Qualified Claimant will be paid only the applicable proportionately reduced per claim amount. Such reduced amounts would preserve the proportionate relationships between the individual subclass awards. Thus, the amount paid to each member of Subclass 1 will continue to be 40% greater than the amount awarded to each member of Subclass 2; the amount paid to each member of Subclass 2 will continue to be two thirds (2/3) greater than the amount awarded to each member of Subclass 3.

If the total number of timely claims submitted by Qualified Claimants is such that the payment of such claims, combined with payment of the other components of the Aggregate Limit will not exhaust the Aggregate Limit, then any difference between the total amount paid out in claims and other components of the Aggregate Limit and the Aggregate Limit of \$4,500,000.00 will not be paid by the Defendants. These remaining funds, if any, after expiration of the Payment Period will revert to the funding sources consistent with the percentage of their respective contribution.

7. Are Insurance Claims Affected by the Settlement?

Although the Settlement of class claims is for general damages only, compensating Class Members for personal injury, pain, emotional distress, and inconvenience caused by need for, and obtaining of, preventive medical treatment, a portion of the compensation to each claimant will be allocated to settle and release the claims of insurers asserting any right of subrogation. The compensation provides for identified insurers to be paid 5% of each Qualified Claim for the full and final release of all subrogation claims arising from or related to preventative medical treatment. Such payments to identified insurers will not be deducted from the amounts identified

for the three subclasses, but will count towards the aggregate limit. Identified insurers will be required to verify whether Qualified Claimants received immune globulin, HAV virus vaccine, or blood tests.

8. Will there be Compensation Paid to the Named Representatives?

In addition to the payments described above, each named representative will each receive \$5,000.00 in compensation paid out of the Settlement Fund. Stanley Sato is the named representative for Subclass 1; Bryan Cuelho is the named representative for Subclass 2; and D'ann Ramos is the named representative for Subclass 3.

9. How do I make a claim?

To make a Qualified Claim, you must submit a completed and signed claim form along with supporting documentation that shows receipt of IG, HAV vaccine, or blood tests. Your claim must be received by the Class Administrator on or before **February 15, 2019**. A claim form can be obtained by downloading the form at www.HawaiiHepA.com or by calling **1-800-532-9250**.

When submitting your claim, you must provide the information requested on the claim form to support and verify your claim. Acceptable proof of receiving IG, HAV vaccine, or HAV blood tests are: (a) signed statement, (b) documentation from a medical provider, and/or (c) verification by your health insurer. Return your completed claim by mail, fax or email to the Class Administrator so that it is received no later than **February 15, 2019**. The mailing address of the Class Administrator is:

Hawai'i Hep-A Claims
c/o The Notice Company
P.O. Box 455
Hingham, MA 02043

Claims may also be submitted by email sent to claims@HawaiiHepA.com or by fax to (808) 748-0584.

You must complete and submit a separate claim form for each person who received IG, HAV vaccine or HAV blood test. FAILURE TO SUBMIT A VALID AND TIMELY CLAIM FORM SO THAT IT IS RECEIVED BY **FEBRUARY 15, 2019** 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.

10. Will I receive payment if I do not file a claim?

You will not be entitled to receive a payment from this Settlement if you do not file a timely claim. If you wish to receive a portion of the Settlement, you must make a claim as described in the previous section. If your timely submitted claim form shows that you qualify as a Class Member, your claim will then be paid, following the Court's approval of the Settlement. You will not be charged anything individually to remain in the Class. You will not be charged individually for attorney fees. See Question 14 below.

Any potential class member who wishes to do so may enter an appearance in this litigation through his or her own attorney, but must pay separately for the fees and expenses incurred by that attorney.

In order to receive a portion of the Settlement, you must submit a valid claim form so that it is received by **February 15, 2019**. Should you decide to enter an appearance, in this litigation, however, you must still submit a claim form so that it is received by **February 15, 2019**. Failure to do so will preclude you from receiving a portion of the Settlement. Any claim received after **February 15, 2019**, will not be accepted or paid.

11. Can I exclude myself from the Class?

If you exclude yourself from the Class, you may not submit a claim and you will not be entitled to receive payment from this Settlement. Any person who would otherwise be a member of the Class may be excluded from the Class and from the Settlement by mailing a written request for exclusion to the Class Administrator to the following address:

Hawai'i Hep-A Exclusions
c/o The Notice Company
P.O. Box 455
Hingham, MA 02043

To be valid, your exclusion request must be received no later than **February 15, 2019**. Your request for exclusion must (a) specify your full name and mailing address, (b) be signed and dated, and (c) state that you request to be "Excluded from the Hawai'i Hepatitis-A Class Action (Civil No. 17-1-HEP (JHA)) in the State of Hawai'i". A member of the Class submitting such a request shall be deemed excluded from the Settlement Class and from this Settlement.

Any potential member of the Class who does not file a timely written request for exclusion will be bound by the Settlement and all subsequent proceedings, orders and judgments in this lawsuit, even if that member of the Class does not submit a claim or subsequently initiates litigation against the Defendants relating to the HAV outbreak and/or the matters released.

12. Can I object to the Settlement?

Any member of the Class who has not filed a written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement must serve a notice of intent to appear and/or object, together with copies of any papers the member of the Class intends to present to the Court in connection with such objection, on the Class Counsel and Defendants' Counsel, no later than **February 15, 2019**.

A copy of the notice of intent to appear and/or object and any accompanying papers must also be filed with the Court no later than **February 15, 2019**.

COURT ADDRESS:

Honorable Judge James H. Ashford
Circuit Court of the First Circuit, State of Hawai'i
Ka'ahumanu Hale
777 Punchbowl Street
Honolulu, HI 96813-5093

CLASS COUNSEL ADDRESSES:

Brandee J.K. Faria, Esq.
PERKIN & FARIA, LLLC
841 Bishop Street, Suite 1000
Honolulu, HI 96813;

Trevor A. Brown, Esq.
STARN O'TOOLE MARCUS &
FISHER
733 Bishop Street, Suite 1900
Honolulu, HI 96813; and

William D. Marler, Esq.
MARLER CLARK, LLP, PS
(Admitted Pro Hac Vice)
1012 First Avenue, Fifth Floor
Seattle, WA 98104

DEFENDANTS' COUNSEL ADDRESSES:

**Genki Sushi USA, INC.
Counsel:**

Stefan M. Reinke, Esq.
LYONS, BRANDT, COOK &
HIRAMATSU
Davies Pacific Center
841 Bishop Street, Suite 1800
Honolulu, HI 96813

**HNK, Inc. dba Koha Foods
Counsel:**

Steven J.T. Chow, Esq.
THE PACIFIC LAW GROUP
745 Fort Street,
Fort Tower, Suite 1415
Honolulu, HI 96813

**Sea Port Products Corporation
Counsel:**

Calvin E. Young, Esq.
GOODSILL ANDERSON
QUINN & STIFE
999 Bishop Street, Suite 1600
Honolulu, HI 96813

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 Class Member, he or she must (i) file a notice of appearance with the Court no later than **February 15, 2019**, and (ii) serve on the Class Counsel and on Defendants' Counsel a copy of the same. Any such Class Member or their counsel may obtain access at the offices of STARN O'TOOLE MARCUS & FISHER, at the address listed above, to the original filed complaint, answer, any orders entered by the Court in the lawsuit, and to such additional pleadings as may be agreed upon by the Defendants' Counsel and the Class Counsel.

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.

13. Who represents the class?

The Court has designated Stanley Sato as the named representative for Subclass 1; Bryan Cuelho as the named representative for Subclass 2; and D'ann Ramos as the named representative for Subclass 3. The Court has appointed Perkin & Faria, LLC, Starn O'Toole Marcus & Fisher, and Marler Clark, LLP, PS, as the Class Counsel. If you have any questions for the Class Counsel, you may write to them at the addresses listed above.

14. How much will be paid to Class Counsel for fees and costs?

Class Counsel's fees and costs will be capped at 25% of the amount paid to the entire class for general damages. The amount awarded to Class Counsel will count toward the Aggregate Limit of \$4,500,000.00 for all claims and payments (see Question 6).

15. What are the reasons for the Settlement?

The Class Representatives 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.

16. What is the Settlement approval procedure?

The Court will hold a Final Approval Hearing on **March 6, 2019, at 8:30 a.m.** with the Honorable Judge James H. Ashford at the Circuit Court of the First Circuit, State of Hawai'i, Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu, HI 96813. 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.

Class Members will have the right to be excluded or to object to the proposed Settlement in the manner described above. No objection to the proposed Settlement will be valid unless it is in writing, signed personally by the Class Member under penalty of perjury, and submitted to the Court and served on Class Counsel and Defendants' Counsel, no later than **February 15, 2019**. If you do not file an objection by **February 15, 2019**, 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 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.

The compensation included in the Settlement covers three primary components: (1) an award to qualifying Class Members to compensate for general damages; (2) settlement of any subrogation liens for the benefit of qualifying Class Members; and (3) compensation for class representatives. This release will bar any further suit on the settled claims by or on behalf of the Class Members, and any persons claiming by or through them, including heirs, assigns, administrators, devisees, successors, attorneys, or representatives of any kind.

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

17. 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. Additional information is available at **www.HawaiiHepA.com**. 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.

EXHIBIT C

HAWAII HEP-A CLASS ACTION CLAIM FORM
CLAIM DEADLINE EXTENDED TO February 15, 2019

If you are a person who:

1. As a result of the 2016 Hepatitis A outbreak infections linked to consuming food at thirteen Genki Sushi restaurants located on the islands of Oahu, Kauai, and Maui, were exposed to the Hepatitis A virus ("HAV") through one of three exposure-mechanisms (SEE page 2 of this form), but did not become infected, AND
2. As a result of such exposure, after learning of the requirement of treatment from an announcement of public health officials or a medical professional, obtained preventative medical treatment, such as receiving immune globulin ("IG"), HAV vaccine, or blood test within fourteen days of exposure, and you wish to participate in the settlement, please complete this form.

IMPORTANT – If you previously submitted a Hawaii Hep-A Claim Form, you do not need to submit a second form.

>> YOUR SIGNATURE IS REQUIRED ON PAGE 2 <<

Fill out a separate claim form for each person who received immune globulin ("IG"), Hepatitis A virus ("HAV") vaccination or blood test. Parent or guardian should fill out a separate claim form for a minor child who obtained treatment.

CLAIMANT

FULL NAME _____

MAILING

ADDRESS

STREET _____

CITY _____

STATE _____

ZIP _____

CONTACT

PHONE _____

EMAIL _____

WHICH SUBCLASS DO YOU BELONG TO?

I AM A MEMBER OF THE FOLLOWING EXPOSURE SUBCLASS (DEFINED ON PAGE 2) [SELECT ONE OF THE FOLLOWING SUBCLASSES]:

☐ **EXPOSURE SUBCLASS 1 (\$350):** I WAS IN CONTACT WITH THE FOLLOWING PERSON(S) WHO WAS INFECTED WITH HAV AS PART OF THE 2016 HEPATITIS-A OUTBREAK (SEE PAGE 2 FOR DEFINITION OF A "CONTACT"); NAME(S): _____

☐ **EXPOSURE SUBCLASS 2 (\$250):** I WAS EXPOSED TO HAV AS A RESULT OF CONSUMING FOOD AT ONE OF THE GENKI SUSHI RESTAURANTS ON OAHU, KAUAI, OR MAUI (LISTED ON PAGE 2) BETWEEN AUGUST 1 AND AUGUST 16, 2016.

APPROXIMATE DATE(S) OF VISIT _____

☐ **EXPOSURE SUBCLASS 3 (\$150):** I WAS EXPOSED TO HAV AS A RESULT OF CONSUMING FOOD OR DRINK AT ONE OF THE SECONDARY ESTABLISHMENTS (LISTED ON PAGE 2) WHERE HAV EXPOSURE OCCURRED IN 2016.

NAME OF SECONDARY ESTABLISHMENT: _____

DATE(S) OF VISIT _____

TREATMENT INFORMATION

APPROXIMATE DATE(S) OF TREATMENT (IG, HAV VACCINE, OR BLOOD TEST): _____

DID YOU RECEIVE TREATMENT WITHIN 14 DAYS OF YOUR EXPOSURE TO THE HEPATITIS A VIRUS ("HAV")? ☐ YES ☐ NO

WHERE DID YOU OBTAIN TREATMENT? _____

WAS YOUR TREATMENT COVERED BY INSURANCE? ☐ YES ☐ NO

IF YES: NAME OF INSURANCE PLAN: _____

- ☐ HAWAII MEDICAL SERVICES ASSOCIATION (HMSA)
☐ HAWAII MEDICAL ASSURANCE ASSOCIATION (HMAA)
☐ KAISER FOUNDATION HEALTH PLAN
☐ UNIVERSITY HEALTH ALLIANCE (UHA)
☐ OTHER: _____

IF NO: You Must Provide Documentation that You Received IG, HAV Vaccine or Blood Test

YOUR INSURANCE ID #: _____

CLASS MEMBER'S DECLARATION

I declare under penalty of perjury that:

1. The information set forth in this Claim is true and correct to the best of my knowledge and belief.
2. In 2016, as a result of being exposed to HAV through one of the three exposure-mechanisms, I received IG, HAV vaccine or HAV blood test within 14 days of exposure to HAV.
3. Prior to my 2016 exposure to HAV, I did not previously have HAV and had not previously received a HAV vaccination.

CERTIFICATION

SIGNATURE OF CLAIMANT OR PARENT/GUARDIAN OF CLAIMANT

DATE

☐ CHECK BOX IF YOU ARE SIGNING AS THE PARENT OR GUARDIAN OF THE CLAIMANT

THIS FORM WILL NOT BE ACCEPTED UNLESS ALL INFORMATION IS PROVIDED, SIGNED BY THE CLAIMANT AND SUBMITTED SO THAT IT IS RECEIVED NO LATER THAN FEBRUARY 15, 2019 TO:

HAWAII HEP-A, THE NOTICE COMPANY, PO BOX 455, HINGHAM, MA 02043

Fax: 808-748-0584 or Email: claims@HawaiiHepa.com

Persons who qualify as members of the Class ("Class Members") will consist of three Subclasses based on the manner in which the Class Members were exposed to HAV:

Exposure Subclass 1: All Class Members who were in contact with one of the 292 persons who the Hawai'i Department of Health identified as infected with Hepatitis A virus ("HAV") as part of the 2016 Hepatitis A Outbreak. A contact is defined as: (a) All household members of one of the 292 persons; (b) All sexual contacts with one of the 292 persons; (c) Anyone sharing illicit drugs with one of the 292 persons; (d) Anyone sharing food or eating or drinking utensils with one of the 292 persons; and/or (e) Anyone consuming ready-to-eat foods prepared by one of the 292 persons.

Exposure Subclass 2: All Class Members who as a result of consuming food on or between August 1 to August 16, 2016, were exposed to HAV at one of the following thirteen Genki Sushi restaurants located on the islands of Oahu, Kauai, and Maui, implicated in the summer 2016 outbreak of HAV:

- | | |
|---|---|
| 1) 3-2600 Kaunaulii Hwy. Kauai, HI 96766 | 7) 4450 Kapolei Parkway, Kapolei, HI 96707; |
| 2) 820 West Hind Drive, # 102, Honolulu, HI 96821 | 8) 98-1005 Moanalua Road, Ste.801, Aiea, HI 96701 |
| 3) 1450 Ala Moana Blvd #2096, Honolulu, HI 96814 | 9) 94-799 Lumiaina St., Waipahu, HI 96797 |
| 4) 91-1401 Fort Weaver Rd. D-102, Ewa Beach, HI 96706 | 10) 98-430 Kamehameha Hwy, Pearl City, HI 96782 |
| 5) 45-480 Kaneohe Bay Drive, Kaneohe, HI 96744 | 11) 1200 Ala Moana Blvd, Honolulu, HI 96814 |
| 6) 888 Kapahulu Ave, Honolulu, HI 96816 | 12) 70 E. Kaahumanu Ave, Kahului, HI 96732 |
| | 13) 435 Keawe St., Lahaina, HI 96761 |

Exposure Subclass 3: All Class Members who as a result of consumption of food or drink from one or more of the Secondary Establishments identified below, where an employee infected as part of the 2016 Hepatitis A Outbreak (one of the 292 persons) was found to have worked on the Identified Dates, were exposed as a result of consuming food or drink at the Secondary Establishment during one or more of the Identified Dates. The Secondary Establishments and Identified Dates are as follows:

- Baskin Robbins located at Waikole Center, HI 96797: June 30 and July 1, 2, 2016
- Taco Bell located at 94-790 Uke'e St., Waipahu, HI 96797: July 1, 3, 4, 6, 7, 11, 2016;
- Sushi Shiono located at 69-201 Waikoloa Beach Drive, Waikoloa, HI 96738: July 12, 13, 14, 15, 18, 19, 20, 21, 2016
- Chili's Grill & Bar located at 590 Farrington Hwy, Kapolei, HI 96707: July 20, 21, 22, 23, 25, 26, 27, 2016;
- Twelve Hawaiian Airlines flights: flight 118 on July 24; flight 117 on July 24; flight 382 on July 24; flight 383 on July 24; flight 396 on July 24; flight 365 on July 24; flight 273 on July 25; flight 68 on July 25; flight 65 on July 25; flight 147 on July 26; flight 18 on August 10; and flight 17 on August 12, 2016;
- Tamashiro Market located at 802 N. King St., Honolulu, HI 96817: July 23, 2016;
- Papa John's located at 94-1012 Waipahu St., Waipahu, HI 96797; August 2, 2016;
- New Lin Fong Bakery located at 1132 Maunakea St., Honolulu, HI 96817: July 27, 29, 30, and August 1, 3, 5, 6, 2016;
- Hokkaido Ramen Santouka, located at 801 Kaheka St., Honolulu, HI 96814: August 3, 4, 5, 6, 9, 10, 11, 2016;
- Kipapa Elementary School located at 95-76 Kipapa Dr., Mililani, HI 96789: August 10, 11, 12, 13, 14, 15, 16, 2016;
- Zippy's Restaurant located at 950 Kamokila Blvd., Kapolei, HI 96707: August 14, 18, 19, 21, 23, 25, 26, 2016;
- Harbor Restaurant at Pier 38 located at 1133 North Nimitz Hwy, Honolulu, HI 96817: August 30-31 and September 1- 12, 2016;
- Ohana Seafood at Sam's Club located at 1000 Kamehameha Hwy., Pearl City, HI 96782: September 1- 11, 2016;
- Chart House Restaurant located at 1765 Ala Moana Boulevard, Honolulu, HI 96815: September 4, 8, 9, 10, 11, 2016; and
- McDonald's Restaurant located at 4618 Kilauea Avenue, Honolulu, HI 96816: October 5, 7, 11, 2016.

DO YOU NEED TO ATTACH DOCUMENTATION?

- If your treatment was not covered by insurance or if you did not identify an insurer who covered your treatment, then you must show receipt of IG, HAV vaccine, or blood tests by providing documentation from a medical provider. Your receipt of IG, HAV vaccine, or blood tests is subject to verification.
- No documentation required if your treatment was covered by insurance as identified on your claim form.
- No receipts required from Genki Sushi or other locations where you consumed food.

QUESTIONS? Visit www.HawaiiHepA.com or call 1-800-532-9250.