

2018 OCT 12 A 9:12

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N. MIYATA  
CLERK

IN RE:

HEPATITIS A CASES

This Document Applies To:

BRYAN CUEHLO

STANLEY SATO

D'ANN RAMOS

)  
) CIVIL NO. 17-1-HEP (JHA)  
) (Product Liability)  
)  
) **STIPULATION FOR ORDER**  
) **CERTIFYING CLASS AND FOR**  
) **PRELIMINARY APPROVAL OF CLASS**  
) **SETTLEMENT**  
)  
) **No Trial Date Set**  
)  
) Hon. Judge James H. Ashford  
)  
) CIVIL NO.  
) 16-1-1612  
) 16-1-1641  
) 16-1-1702  
)

**STIPULATION FOR ORDER CERTIFYING CLASS AND FOR PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT**

COME NOW the parties identified in the caption above, by and through their respective attorneys of record, and by this Stipulation, to respectfully request that the Court certify the class and subclasses identified below and preliminarily approve the settlement that the parties have reached in this matter.

**I. RELIEF REQUESTED**

Based on the stipulations set forth below, the parties to this action request that the Court issue an order certifying this class action, consistent with the class definition set forth in Section III below. The parties additionally request the Court's approval, as a preliminary matter, of the proposed settlement, issuing findings that the settlement is fair, adequate, and reasonable, and that the proposed notice of settlement to class members is reasonable and sufficient.

## **II. BRIEF STATEMENT OF UNDISPUTED FACTS**

The plaintiffs and defendant have entered into a Settlement Agreement, subject to court approval, including the documents and exhibits incorporated therein (together, the “Settlement Agreement”, **Exhibit 1**), to settle the above-captioned litigation (the “litigation”). The Settlement Agreement sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the litigation. The parties hereby stipulate to this Court’s preliminary approval of the settlement, subject to final approval after notice and claim administration.

### **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 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. Summary of the Proposed Settlement.**

There are three primary components to the settlement reached by the Parties: (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. These components are summarized as follows:

**1. General Damages:**

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

1. \$350.00 for each member of Subclass 1.
2. \$250.00 for each member of Subclass 2.
3. \$150.00 for each member of Subclass 3.
4. No Qualified Claimant may be paid an award in more than one Subclass.
5. 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 shall 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 under the heading "Settlement of Subrogation Liens," and (iv) plaintiff's attorney fees and costs under Paragraph 6 of the Settlement Agreement.

If payment of the total number of timely claims submitted by Qualified Claimants, combined with payment of the other components of the Aggregate Limit described in Paragraph 3(b) of the Settlement Agreement, would require exceeding the Aggregate Limit, then the per claim amounts identified for each of the three subclasses shall be reduced proportionately to the

extent needed to avoid exceeding the Aggregate Limit and each Qualified Claimant shall be paid only the applicable proportionately reduced per claim amount.<sup>1</sup>

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 described in Paragraph 3(b) of the Settlement Agreement will not exhaust the Aggregate Limit, any difference between the total amount paid out in claims and other components of the Aggregate Limit described in Paragraph 3(b) of the Settlement Agreement 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, as defined in Section 14 of the Settlement Agreement, shall revert to the funding sources consistent with the percentage of their respective contribution. Other than as provided in Paragraph 14 of the Settlement Agreement, there will be no claw back on the settlement contributions.

## **2. Settlement of Subrogation Liens:**

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 shall 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

---

<sup>1</sup> The reduced amounts shall 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 2/3 greater than the amount awarded to each member of Subclass 3.

subclasses, but shall count towards the aggregate limit.<sup>2</sup> Identified insurers will be required to verify whether Qualified Claimants received immune globulin, HAV virus vaccine, or blood tests.

### **3. Compensation for Class Representatives:**

In addition to the above, Class Representatives will each receive an additional \$5,000.00 in compensation paid out of the Settlement Fund referenced above.

### **III. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS OF RULE 23(A)**

The proposed class (the “Class”) is defined as follows:

All persons who: (1) as a result of the 2016 Genki Sushi Hepatitis A Outbreak infections linked to consuming food at thirteen Genki Sushi restaurants<sup>3</sup> 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.

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:**<sup>4</sup> 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 Genki Sushi Hepatitis A Outbreak. A contact is defined as:

- All household members of one of the 292 persons

---

<sup>2</sup> For example, a member of Subclass 2 will be paid \$250 and the identified insurer will be paid \$12.50 in settlement of a subrogation lien, for a total payment of \$262.50 in connection with such claim (with all such payments subject to the Aggregate Limit and with the payment to the identified insurer reduced in proportion to any reduction to the payment to a Class Member).

<sup>3</sup> 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 Avenue, Honolulu, HI 96816; (7) 4450 Kapolei Parkway, Kapolei, Hawai’i 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; and (13) 435 Keawe St., Lahaina, HI 96761.

<sup>4</sup> Stanley Sato is the named representative for Subclass 1.

- 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:**<sup>5</sup> 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:**<sup>6</sup> 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 Genki Sushi 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 Waialeale 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;
- Costco Bakery located at 333A Keahole St., Honolulu, HI 96825: June 16, 17, 18, 19, 20, 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: (1) flight 118 on July 24; (2) flight 117 on July 24; (3) flight 382 on July 24; (4) flight 383 on July 24; (5) flight 396 on July 24; (6) flight 365 on July 24; (7) flight 273 on July 25; (8) flight 68 on July 25; (9) flight 65 on July 25; (10) flight 147 on July 26; (11) flight 18 on August 10; and (12) flight 17 on August 12;
- 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 2, 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;

---

<sup>5</sup> Bryan Cuelho is the named representative for Subclass 2.

<sup>6</sup> D'ann Ramos is the named representative for Subclass 3.

- Zippy's Restaurant located at 950 Kamokila Blvd., Kapolei, HI 96707: August 21, 23, 25, 26, 2016;
- Harbor Restaurant at Pier 38 located at 1133 North Nimitz Hwy, Honolulu, HI 96817: August 30 through September 12, 2016;
- Ohana Seafood at Sam's Club located at 1000 Kamehameha Hwy., Pearl City, HI 96782: September 1 through September 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.

To be a Qualified Claimant, all Class Members are required to submit a declaration signed under penalty of perjury attesting to facts showing that the claimant is an individual defined as a Class Member through one of three exposure-mechanisms described in the exposure subclasses listed above. The receipt of IG, HAV vaccine, or blood tests, including the date of such treatment, shall be shown through attestation, documentation and/or verification by health insurer. Claimants shall show receipt of IG, HAV vaccine, or blood tests by providing 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. Claimants shall also attest they have not previously had HAV or previously received a HAV vaccination.

**A. The Requirements of the Rules Governing Class Certification Are Met.**

The question of whether a suit shall be allowed to proceed as a class action is one of fact, to be determined by the trial court within its discretion. *Life of Land v. Burns*, 59 Haw. 244, 252, 580 P.2d 405 (Haw. 1978). The proponents of a class action assume the burden of establishing the four prerequisites for class certification delineated in Haw. R. Civ. P. 23(a)— (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *Life of the Land v. Land Use Comm'n*, 63 Haw. 166, 181, 623 P.2d 431 (Haw. 1981). A failure to satisfy the burden in any respect can result in a denial of the necessary certification. *Id.* The requirements of HRCP Rule 23

are substantially similar to the requirements set forth in Rule 23 of the Federal Rules of Civil Procedure, which governs the certification of class actions in Federal Court and, thus, interpretation by federal courts of Federal Rule of Civil Procedure Rule 23 is highly persuasive. *Collins v. South Seas Jeep Eagle*, 87 Haw. 86, 89, 952 P.2d 374 (Haw. 1997).

As stipulated by the parties and as shall be demonstrated in the subsections that follow, the four requirements of Rule 23(a) are met, and the proposed class can be certified.

**1. Numerosity—Rule 23(a)(1)**

There is no dispute that the proposed class is “so numerous that joinder of all members is impracticable.” H.R.C.P. 23(a)(1). The key inquiry is who are the proposed class, and the specific criteria are that its members be identifiable and their possible joinder impracticable. *Life of the Land*, 63 Haw. at 181.

In the present case, records from a number of Hawai’i’s leading health insurers indicate that well over 100,000 people were likely exposed to HAV through the mechanisms illustrated in the three Exposure Subclasses and received post-exposure prophylaxis (PEP) treatment, including an injection of HAV vaccine or immune globulin, with many also obtaining associated blood tests. Even though it is not certain that all of the PEP treatment that was obtained satisfies the class definition, the large number of potential class members shows that the numerosity requirement is easily met here.

**2. Commonality—Rule 23(a)(2)**

To be certified, the proponents of certification must show “there are questions of law or fact common to the class.” H.R.C.P. 23(a)(2). The plaintiff need not show that each class member’s factual and legal issues are identical: “The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies.”



*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). As the Supreme Court has explained, “for purposes of Rule 23(a)(2) even a single common question will do.” *Wal-Mart*, 131 S. Ct. 2541, 2556, 564 U.S. 338, (2011). The common question “must be of such a nature that it is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 2551.

Commonality exists here. Several significant questions of law and fact are common to the class:

- whether food prepared with HAV-contaminated scallops is adulterated, unsafe to eat, defective, or otherwise prohibited from sale and distribution under the laws of the State of Hawai’i;
- whether food prepared in proximity or conjunction with HAV-contaminated scallops thus making the potential for cross-contamination inevitable, is adulterated, unsafe to eat, defective, or otherwise prohibited from sale and distribution under the laws of the State of Hawai’i;
- whether the defendants were strictly liable for the sale of adulterated and unsafe food;
- whether the defendants manufactured and sold food products not reasonably safe in construction, in that such products materially deviated from applicable design specifications, or deviated materially from identical units in the product line;
- whether the defendants manufactured, distributed, and sold a food product that was adulterated, not fit for human consumption, in a defective condition unreasonably dangerous to the plaintiff, and not reasonably safe as manufactured or sold; and
- whether the defendants were liable for damages to all potentially exposed persons

who obtained vaccinations to avoid HAV infections.

The arguments and common answers to these questions have driven the resolution of the litigation because the answers establish liability of the defendants as to all class members—and do so “in one stroke.” *Wal-Mart*, 131 S. Ct. at 2551. Thus, the commonality requirement is satisfied here.

### 3. Typicality—Rule 23(a)(3)

Rule 23(a)(3) requires that “the claims or defenses of the class representatives [be] typical of the claims or defenses of the class.” H.R.C.P. 23(a)(3). Typicality refers to the nature of the claim or defense, “not to the specific facts from which it arose, or the relief sought.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011). Indeed:

The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.

*Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quotation omitted). The typicality requirement was designed to be read in conjunction with the fair representation requirement; it can be equated with absence of conflict of interest. *Life of Land*, 63 Haw. at 183 (citing *Rosado v. Wyman*, 322 F. Supp. 1173, 1193 (E.D.N.Y. 1970), *aff’d*, 437 F.2d 619 (2nd Cir. 1970), *aff’d*, 402 U.S. 991 (1971)).

The claims of the named plaintiffs are typical of the claims of the Exposure Subclasses because (1) Stanley Sato received a HAV vaccine on July 13, 2016 after learning his son contracted the virus by eating contaminated food from Genki Sushi,<sup>7</sup> (2) Bryan Cuelho received a HAV vaccine on August 18, 2016 after he consumed products, specifically scallops, at the defendant’s restaurants during the outbreak period, on or between August 1 to August 16, (3) D’ann Ramos

---

<sup>7</sup> Stanley’s son, Andrew, tested positive for HAV on July 11, 2016.

received a HAV vaccine on July 18, 2016 after she consumed food or drink from a Secondary Establishment—the Taco Bell located at 94-790 Uke’e St., Waipahu, HI—on July 6, 2016, and, as a result, all three named plaintiffs and their respective subclass members obtained PEP treatment to prevent infection and further injury. Moreover, the conduct of the defendants was unchallenged—the manufacture and sale of a food product contaminated with HAV—and was not unique to any plaintiff.

As a result, the plaintiffs and putative class members claimed the same injury from the “same course of conduct.” *Hanon*, 976 F.2d at 508. There were no claims that the plaintiffs brought that the class members could not bring, or vice versa. Moreover, based on the well settled principles of strict liability, establishing liability of the defendant Genki Sushi effectively establishes the liability of all those in the chain of distribution for the implicated scallops, with there being no unique defenses as to any of the defendants. The claims of the putative class members and the named-plaintiff are not only coextensive, they are in this case basically identical. The requirement of typicality is thus met.

#### **4. Adequacy of Representation—Rule 23(a)(4)**

The final requirement of Rule 23(a) is that “the representatives will fairly and adequately protect the interests of the class.” H.R.C.P. 23(a)(4).

Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?

*Hanlon*, 150 F.3d at 1020. While the adequacy of his counsel is of relevant concern, the representative’s ability to speak on behalf of the rest of the class is the more important question here. *Life of the Land*, 63 Haw. at 183. Where claims or defenses are coextensive, there is a probability of fair and adequate representation. *Id.* The adequacy of class counsel and the

willingness of the named plaintiffs to vigorously prosecute the class's case was previously alleged. "Adequate representation is usually presumed in the absence of contrary evidence." *Californians for Disability Rights, Inc., v. California Dept. of Transp.*, 249 F.R.D. 334, 349 (N.D. Cal. 2008). In light of this presumption, and barring contrary evidence or some demonstration of an ongoing dispute among the parties, the adequacy requirement should be deemed met.

**A. RULE 23(B)(3)—PREDOMINANCE AND SUPERIORITY**

In addition to fulfilling the four requirements of H.R.C.P. 23(a), the moving party assumes the burden of demonstrating the presence of a suitable situation for the maintenance of a class action under the criteria set forth in at least one of the subdivisions of Rule 23(b). *Life of the Land v. Land Use Comm'n*, 63 Haw. 166, 181, 623 P.2d 431 (Haw. 1981). In the present case, the parties seek certification pursuant to Rule 23(b)(3), which allows certification so long as "the court finds the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." H.R.C.P. 23(b)(3).

First, a common nucleus of facts and potential legal remedies predominated this litigation. The Rule 23(b)(3) predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Nakamura v. Countrywide Home Loans, Inc.*, 122 Haw. 238, 247, 225 P.3d 680 (2010) (citing and quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623, 117 S. Ct. 2231 (1997)). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Nakamura*, 122 Haw. at 247 (citing *Hanlon*, 150 F.3d at 1022).

In this case, the plaintiffs alleged identical product liability claims against the defendants

and, in doing so, admitted that these causes of action were based on and governed by State statutes and common law of Hawai'i. The plaintiffs established the liability of the defendants in the same way, required the same sort of proof, and established liability on a class-wide basis. The plaintiffs have previously provided discussion of the common questions of fact and law that pervaded this lawsuit in their discussion of commonality above. The only differing determination among class members was related to damages, primarily because people paid different costs for their post-exposure prophylaxis treatment and some may have been covered by insurance while others were not, but "damage calculations alone cannot defeat certification." *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. Haw. 2010). In this case, common questions of law and fact predominated over questions affecting only individual members.

Second, a class action is superior to other available methods for the fair and efficient adjudication of this case. The claims at issue in the present case were relatively modest, and certainly not so large as to incline anyone toward incurring the costs of individual lawsuits. In past HAV outbreaks in which classes have been certified as part of a settlement, the per-person settlement amounts for those who were vaccinated have been less than one-thousand dollars. *See Marler Decl.*, ¶2, at 2. A class action is the only device that makes sense in this case given the amounts at stake; to not certify the class action would be tantamount to denying the plaintiffs any compensation at all. Both requirements of Rule 23(b)(3) are met, and the parties stipulate to class certification for settlement purposes only.

#### **IV. THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE AND THEREFORE DESERVES THE COURT'S PRELIMINARY APPROVAL**

H.R.C.P. Rule 23(e) requires that the Court approve any class action settlement, and courts within this circuit have held that "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to

reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir. 1982). A court’s determination will involve balancing several factors which may include, among others, the risk, expense, complexity and likely duration of further litigation, the extent of discovery completed, and the stage of proceedings. *Id.*

Here, the proposed settlement is fair, adequate, and reasonable. First, whether there existed fraud or collusion behind the settlement is not at issue because the parties to the settlement have engaged in arm’s length negotiations for more than a year with a highly esteemed mediator to reach the terms of the settlement together. Second, the complexity, expense and likely duration of the litigation should it proceed to trial is substantial. Third, the stage of the proceedings and the amount of discovery completed to date has revealed that this case is ripe for settlement. Fourth, the range of possible recovery should individual litigation of these claims take place will be minimal in light of the probable damages that might be recovered. Lastly, the opinions of class counsel and the class representatives unanimously favor settlement without objection.

**A. Relief to the Class**

**General Damages:**

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

6. \$350.00 for each member of Subclass 1.
7. \$250.00 for each member of Subclass 2.
8. \$150.00 for each member of Subclass 3.
9. No Qualified Claimant may be paid an award in more than one Subclass.
10. 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 shall 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 under the heading "Settlement of Subrogation Liens," and (iv) plaintiff's attorney fees and costs under Paragraph 6 of the Settlement Agreement.

If payment of the total number of timely claims submitted by Qualified Claimants, combined with payment of the other components of the Aggregate Limit described in Paragraph 3(b) of the Settlement Agreement, would require exceeding the Aggregate Limit, then the per claim amounts identified for each of the three subclasses shall be reduced proportionately to the extent needed to avoid exceeding the Aggregate Limit and each Qualified Claimant shall be paid only the applicable proportionately reduced per claim amount.<sup>8</sup>

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 described in Paragraph 3(b) of the Settlement Agreement will not exhaust the Aggregate Limit, any difference between the total amount paid out in claims and other components of the Aggregate Limit described in Paragraph 3(b) of the Settlement Agreement 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, as defined in Section 14 of the Settlement Agreement, shall revert to the funding sources consistent with the percentage of their respective contribution. Other than as provided in Paragraph 14 of the Settlement Agreement, there will be no claw back on the settlement contributions.

---

<sup>8</sup> The reduced amounts shall 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 2/3 greater than the amount awarded to each member of Subclass 3.

Settlement of Subrogation Liens:

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 shall 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 shall count towards the aggregate limit.<sup>9</sup> Identified insurers will be required to verify whether Qualified Claimants received immune globulin, HAV virus vaccine, or blood tests.

Compensation for Class Representatives:

In addition to the above, Class Representatives will each receive an additional \$5,000.00 in compensation paid out of the Settlement Fund referenced above.

**V. PROPOSED NOTICE OF SETTLEMENT IS REASONABLE AND SUFFICIENT**

In assessing whether there is sufficient notice, the Court must consider the sufficiency of the notice plan that the parties propose. More specifically, the plan must provide “to the members of the class the best notice practicable under the circumstances.” H.R.C.P. 23(c)(2). The notice shall advise each member that (A) the court will exclude the members from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

---

<sup>9</sup> For example, a member of Subclass 2 will be paid \$250 and the identified insurer will be paid \$12.50 in settlement of a subrogation lien, for a total payment of \$262.50 in connection with such claim (with all such payments subject to the Aggregate Limit and with the payment to the identified insurer reduced in proportion to any reduction to the payment to a Class Member).



**A. The Notice Company Should be Appointed as the Class Third-Party Administrator**

The parties request that the Court formally appoint The Notice Company to be the proposed Class Administrator in this case.

The Notice Company is principally engaged in the administration of class action lawsuits pending in courts around the United States, including the dissemination of notice to class members, administering the claims process, and distributing the proceeds of the litigation to the class; see the related Declaration of Joseph Fisher in support of this stipulation.

The Notice Company has implemented notice programs and served as settlement administrator in a wide variety of class action cases, with class membership sizes ranging from a few hundred to several million. The Notice Company has specific experience with specific class actions involving allegations of possible exposure to HAV at restaurants located in the United States, including the following cases:

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

The Notice Company provided notice of the class action by (1) mailing notice to 4,592 persons identified by the public health departments, (2) publication of notice in The Greenville News and the Spartanburg Herald-Journal, and (3) posting notice on the world wide web. The Notice Company handled all mailings of notices, received all claim forms, and administered the settlement.

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

The Notice Company provided notice of the class action by (1) mailing notice to 1,656 persons identified by the public health departments, (2) publication of notice in the Charlotte Observer, and (3) posting notice on the world wide web. The

Notice Company handled all mailings of notices, received all claim forms, and administered the settlement.

\* *Prescott v. GMRI, Inc. d/b/a The Olive Garden Italian Restaurant* (Cumberland County, NC)

The Notice Company provided notice of the class action by (1) mailing notice to 3,086 persons identified by the public health department, (2) publication of notice in The Fayetteville Observer, and (3) posting notice on the world wide web. The Notice Company handled all mailings of notices, received all claim forms, and administered the settlement.

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

The Notice Company provided notice to 2,633 members of the class by mailing notice to those individuals who had been identified by the Board of Health and by publication of notice in The Arlington Advocate. The Notice Company handled all mailings of notices, received all claim forms,

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

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. The Notice Company handled all re-mailings of notices that were returned by the U.S. Postal Service, received all claim forms, and administered the settlement.

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

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. The Notice Company handled all re-mailings of notices that were returned by the U.S. Postal Service, received all claim forms, and administered the settlement.

(see the related Declaration of Joseph Fisher in support of this stipulation).

The parties therefore request that the Court formally appoint The Notice Company to be the proposed Class Administrator in this case. The Notice Company has substantial experience in administering similar class actions and has served as the class settlement administrator in a wide variety of class action cases.

**B. The Proposed Notice Plan Is Sufficiently Comprehensive**

The proposed notice plan set forth in the Settlement Agreement is reasonable and sufficient. On the later of October 15, 2018, or within 10 business days after issuance of the Preliminary Approval Order (the later of such dates shall be the "Notice Commencement Date"), the Class Administrator will establish a website for this Settlement at [www.HawaiiHepA.com](http://www.HawaiiHepA.com) which will include electronic copies of the Claim Form, the Notice of Settlement for publication, the Preliminary Approval Order, and other information pertaining to the Settlement as requested by Class Counsel. The Claim Form intended to be used by the parties is attached to **Exhibit 1**, as **Attachment 1**.

Beginning on or promptly after the Notice Commencement Date, the Class

Administrator shall commence an online or social media campaign, to include Facebook, Instagram or such other social media as the Class Administrator deems appropriate, to disseminate notice of the Settlement.

Beginning on or promptly after the Notice Commencement Date, the Class Administrator shall cause the Notice of Settlement for publication to be published once a week for two consecutive weeks in the Honolulu Star-Advertiser on Oahu, Hawai'i, and Maui as a paid legal advertisement. The Notice of Settlement is attached as **Exhibit 1**, as **Attachment 3**.

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 forty-five (45) days from the Notice Commencement Date (or the next business day if such date falls on a weekend or on state or federal holiday) (the "Response Deadline").

#### **C. Request for Exclusion**

Any person who would otherwise be a member of the Class may be excluded from the Class and from the settlement set forth herein by mailing a written request for exclusion to the Class Administrator pursuant to the Preliminary Approval Order, postmarked no later than Response Deadline or as the Court may otherwise direct. The original requests for exclusion shall be filed with the Court by the Plaintiffs' counsel, and served on Defendants' counsel, at least seven (7) calendar days before the Final Approval Hearing. A member of the Class filing such a request on or before the Response Deadline shall be deemed excluded from the Settlement Class and from this Settlement with respect to all of the matters released.

Any potential member of the Class who does not file a timely written request for exclusion as provided in the preceding section shall be bound by this Settlement Agreement and all subsequent proceedings, orders, and judgments in this Lawsuit, even if that potential member

of the Class subsequently initiates litigation against Defendants relating to any of the matters released.

No Party shall encourage any potential Class Member to file a request for exclusion or encourage or provide any material assistance for any potential Class Member to file an objection to this Settlement or to file any other action, except as expressly provided herein.

**D. Objection to Settlement**

Any potential Class Member who has not filed a written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement must serve on the Plaintiffs' counsel and on counsel for Defendants, and must file with the Court, no later than the Response Deadline or as the Court may otherwise direct, a notice of intention to appear and/or object, together with copies of any papers such Potential Class Members intends to present to the Court in connection with such objection. Potential 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 potential Class Member, he or she must (i) file an appearance with the Court no later than the Response Deadline or as the Court otherwise may direct, and (ii) serve on the Plaintiffs' counsel and on counsel for Defendants a notice of the filing of the appearance. Any such potential Class Member or counsel thereto may, with notice, obtain access at the offices of Starn O'Toole Marcus & Fisher, Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawai'i 96813, to the complaints and answers thereto, if any, filed in this litigation and any orders entered in this litigation, and to such additional pleadings as may be agreed by Defendants' counsel and the Plaintiffs' counsel at the potential Class Member's or counsel's thereto own cost and expense.. Defendants' counsel will inform the Plaintiffs' counsel promptly of any requests received by Defendants' counsel by potential Class

Members or their attorneys for access to such documents.


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


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

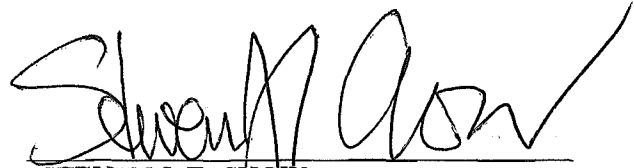
#### **VI. CONCLUSION**

For the reasons set forth above, the parties to this action request an order certifying this class action, consistent with the definitions set forth in Section III above.

The parties additionally request that the Court approve, as a preliminary matter, the proposed settlement as being fair, adequate, and reasonable, and the proposed Claim Form and Notice of Settlement to class members as reasonable and sufficient.

Dated this  day of October 2018

  
BRANDEE J.K. FARIA  
TREVOR A. BROWN  
WILLIAM D. MARLER  
Attorneys for Plaintiff STANLEY SATO,  
BRYAN K. CUELHO, and D'ANN  
RAMOS, individually and on behalf of all  
those similarly situated



---

STEVEN J. T. CHOW  
KRISITIE M. KUTAKA  
KYLEIGH F.K. NAKASONE  
Attorneys for Defendant HNK, INC. dba  
KOHA FOODS

---

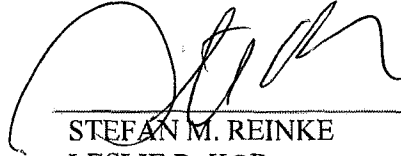
STEFAN M. REINKE  
LESLIE R. KOP  
Attorneys for Defendant GENKI SUSHI  
USA, INC.

---

CALVIN E. YOUNG  
DAVID ERNST  
KEVIN H. KONO  
Attorneys for Defendant SEAPORT  
PRODUCTS CORPORATION

---

STEVEN J. T. CHOW  
KRISITIE M. KUTAKA  
KYLEIGH F.K. NAKASONE  
Attorneys for Defendant HNK, INC. dba  
KOHA FOODS



---

STEFAN M. REINKE  
LESLIE R. KOP  
Attorneys for Defendant GENKI SUSHI  
USA, INC.

---

CALVIN E. YOUNG  
DAVID ERNST  
KEVIN H. KONO  
Attorneys for Defendant SEAPORT  
PRODUCTS CORPORATION

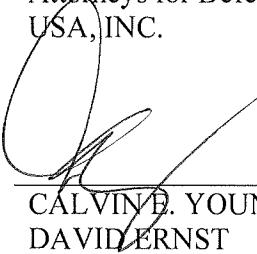


---

STEVEN J. T. CHOW  
KRISITIE M. KUTAKA  
KYLEIGH F.K. NAKASONE  
Attorneys for Defendant HNK, INC. dba  
KOHA FOODS

---

STEFAN M. REINKE  
LESLIE R. KOP  
Attorneys for Defendant GENKI SUSHI  
USA, INC.



---

CALVIN E. YOUNG  
DAVID ERNST  
KEVIN H. KONO  
Attorneys for Defendant SEAPORT  
PRODUCTS CORPORATION

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement" or "Settlement Agreement") is entered into by plaintiffs Bryan Cuelho, D'Ann Ramos, and Stanley Sato, ("Plaintiffs"), on behalf of themselves and all those similarly situated, and Genki Sushi, Inc., HNK, Inc. dba Koha Foods and Sea Port Products Corp. ("Defendants").

### **RECITALS**

A. Plaintiffs have made claims against Defendants and have filed class action complaints against Defendants in the Circuit Court of the First Circuit, Hawai'i, Civil Nos. 16-1-1612, 16-1-1641 and 16-1-1702 (Consolidated Order Civil No. 17-1-HEP (JHA) ("The Litigation").

B. 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. Between June 12 and October 9, 2016, 292 people were confirmed to be infected with HAV; 74 people required hospitalization, and 2 people died.

C. 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.

D. The Plaintiffs 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.

E. Counsel for the Plaintiffs have conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the Plaintiffs' claims and potential claims, and to determine how best to serve the interests of the Plaintiffs and the class as defined below (the "Class").

F. Based upon the investigation and evaluation of the facts and law relating to these matters, the Plaintiffs, the Plaintiffs' counsel and the Class have agreed to settle the litigation pursuant to the provisions of this Agreement after considering such factors as: (1) the benefits to the Plaintiffs and the Class under the terms of this Agreement; (2) the attendant risks and uncertainty of litigation as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this Agreement promptly, in order to provide prompt relief to the Plaintiffs and the Class.

G. 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.

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 all class claims alleged against Defendants in the litigation above are hereby compromised, settled, released and discharged in accordance with the terms and conditions set forth below.

### **THE SETTLEMENT**

In consideration of the respective covenants and undertakings set forth below, the Plaintiffs and Defendants (together, the "Parties") agree as follows:

**1. Effective Date:**

This Agreement shall become effective upon its execution by all parties hereto, which may be done in counterparts in accordance with Paragraph 22 below.

**2. The Settlement Class:**

For purposes of this settlement, the parties agree that the class (the "Settlement Class" or the "Class") shall be defined as follows:

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

---

<sup>1</sup> 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 Avenue, Honolulu, HI 96816; (7) 4450 Kapolei Parkway, Kapolei, Hawai'i 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; and (13) 435 Keawe St., Lahaina, HI 96761.

(“IG”), HAV vaccine, or blood test within fourteen days of exposure.

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:**<sup>2</sup> 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 Genki Sushi 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:**<sup>3</sup> 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:**<sup>4</sup> 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 Genki Sushi 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 (24) flight 118 on July 24; (25) flight 117 on July 24; (26) flight 382 on July 24; (27) flight 383 on July 24; (28) flight 396 on July 24; (29) flight 365 on July 24; (30) flight 273 on July 25; (31) flight 68 on July 25; (32) flight 65 on July 25; (33) flight 147 on July 26;; (36) flight 18 on August 10; and (37) flight 17 on August 12;

---

<sup>2</sup> Stanley Sato is the named representative for Subclass 1.

<sup>3</sup> Bryan Cuelho is the named representative for Subclass 2.

<sup>4</sup> D’ann Ramos is the named representative for Subclass 3.

- 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: and 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:, and October 5, 7, 11, 2016

**To be a Qualified Claimant, all Class Members are Required to Submit:** A declaration signed under penalty of perjury attesting to facts showing that the claimant is an individual defined as a Class Member through one of three exposure-mechanisms described in the exposure subclasses listed above. The receipt of IG, HAV vaccine, or blood tests, including the date of such treatment, shall be shown through attestation, documentation and/or verification by health insurer. Claimants shall show receipt of IG, HAV vaccine, or blood tests by providing 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. Claimants shall also attest they have not previously had HAV or previously received a HAV vaccination.

### **3. Relief to the Class:**

#### **A. General Damages:**

(a) The General Damages Settlement provides for an award of General Damages to be paid to

each person member of one of the subclasses, as follows:

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

- (b) The Aggregate Limit for all claims and payments shall 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 under the heading “Settlement of Subrogation Liens,” and (iv) plaintiff’s attorney fees and costs under paragraph No. 6 of this agreement.
- (c) If payment of the total number of timely claims submitted by Qualified Claimants, combined with payment of the other components of the Aggregate Limit described in Paragraph 3(b) of this Agreement, would require exceeding the Aggregate Limit, then the per claim amounts identified for each of the three subclasses shall be reduced proportionately to the extent needed to avoid exceeding the Aggregate Limit and each Qualified Claimant shall be paid only the applicable proportionately reduced per claim amount.<sup>5</sup>
- (d) 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 described in Paragraph 3(b) of this Agreement will not exhaust the Aggregate Limit, any difference between the total amount paid out in claims and other components of the Aggregate Limit described in Paragraph 3(b) of this Agreement 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, as defined below in Section 14, shall revert to the funding sources consistent with the percentage of their respective contribution. Other than as

---

<sup>5</sup> The reduced amounts shall 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 2/3 greater than the amount awarded to each member of Subclass 3.

provided in Paragraph 14 of this Agreement, there will be no claw back on the settlement contributions.

**B. Settlement of Subrogation Liens:**

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 shall 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 shall count towards the aggregate limit.<sup>6</sup> Identified insurers will be required to verify whether Qualified Claimants received immune globulin, HAV virus vaccine, or blood tests.

**C. Compensation for Class Representatives:**

In addition to the above, Class Representatives will each receive an additional \$5,000.00 in compensation paid out of the Settlement Fund referenced above.

**4. Settlement Process:**

Plaintiffs' counsel will prepare initial drafts of all settlement documents and will supervise, subject to Court oversight, the Class Notice and Claims Administration process. Claims Administrator will provide written notice to Defendants of the claims scheduled to be paid. Any party may seek additional clarification or information to determine whether a claim scheduled to be paid is valid or invalid. Within ten (10) days thereafter, Plaintiffs, their attorneys and agents

---

<sup>6</sup> For example, a member of Subclass 2 will be paid \$250 and the identified insurer will be paid \$12.50 in settlement of a subrogation lien, for a total payment of \$262.50 in connection with such claim (with all such payments subject to the Aggregate Limit and with the payment to the identified insurer reduced in proportion to any reduction to the payment to a Class Member).



shall be released and held harmless by Defendants for the payment thereof. The preliminary approval of the settlement shall be submitted by joint stipulation. Defendants agree to join in Plaintiffs' Motion for Final Approval of this settlement.

**5. The Plaintiffs' Counsel's Fees:**

Defendants shall pay Plaintiffs' reasonable attorneys' fees and costs capped at \$1,125,000.00. Reasonable fee application by Class Counsel will not be opposed by Defendants.

**6. Settlement Administration:**

The Notice Company, Inc., 94 Station Street, Hingham, MA (the "Class Administrator"), will handle the notice and claims administration for this Settlement as follows:

The printing, handling, mailing, and re-mailing, as required by the Notice of Settlement, including all related personnel and operating costs, and the processing of any requests for exclusion and other documents submitted. No notice to potential Class Members will be published until October 15, 2018.

Defendants shall be responsible for the payment of any and all reasonable fees and charges owed to the Class Administrator with respect to the foregoing administration of the Settlement, including media publication. Defendants shall not be responsible, and shall not pay, for any time or costs incurred by Class Members or their counsel with respect to the negotiation, implementation, or administration of the Settlement, or any costs incurred by any Class Member in connection with participating in the Settlement, other than the fees and costs agreed upon and identified in paragraph 6.

**7. Claim Form:**

A. The claim form to be used by persons who qualify as Class Members shall be substantially in the form attached hereto as **Attachment 1** (the "Claim Form").

B. Claim Forms may be submitted by a legally authorized guardian or representative of an incapacitated or minor Class Member or on behalf of a deceased Class Member.

**8. No Other Financial Obligations of Defendants:**

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

**9. Procedure for Implementation of Settlement:**

After this Agreement has been fully executed, the Parties shall present this Agreement, including all attached exhibits, to the Court for a “preliminary approval”. Specifically, the preliminary approval shall be submitted by stipulation, which will seek entry of the “Order Approving Class Certification and Preliminary Approval of Class Settlement” substantially in the form attached hereto as **Attachment 2**.

The Stipulation for Settlement Class Certification and Preliminary Approval of Class Settlement will request that the Court: (a) certify the proposed class for the purpose of settlement; (b) preliminarily approve the proposed settlement; (c) approve the Claim Form in the form, attached hereto as **Attachment 1**; (d) approve the Notice of Settlement for publication, attached hereto as **Attachment 3**; (e) approve the Detailed Notice of Settlement for mailing, if necessary, attached hereto as **Attachment 4**; and (f) conduct a final approval hearing (“Final Approval Hearing”) approximately two weeks after expiration of the “Response Deadline” as described below in Section 11.

**10. Class Notice.**

Class Notice shall proceed in accordance with the following schedule:

- a. No notice shall issue prior to October 15, 2018.

- b. On the later of October 15, 2018, or within 10 business days after issuance of the Preliminary Approval Order (the later of such dates shall be the “Notice Commencement Date”), the Class Administrator will establish a website for this Settlement at [www.HawaiiHepA.com](http://www.HawaiiHepA.com) which will include electronic copies of the Claim Form, the Notice of Settlement for publication, the Preliminary Approval Order, and other information pertaining to the Settlement as requested by Class Counsel.
- c. Beginning on or promptly after the Notice Commencement Date, the Class Administrator shall commence online or social media campaign, to include Facebook, Instagram or such other social media as the Class Administrator deems appropriate, to disseminate notice of the Settlement.
- d. Beginning on or promptly after the Notice Commencement Date, the Class Administrator shall cause the Notice of Settlement for publication to be published once a week for two consecutive weeks in the Honolulu Star-Advertiser on Oahu, Hawaii and Maui as a paid legal advertisement.
- e. 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 forty-five (45) days from the Notice Commencement Date (or the next business day if such date falls on a weekend or on state or federal holiday) (the “Response Deadline”).

**11. Request for Exclusion.**

A. Any person who would otherwise be a member of the Class may be excluded from the Class and from the settlement set forth herein by mailing a written request for exclusion

to the Class Administrator pursuant to the Preliminary Approval Order, postmarked no later than Response Deadline or as the Court may otherwise direct. The original requests for exclusion shall be filed with the Court by the Plaintiffs' counsel, and served on Defendants' counsel, at least seven (7) calendar days before the Final Approval Hearing. A member of the Class filing such a request on or before the Response Deadline shall be deemed excluded from the Settlement Class and from this Settlement with respect to all of the matters released.

B. Any potential member of the Class who does not file a timely written request for exclusion as provided in the preceding section shall be bound by this Settlement Agreement and all subsequent proceedings, orders, and judgments in this Lawsuit, even if that potential member of the Class subsequently initiates litigation against Defendants relating to any of the matters released.

C. No Party shall encourage any potential Class Member to file a request for exclusion or encourage or provide any material assistance for any potential Class Member to file an objection to this Settlement or to file any other action, except as expressly provided herein.

## **12. Objection to Settlement.**

A. Any potential Class Member who has not filed a written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement must serve on the Plaintiffs' counsel and on counsel for Defendants, and must file with the Court, no later than the Response Deadline or as the Court may otherwise direct, a notice of intention to appear and/or object, together with copies of any papers such Potential Class Members intends to present to the Court in connection with such objection. Potential 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 potential Class Member, he or she must

(i) file an appearance with the Court no later than the Response Deadline or as the Court otherwise may direct, and (ii) serve on the Plaintiffs' counsel and on counsel for Defendants a notice of the filing of the appearance. Any such potential Class Member or counsel thereto may, with notice, obtain access at the offices of Starn O'Toole Marcus & Fisher, Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawai'i 96813, to the complaints and answers thereto, if any, filed in this litigation and any orders entered in this litigation, and to such additional pleadings as may be agreed by Defendants' counsel and the Plaintiffs' counsel at the potential Class Member's or counsel's thereto own cost and expense. Defendants' counsel will inform the Plaintiffs' counsel promptly of any requests received by Defendants' counsel by potential Class Members or their attorneys for access to such documents.

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

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

**13. Final Approval, Final Approval Order, and Post-Settlement Notice.**

If the Court approves of this Agreement and enters a Preliminary Approval Order, the Parties shall then seek and use their best efforts to obtain from the Court a "Final Approval

Order" which shall, among other things:

- A. Certify the Class as defined in Paragraph 2;
- B. Find that the Court has personal jurisdiction over all potential Class Members and that the Court has subject matter jurisdiction to approve this Agreement and all exhibits thereto;
- C. Approve this Agreement and the proposed settlement as fair, reasonable and adequate, and consistent and in compliance with the applicable provisions of the laws of Hawai'i and the United States Constitution, as to, and in the best interests of, each of the Parties and the potential Class Members; direct the Parties and their counsel to implement and consummate this Agreement according to its terms and provisions; and declare this Agreement to be binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of the named plaintiffs and all other potential Class Members, as well as their heirs, executors and administrators, successors and assigns;
- D. Find that the Plaintiffs and the Plaintiffs' counsel adequately represented the Class for purposes of entering into and implementing the Settlement;
- E. Find that the Notice of Settlement and the notice methodology implemented pursuant to this Agreement: (i) constitute the best practicable notice, (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise potential Class Members of the pendency of the litigation and of their right to object to the proposed settlement and to appear at the Final Approval Hearing; (iii) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of Hawai'i Rule of Civil Procedure Rule 23, the Rules of the Hawai'i Supreme Court, and the Due Process Clause of the United States Constitution.

F. Authorize Defendants at their sole discretion, but in consultation with the Plaintiffs' counsel and without approval from the Court, to implement the settlement;

G. Dismiss the litigation (including all individual claims and Class claims presented thereby) on the merits and with prejudice, without fees or costs to any Party except as provided in this Agreement;

H. Bar and permanently enjoin all potential Class Members from (i) filing, commencing, prosecuting, intervening in, or participating (as Class Members or otherwise) in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action within the scope of the Release (as set out in paragraph 15 below), and (ii) organizing potential Class Members who have not been excluded from the Class into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to the claims and causes of action within the scope of the Release;

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

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

K. Incorporate any other provisions as the Court deems necessary and just.

**14. Payment of Settlement Checks:**

The Defendants shall send to the Class Administrator the amount required for distribution, up to the Aggregate Limit, within ten (10) calendar days after the Approval Order becomes final, where final means that the appeal period has passed, and no appeals have been filed or, if filed, such appeals have been dismissed. The Class Administrator shall mail settlement checks to qualified claimants within thirty (30) calendar days after the Approval Order becomes final. Settlement checks must be cashed within six (6) months of the date of the mailing (the "Payment Period"). Any qualified claimant who does not cash his/her check within the Payment Period foregoes his/her claim to the funds. Any proceeds from checks not cashed by the deadline shall be returned to Defendants.

The Class Administrator shall send payment to the Class Representatives within thirty (30) calendar days, to the identified insurers within thirty (30) calendar days and to Class Counsel within fourteen (14) calendar days after the Approval Order becomes final, provided that such persons or entities shall be required to submit a completed IRS Form W-9 to the Class Administrator prior to the issuance of such payment.

**15. Releases:**

Upon payment of the amount agreed upon, the Plaintiffs and each actual Class Member (except a potential Class Member who has obtained proper and timely exclusion from the class) hereby release Defendants, and their officers, directors, employees, agents, and insurers, of and from any and all liability for any and all claims, obligations, actions, demands, rights, costs, expenses, compensation, or causes of action of any nature whatsoever, whether based upon tort, contract, statute or any other theory of recovery, and whether for compensatory, punitive, statutory or any other forms of damage or relief, whether legal or equitable, which currently exist or which



may accrue in the future, whether known or unknown, latent or patent, whether asserted or unasserted in the Litigation, based upon or arising out of the acts, errors, omissions, and transactions alleged in the Litigation and/or relating in any way to any alleged exposure to the HAV virus as set out in the Recitals to this Agreement.

**16. Integration and Drafting:**

The Parties agree that this Agreement is clear and unambiguous, that it was drafted by respective counsel for the Parties at arm's length and sets forth the entire agreement among the Parties with respect to its subject matter, and that no parole or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which the Agreement was made or executed. The Parties further agree that no Party shall be deemed to have drafted this Agreement. This Agreement constitutes and represents the complete and entire agreement among the Parties. This 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 Agreement. Each Party further agrees, acknowledges and expressly warrants that no information, statement, promise, representation, warranty, condition, inducement, or agreement of any kind, whether oral or written, made by or on behalf of any other Party shall be, or has been, relied upon by it unless specifically contained and incorporated herein.

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

This Agreement is not subject to modification without the written consent of all Parties and approval of the Court; provided, however, that, after entry of the Final Approval Order, the Parties may by agreement effect such modification of this Agreement and its implementing

documents (including all exhibits hereto) without notice to or approval by the Court if such changes are consistent in all material respects with the Court's Final Approval Order or do not limit the rights of potential Class Members. The Parties also reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

**18. Termination of Agreement:**

This Agreement will terminate at the sole option and discretion of Defendants or the Plaintiffs if: (i) the Court, or any appellate court(s), rejects, modifies or denies approval of any portion of this Agreement or the proposed settlement that the terminating Party in its (or their) sole judgment and discretion believes is material; or (ii) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party in its (or their) sole judgment and discretion believes is material. The terminating Party must exercise the option to withdraw from and terminate this Agreement, as provided in this paragraph no later than twenty (20) days after receiving notice of the event described in this paragraph. Notwithstanding the foregoing, the Plaintiffs may not terminate this Agreement solely because of the amount of attorneys' fees awarded by the Court or any appellate court(s). Defendants, however, may elect to terminate this Agreement if the amount of attorneys' fees awarded exceeds the amount agreed upon by the Parties in Paragraph 5 hereof. If the Agreement is terminated, then the Agreement, its terms, and its exhibits shall be null and void and shall have no force or effect, no Party shall be bound by any of its terms (except for the terms of this Paragraph) and the Agreement shall not be admissible in any further or different proceedings.

**19. Attachments:**

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

**20. Waiver:**

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

**21. Authorization of Signatories:**

William D. Marler represents that (i) he is authorized to enter into this Agreement on behalf of the respective Plaintiffs and any other attorneys who have represented or who now represent the Plaintiffs, and (ii) he is seeking to protect the interests of the entire Class. David A. Ernst, Steven J. T. Chow and Stefan M. Renke represent that they are authorized to enter into this Agreement on behalf of Defendants and any attorneys who have represented or who now represent Defendants in the litigation.

**22. Agreement Executable in Counterparts:**

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

**23. Confidentiality:**

The Parties and their counsel agree to keep the existence and contents of this Agreement and all related negotiations confidential until October 15, 2018, provided, however, that this

paragraph shall not prevent the disclosure of such information, prior to October 15, 2018, to regulators, rating agencies, financial analysts, sales representatives and brokers, or any other person or entity (such as experts, courts, and/or Class Administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Agreement. The Parties further agree that no further press release or public statement (including any internet publication by anyone other than the Class Administrator) shall be made, issued or posted on the internet announcing this settlement or discussing the litigation until October 15, 2018.

**24. Interest of the Class:**

The Plaintiffs' counsel and the Plaintiffs represent that they are seeking to protect the interests of the entire Class and believe that this Agreement is in the best interests of the Class. The Plaintiffs and the Plaintiffs' counsel agree not to request exclusion from the Class or to object to the proposed settlement, and they further agree to support and urge the Court approve the Notice of Settlement.

**25. No Evidence:**

In no event shall this Agreement, any of its provisions, or any negotiations, statements, or proceedings relating to it in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the litigation, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this Agreement. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or proceedings shall be construed as, offered as, used as, or deemed to be evidence or an admission or concession by any person of any matter, including but not limited to any liability or wrongdoing on the part of Defendants or as a waiver by Defendants of any applicable defense, including without limitation any applicable statute of limitations, or as evidence of the appropriateness of

certification of any class or of defense against any such certification.

**26. Tax Consequences:**

No opinions concerning the tax consequences of the proposed settlement to individual claimants is given or will be given by Defendants, the Plaintiffs, or the Plaintiffs' counsel, nor are any representations in this regard made by virtue of this Agreement. Each claimant's tax obligations, if any, and the determination thereof, are the sole responsibility of the claimant, and the tax consequences, if any, may vary depending on the particular circumstances of each individual claimant. Defendants shall act as it determines is required by the United States Internal Revenue Code and the Regulations of the Internal Revenue Service thereunder, and by any applicable state law or regulations thereunder, in reporting any settlement benefit provided to any claimant pursuant to this Agreement.

**27. Media Communications:**

The Plaintiffs' counsel, the Plaintiffs, and Defendants agree to cooperate in good faith to ensure that descriptions of the proposed settlement in the media or in any other public forum are fair and accurate.

**28. The Plaintiffs' Assertion of Good Faith:**

The Plaintiffs expressly affirm that the allegations they made in pleadings filed in the litigation were made in good faith and do not admit or concede that any of the claims alleged in the Complaint lack merit.

**29. Cooperation in Effecting Settlement:**

The Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Agreement in good faith, to use good faith in resolving any disputes that may arise in the implementation of terms of this Agreement, to cooperate fully with one another in seeking

Court approval of this Agreement, and to use their best efforts to effect the prompt consummation of this Agreement and the proposed settlement.

**30. Conditions to Obligation to Conclude Settlement:**

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

- A. Execution of this Agreement by the Parties;
- B. Entry by the Court of the Final Approval Order approving the settlement, from which the time to appeal has expired or which has remained unmodified after any appeal(s); and
- C. Any other conditions stated in this Agreement.

**31. Governing Law:**

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

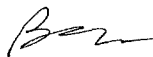
**32. Forum for Enforcement of Settlement:**

Any action to enforce this Agreement shall be commenced and maintained only in the Circuit Court of the First Circuit of Hawai'i. If any Class Member hereafter sues or commences an arbitration against Defendants for the purpose of enforcing any claims that are released under this Agreement, this Agreement shall be and constitute a complete defense thereto.

**33. Parties Bound:**

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, all potential Class Members, the Plaintiffs' counsel, Defendants, and the respective heirs, successors and assigns of each of the foregoing.

PLAINTIFF BRYAN CUELHO:



Dated: 10/10/2018

PLAINTIFF D'ANN RAMOS:



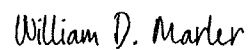
Dated: 10/10/2018

PLAINTIFF STANLEY SATO:



Dated: 10/10/2018

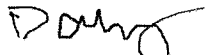
FOR PLAINTIFFS' COUNSEL:



WILLIAM D. MARLER

Dated: 10/10/2018

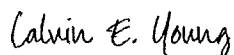
FOR HNK, INC. DBA KOHA FOODS:



DANNY KIM

Dated: 10/10/2018

FOR SEA PORT PRODUCTS CORPORATION:

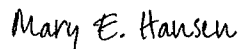


Calvin E. Young as counsel for William Dresser, President of Sea Port Products Corporation

WILLIAM DRESSER

Dated: 10/10/2018

FOR GENKI SUSHI USA, INC.:



MARY E. HANSEN

Dated: 10/10/2018

FOR DEFENDANTS' COUNSEL:



STEVEN J. T. CHOW

Dated: 10/10/2018



FOR DEFENDANTS' COUNSEL:

*Stefan M. Reinke*

STEFAN M. REINKE

Dated: 10/10/2018

FOR DEFENDANTS' COUNSEL:

*David A. Ernst*

DAVID A. ERNST

Dated: 10/10/2018

# **ATTACHMENT 1**

## HAWAI'I HEP-A CLASS ACTION CLAIM FORM

### **POSSIBLE HEPATITIS A EXPOSURE ALLEGED TO ORIGINATE AT THE GENKI SUSHI RESTAURANTS IN HAWAII IN 2016.**

If you are a person who:

1. As a result of the 2016 Hepatitis A outbreak infections linked to consuming food or drink 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 3 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** – to be valid, this form **MUST** be signed and sent, along with supporting documentation, so that it is received by the Claims Administrator on or before **NOVEMBER 29, 2018**.

Fill out a separate claim form for each person who received IG, HAV vaccination or blood test. The parent or guardian of a minor child who obtained a shot should fill out a separate claim form for each minor child.

#### CLAIMANT'S CONTACT INFORMATION

CLAIMANT

FULL NAME

SOCIAL SECURITY NO. (LAST 4 DIGITS ONLY)

MAILING

ADDRESS

STREET

CITY

STATE

ZIP

CONTACT

PHONE

EMAIL

#### CLASS MEMBERSHIP INFORMATION

I AM A MEMBER OF THE FOLLOWING EXPOSURE SUBCLASS (DEFINED HERE ON PAGE 3) [CHECK ONE OF THE FOLLOWING SUBCLASSES AND COMPLETE ALL OF THE REQUESTED QUALIFYING INFORMATION BELOW YOUR SELECTED SUBCLASS]:

☐ **EXPOSURE SUBCLASS 1**

(A) I WAS IN CONTACT WITH THE FOLLOWING PERSON(S) WHO WAS INFECTED WITH HAV AS PART OF THE 2016 HEPATITIS A OUTBREAK. A: (NAMES:) \_\_\_\_\_

(B) TYPE OF CONTACT: (SEE PAGE 3) \_\_\_\_\_

☐ **EXPOSURE SUBCLASS 2**

(A) ADDRESS OF THE GENKI SUSHI RESTAURANT WHERE I WAS EXPOSED TO HAV IN 2016:

STREET

CITY

STATE

ZIP

(B) DATE(S) OF MY VISIT TO GENKI SUSHI RESTAURANT: \_\_\_\_\_

☐ **EXPOSURE SUBCLASS 3**

(A) NAME AND ADDRESS OF THE SECONDARY ESTABLISHMENT (SEE PAGE 3) WHERE HAV EXPOSURE OCCURRED IN 2016: \_\_\_\_\_

NAME

STREET

CITY

STATE

ZIP

(B) DATE(S) OF MY VISIT TO THE SECONDARY ESTABLISHMENT: \_\_\_\_\_

### **TREATMENT INFORMATION**

DATE(S) OF TREATMENT: \_\_\_\_\_ TYPE OF TREATMENT (IG, HAV VACCINE, OR BLOOD TEST): \_\_\_\_\_

NAME OF MEDICAL FACILITY WHERE YOU OBTAINED TREATMENT: \_\_\_\_\_

ADDRESS OF MEDICAL FACILITY: \_\_\_\_\_  
STREET CITY STATE ZIP

TREATMENT PAYMENT TYPE (CHECK ONE OF THE FOLLOWING):

- ☐ OUT OF POCKET/CASH ☐ HAWAII MEDICAL SERVICES ASSOCIATION (HMSA)  
☐ HAWAII MEDICAL ASSURANCE ASSOCIATION (HMAA) ☐ KAISER FOUNDATION HEALTH PLAN  
☐ UNIVERSITY HEALTH ALLIANCE (UHA) ☐ OTHER INSURANCE PLAN: \_\_\_\_\_

### **SUPPORTING DOCUMENTATION**

☐ CHECK TO CONFIRM THAT YOU HAVE ATTACHED DOCUMENTATION THAT SUPPORTS AND VERIFIES YOUR CLAIM. ACCEPTABLE PROOF OF RECEIVING IG, HAV VACCINE, OR HAV BLOOD TESTS ARE: (A) SIGNED STATEMENTS, (B) DOCUMENTATION FROM A MEDICAL PROVIDERS, AND/OR (C) VERIFICATION BY YOUR HEALTH INSURER.

### **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 at the health care facility listed above and that I am a member of the Settlement Class.
3. Prior to my 2016 exposure to HAV, I did not previously have HAV or 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 RETURNED BY MAIL, FAX OR EMAIL SO THAT IT IS RECEIVED NO LATER THAN **NOVEMBER 29, 2018** TO:

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

EMAIL: [claims@HawaiiHepA.com](mailto:claims@HawaiiHepA.com)

FAX: (808) xxx-xxxx.

Additional information may be obtained at [www.HawaiiHepA.com](http://www.HawaiiHepA.com) or at 1-800-XXX-XXXX

**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 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 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 Waikale 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 (24) flight 118 on July 24; (25) flight 117 on July 24; (26) flight 382 on July 24; (27) flight 383 on July 24; (28) flight 396 on July 24; (29) flight 365 on July 24; (30) flight 273 on July 25; (31) flight 68 on July 25; (32) flight 65 on July 25; (33) flight 147 on July 26;; (36) flight 18 on August 10; and (37) flight 17 on August 12;
- 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: and 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.

**To be a Qualified Claimant, all Class Members are Required to Submit:** A declaration signed under penalty of perjury that the claimant is an individual defined as a Class Member through one of three exposure-mechanisms. The receipt of IG, HAV vaccine, or blood tests shall be shown through attestation, documentation and/or verification by health insurer. Claimants shall show receipt of IG, HAV vaccine, or blood tests by providing 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. Claimants shall also attest they have not previously had HAV or previously received a HAV vaccination.

# **ATTACHMENT 2**

**IN THE CIRCUIT COURT OF THE FIRST CIRCUIT**

**STATE OF HAWAII**

IN RE:	)	
	)	CIVIL NO. 17-1-HEP (JHA)
HEPATITIS A CASES	)	(Product Liability)
	)	
This Document Applies To:	)	<b>STIPULATION FOR ORDER</b>
	)	<b>CERTIFYING CLASS AND FOR</b>
BRYAN CUEHLO	)	<b>PRELIMINARY APPROVAL OF CLASS</b>
STANLEY SATO	)	<b>SETTLEMENT</b>
D'ANN RAMOS	)	
	)	<b>No Trial Date Set</b>
	)	
	)	Hon. Judge James H. Ashford
	)	
	)	<u>CIVIL NO.</u>
	)	16-1-1612
	)	16-1-1641
	)	16-1-1702
	)	

**STIPULATION FOR ORDER CERTIFYING CLASS AND FOR PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT**

COME NOW the parties identified in the caption above, by and through their respective attorneys of record, and by this Stipulation, to respectfully request that the Court certify the class and subclasses identified below and preliminarily approve the settlement that the parties have reached in this matter.

**I. RELIEF REQUESTED**

Based on the stipulations set forth below, the parties to this action request that the Court issue an order certifying this class action, consistent with the class definition set forth in Section III below. The parties additionally request the Court's approval, as a preliminary matter, of the proposed settlement, issuing findings that the settlement is fair, adequate, and reasonable, and that the proposed notice of settlement to class members is reasonable and sufficient.

## **II. BRIEF STATEMENT OF UNDISPUTED FACTS**

The plaintiffs and defendant have entered into a Settlement Agreement, subject to court approval, including the documents and exhibits incorporated therein (together, the “Settlement Agreement”, **Exhibit 1**), to settle the above-captioned litigation (the “litigation”). The Settlement Agreement sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the litigation. The parties hereby stipulate to this Court’s preliminary approval of the settlement, subject to final approval after notice and claim administration.

### **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 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. Summary of the Proposed Settlement.**

There are three primary components to the settlement reached by the Parties: (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. These components are summarized as follows:

**1. General Damages:**

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

1. \$350.00 for each member of Subclass 1.
2. \$250.00 for each member of Subclass 2.
3. \$150.00 for each member of Subclass 3.
4. No Qualified Claimant may be paid an award in more than one Subclass.
5. 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 shall 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 under the heading "Settlement of Subrogation Liens," and (iv) plaintiff's attorney fees and costs under Paragraph 6 of the Settlement Agreement.

If payment of the total number of timely claims submitted by Qualified Claimants, combined with payment of the other components of the Aggregate Limit described in Paragraph 3(b) of the Settlement Agreement, would require exceeding the Aggregate Limit, then the per claim amounts identified for each of the three subclasses shall be reduced proportionately to the

extent needed to avoid exceeding the Aggregate Limit and each Qualified Claimant shall be paid only the applicable proportionately reduced per claim amount.<sup>1</sup>

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 described in Paragraph 3(b) of the Settlement Agreement will not exhaust the Aggregate Limit, any difference between the total amount paid out in claims and other components of the Aggregate Limit described in Paragraph 3(b) of the Settlement Agreement 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, as defined in Section 14 of the Settlement Agreement, shall revert to the funding sources consistent with the percentage of their respective contribution. Other than as provided in Paragraph 14 of the Settlement Agreement, there will be no claw back on the settlement contributions.

## **2. Settlement of Subrogation Liens:**

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 shall 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

---

<sup>1</sup> The reduced amounts shall 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 2/3 greater than the amount awarded to each member of Subclass 3.

subclasses, but shall count towards the aggregate limit.<sup>2</sup> Identified insurers will be required to verify whether Qualified Claimants received immune globulin, HAV virus vaccine, or blood tests.

### **3. Compensation for Class Representatives:**

In addition to the above, Class Representatives will each receive an additional \$5,000.00 in compensation paid out of the Settlement Fund referenced above.

### **III. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS OF RULE 23(A)**

The proposed class (the “Class”) is defined as follows:

All persons who: (1) as a result of the 2016 Genki Sushi Hepatitis A Outbreak infections linked to consuming food at thirteen Genki Sushi restaurants<sup>3</sup> 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.

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:**<sup>4</sup> 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 Genki Sushi Hepatitis A Outbreak. A contact is defined as:

- All household members of one of the 292 persons

---

<sup>2</sup> For example, a member of Subclass 2 will be paid \$250 and the identified insurer will be paid \$12.50 in settlement of a subrogation lien, for a total payment of \$262.50 in connection with such claim (with all such payments subject to the Aggregate Limit and with the payment to the identified insurer reduced in proportion to any reduction to the payment to a Class Member).

<sup>3</sup> 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 Avenue, Honolulu, HI 96816; (7) 4450 Kapolei Parkway, Kapolei, Hawai’i 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; and (13) 435 Keawe St., Lahaina, HI 96761.

<sup>4</sup> Stanley Sato is the named representative for Subclass 1.

- 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:**<sup>5</sup> 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:**<sup>6</sup> 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 Genki Sushi 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 Waialeale 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;
- Costco Bakery located at 333A Keahole St., Honolulu, HI 96825: June 16, 17, 18, 19, 20, 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: (1) flight 118 on July 24; (2) flight 117 on July 24; (3) flight 382 on July 24; (4) flight 383 on July 24; (5) flight 396 on July 24; (6) flight 365 on July 24; (7) flight 273 on July 25; (8) flight 68 on July 25; (9) flight 65 on July 25; (10) flight 147 on July 26; (11) flight 18 on August 10; and (12) flight 17 on August 12;
- 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 2, 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;

---

<sup>5</sup> Bryan Cuelho is the named representative for Subclass 2.

<sup>6</sup> D'ann Ramos is the named representative for Subclass 3.

- Zippy's Restaurant located at 950 Kamokila Blvd., Kapolei, HI 96707: August 21, 23, 25, 26, 2016;
- Harbor Restaurant at Pier 38 located at 1133 North Nimitz Hwy, Honolulu, HI 96817: August 30 through September 12, 2016;
- Ohana Seafood at Sam's Club located at 1000 Kamehameha Hwy., Pearl City, HI 96782: September 1 through September 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.

To be a Qualified Claimant, all Class Members are required to submit a declaration signed under penalty of perjury attesting to facts showing that the claimant is an individual defined as a Class Member through one of three exposure-mechanisms described in the exposure subclasses listed above. The receipt of IG, HAV vaccine, or blood tests, including the date of such treatment, shall be shown through attestation, documentation and/or verification by health insurer. Claimants shall show receipt of IG, HAV vaccine, or blood tests by providing 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. Claimants shall also attest they have not previously had HAV or previously received a HAV vaccination.

**A. The Requirements of the Rules Governing Class Certification Are Met.**

The question of whether a suit shall be allowed to proceed as a class action is one of fact, to be determined by the trial court within its discretion. *Life of Land v. Burns*, 59 Haw. 244, 252, 580 P.2d 405 (Haw. 1978). The proponents of a class action assume the burden of establishing the four prerequisites for class certification delineated in Haw. R. Civ. P. 23(a)— (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *Life of the Land v. Land Use Comm'n*, 63 Haw. 166, 181, 623 P.2d 431 (Haw. 1981). A failure to satisfy the burden in any respect can result in a denial of the necessary certification. *Id.* The requirements of HRCP Rule 23

are substantially similar to the requirements set forth in Rule 23 of the Federal Rules of Civil Procedure, which governs the certification of class actions in Federal Court and, thus, interpretation by federal courts of Federal Rule of Civil Procedure Rule 23 is highly persuasive. *Collins v. South Seas Jeep Eagle*, 87 Haw. 86, 89, 952 P.2d 374 (Haw. 1997).

As stipulated by the parties and as shall be demonstrated in the subsections that follow, the four requirements of Rule 23(a) are met, and the proposed class can be certified.

**1. Numerosity—Rule 23(a)(1)**

There is no dispute that the proposed class is “so numerous that joinder of all members is impracticable.” H.R.C.P. 23(a)(1). The key inquiry is who are the proposed class, and the specific criteria are that its members be identifiable and their possible joinder impracticable. *Life of the Land*, 63 Haw. at 181.

In the present case, records from a number of Hawai’i’s leading health insurers indicate that well over 100,000 people were likely exposed to HAV through the mechanisms illustrated in the three Exposure Subclasses and received post-exposure prophylaxis (PEP) treatment, including an injection of HAV vaccine or immune globulin, with many also obtaining associated blood tests. Even though it is not certain that all of the PEP treatment that was obtained satisfies the class definition, the large number of potential class members shows that the numerosity requirement is easily met here.

**2. Commonality—Rule 23(a)(2)**

To be certified, the proponents of certification must show “there are questions of law or fact common to the class.” H.R.C.P. 23(a)(2). The plaintiff need not show that each class member’s factual and legal issues are identical: “The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies.”

*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). As the Supreme Court has explained, “for purposes of Rule 23(a)(2) even a single common question will do.” *Wal-Mart*, 131 S. Ct. 2541, 2556, 564 U.S. 338, (2011). The common question “must be of such a nature that it is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 2551.

Commonality exists here. Several significant questions of law and fact are common to the class:

- whether food prepared with HAV-contaminated scallops is adulterated, unsafe to eat, defective, or otherwise prohibited from sale and distribution under the laws of the State of Hawai’i;
- whether food prepared in proximity or conjunction with HAV-contaminated scallops thus making the potential for cross-contamination inevitable, is adulterated, unsafe to eat, defective, or otherwise prohibited from sale and distribution under the laws of the State of Hawai’i;
- whether the defendants were strictly liable for the sale of adulterated and unsafe food;
- whether the defendants manufactured and sold food products not reasonably safe in construction, in that such products materially deviated from applicable design specifications, or deviated materially from identical units in the product line;
- whether the defendants manufactured, distributed, and sold a food product that was adulterated, not fit for human consumption, in a defective condition unreasonably dangerous to the plaintiff, and not reasonably safe as manufactured or sold; and
- whether the defendants were liable for damages to all potentially exposed persons

who obtained vaccinations to avoid HAV infections.

The arguments and common answers to these questions have driven the resolution of the litigation because the answers establish liability of the defendants as to all class members—and do so “in one stroke.” *Wal-Mart*, 131 S. Ct. at 2551. Thus, the commonality requirement is satisfied here.

### 3. Typicality—Rule 23(a)(3)

Rule 23(a)(3) requires that “the claims or defenses of the class representatives [be] typical of the claims or defenses of the class.” H.R.C.P. 23(a)(3). Typicality refers to the nature of the claim or defense, “not to the specific facts from which it arose, or the relief sought.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011). Indeed:

The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.

*Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quotation omitted). The typicality requirement was designed to be read in conjunction with the fair representation requirement; it can be equated with absence of conflict of interest. *Life of Land*, 63 Haw. at 183 (citing *Rosado v. Wyman*, 322 F. Supp. 1173, 1193 (E.D.N.Y. 1970), *aff’d*, 437 F.2d 619 (2nd Cir. 1970), *aff’d*, 402 U.S. 991 (1971)).

The claims of the named plaintiffs are typical of the claims of the Exposure Subclasses because (1) Stanley Sato received a HAV vaccine on July 13, 2016 after learning his son contracted the virus by eating contaminated food from Genki Sushi,<sup>7</sup> (2) Bryan Cuelho received a HAV vaccine on August 18, 2016 after he consumed products, specifically scallops, at the defendant’s restaurants during the outbreak period, on or between August 1 to August 16, (3) D’ann Ramos

---

<sup>7</sup> Stanley’s son, Andrew, tested positive for HAV on July 11, 2016.



received a HAV vaccine on July 18, 2016 after she consumed food or drink from a Secondary Establishment—the Taco Bell located at 94-790 Uke’e St., Waipahu, HI—on July 6, 2016, and, as a result, all three named plaintiffs and their respective subclass members obtained PEP treatment to prevent infection and further injury. Moreover, the conduct of the defendants was unchallenged—the manufacture and sale of a food product contaminated with HAV—and was not unique to any plaintiff.

As a result, the plaintiffs and putative class members claimed the same injury from the “same course of conduct.” *Hanon*, 976 F.2d at 508. There were no claims that the plaintiffs brought that the class members could not bring, or vice versa. Moreover, based on the well settled principles of strict liability, establishing liability of the defendant Genki Sushi effectively establishes the liability of all those in the chain of distribution for the implicated scallops, with there being no unique defenses as to any of the defendants. The claims of the putative class members and the named-plaintiff are not only coextensive, they are in this case basically identical. The requirement of typicality is thus met.

#### **4. Adequacy of Representation—Rule 23(a)(4)**

The final requirement of Rule 23(a) is that “the representatives will fairly and adequately protect the interests of the class.” H.R.C.P. 23(a)(4).

Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?

*Hanlon*, 150 F.3d at 1020. While the adequacy of his counsel is of relevant concern, the representative’s ability to speak on behalf of the rest of the class is the more important question here. *Life of the Land*, 63 Haw. at 183. Where claims or defenses are coextensive, there is a probability of fair and adequate representation. *Id.* The adequacy of class counsel and the

willingness of the named plaintiffs to vigorously prosecute the class's case was previously alleged. "Adequate representation is usually presumed in the absence of contrary evidence." *Californians for Disability Rights, Inc., v. California Dept. of Transp.*, 249 F.R.D. 334, 349 (N.D. Cal. 2008). In light of this presumption, and barring contrary evidence or some demonstration of an ongoing dispute among the parties, the adequacy requirement should be deemed met.

**A. RULE 23(B)(3)—PREDOMINANCE AND SUPERIORITY**

In addition to fulfilling the four requirements of H.R.C.P. 23(a), the moving party assumes the burden of demonstrating the presence of a suitable situation for the maintenance of a class action under the criteria set forth in at least one of the subdivisions of Rule 23(b). *Life of the Land v. Land Use Comm'n*, 63 Haw. 166, 181, 623 P.2d 431 (Haw. 1981). In the present case, the parties seek certification pursuant to Rule 23(b)(3), which allows certification so long as "the court finds the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." H.R.C.P. 23(b)(3).

First, a common nucleus of facts and potential legal remedies predominated this litigation. The Rule 23(b)(3) predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Nakamura v. Countrywide Home Loans, Inc.*, 122 Haw. 238, 247, 225 P.3d 680 (2010) (citing and quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623, 117 S. Ct. 2231 (1997)). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Nakamura*, 122 Haw. at 247 (citing *Hanlon*, 150 F.3d at 1022).

In this case, the plaintiffs alleged identical product liability claims against the defendants

and, in doing so, admitted that these causes of action were based on and governed by State statutes and common law of Hawai'i. The plaintiffs established the liability of the defendants in the same way, required the same sort of proof, and established liability on a class-wide basis. The plaintiffs have previously provided discussion of the common questions of fact and law that pervaded this lawsuit in their discussion of commonality above. The only differing determination among class members was related to damages, primarily because people paid different costs for their post-exposure prophylaxis treatment and some may have been covered by insurance while others were not, but "damage calculations alone cannot defeat certification." *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. Haw. 2010). In this case, common questions of law and fact predominated over questions affecting only individual members.

Second, a class action is superior to other available methods for the fair and efficient adjudication of this case. The claims at issue in the present case were relatively modest, and certainly not so large as to incline anyone toward incurring the costs of individual lawsuits. In past HAV outbreaks in which classes have been certified as part of a settlement, the per-person settlement amounts for those who were vaccinated have been less than one-thousand dollars. *See Marler Decl.*, ¶2, at 2. A class action is the only device that makes sense in this case given the amounts at stake; to not certify the class action would be tantamount to denying the plaintiffs any compensation at all. Both requirements of Rule 23(b)(3) are met, and the parties stipulate to class certification for settlement purposes only.

#### **IV. THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE AND THEREFORE DESERVES THE COURT'S PRELIMINARY APPROVAL**

H.R.C.P. Rule 23(e) requires that the Court approve any class action settlement, and courts within this circuit have held that "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to

reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir. 1982). A court’s determination will involve balancing several factors which may include, among others, the risk, expense, complexity and likely duration of further litigation, the extent of discovery completed, and the stage of proceedings. *Id.*

Here, the proposed settlement is fair, adequate, and reasonable. First, whether there existed fraud or collusion behind the settlement is not at issue because the parties to the settlement have engaged in arm’s length negotiations for more than a year with a highly esteemed mediator to reach the terms of the settlement together. Second, the complexity, expense and likely duration of the litigation should it proceed to trial is substantial. Third, the stage of the proceedings and the amount of discovery completed to date has revealed that this case is ripe for settlement. Fourth, the range of possible recovery should individual litigation of these claims take place will be minimal in light of the probable damages that might be recovered. Lastly, the opinions of class counsel and the class representatives unanimously favor settlement without objection.

**A. Relief to the Class**

**General Damages:**

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

6. \$350.00 for each member of Subclass 1.
7. \$250.00 for each member of Subclass 2.
8. \$150.00 for each member of Subclass 3.
9. No Qualified Claimant may be paid an award in more than one Subclass.
10. 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 shall 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 under the heading "Settlement of Subrogation Liens," and (iv) plaintiff's attorney fees and costs under Paragraph 6 of the Settlement Agreement.

If payment of the total number of timely claims submitted by Qualified Claimants, combined with payment of the other components of the Aggregate Limit described in Paragraph 3(b) of the Settlement Agreement, would require exceeding the Aggregate Limit, then the per claim amounts identified for each of the three subclasses shall be reduced proportionately to the extent needed to avoid exceeding the Aggregate Limit and each Qualified Claimant shall be paid only the applicable proportionately reduced per claim amount.<sup>8</sup>

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 described in Paragraph 3(b) of the Settlement Agreement will not exhaust the Aggregate Limit, any difference between the total amount paid out in claims and other components of the Aggregate Limit described in Paragraph 3(b) of the Settlement Agreement 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, as defined in Section 14 of the Settlement Agreement, shall revert to the funding sources consistent with the percentage of their respective contribution. Other than as provided in Paragraph 14 of the Settlement Agreement, there will be no claw back on the settlement contributions.

---

<sup>8</sup> The reduced amounts shall 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 2/3 greater than the amount awarded to each member of Subclass 3.

Settlement of Subrogation Liens:

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 shall 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 shall count towards the aggregate limit.<sup>9</sup> Identified insurers will be required to verify whether Qualified Claimants received immune globulin, HAV virus vaccine, or blood tests.

Compensation for Class Representatives:

In addition to the above, Class Representatives will each receive an additional \$5,000.00 in compensation paid out of the Settlement Fund referenced above.

**V. PROPOSED NOTICE OF SETTLEMENT IS REASONABLE AND SUFFICIENT**

In assessing whether there is sufficient notice, the Court must consider the sufficiency of the notice plan that the parties propose. More specifically, the plan must provide “to the members of the class the best notice practicable under the circumstances.” H.R.C.P. 23(c)(2). The notice shall advise each member that (A) the court will exclude the members from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

---

<sup>9</sup> For example, a member of Subclass 2 will be paid \$250 and the identified insurer will be paid \$12.50 in settlement of a subrogation lien, for a total payment of \$262.50 in connection with such claim (with all such payments subject to the Aggregate Limit and with the payment to the identified insurer reduced in proportion to any reduction to the payment to a Class Member).

**A. The Notice Company Should be Appointed as the Class Third-Party Administrator**

The parties request that the Court formally appoint The Notice Company to be the proposed Class Administrator in this case.

The Notice Company is principally engaged in the administration of class action lawsuits pending in courts around the United States, including the dissemination of notice to class members, administering the claims process, and distributing the proceeds of the litigation to the class; see the related Declaration of Joseph Fisher in support of this stipulation.

The Notice Company has implemented notice programs and served as settlement administrator in a wide variety of class action cases, with class membership sizes ranging from a few hundred to several million. The Notice Company has specific experience with specific class actions involving allegations of possible exposure to HAV at restaurants located in the United States, including the following cases:

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

The Notice Company provided notice of the class action by (1) mailing notice to 4,592 persons identified by the public health departments, (2) publication of notice in The Greenville News and the Spartanburg Herald-Journal, and (3) posting notice on the world wide web. The Notice Company handled all mailings of notices, received all claim forms, and administered the settlement.

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

The Notice Company provided notice of the class action by (1) mailing notice to 1,656 persons identified by the public health departments, (2) publication of notice in the Charlotte Observer, and (3) posting notice on the world wide web. The

Notice Company handled all mailings of notices, received all claim forms, and administered the settlement.

\* *Prescott v. GMRI, Inc. d/b/a The Olive Garden Italian Restaurant* (Cumberland County, NC)

The Notice Company provided notice of the class action by (1) mailing notice to 3,086 persons identified by the public health department, (2) publication of notice in The Fayetteville Observer, and (3) posting notice on the world wide web. The Notice Company handled all mailings of notices, received all claim forms, and administered the settlement.

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

The Notice Company provided notice to 2,633 members of the class by mailing notice to those individuals who had been identified by the Board of Health and by publication of notice in The Arlington Advocate. The Notice Company handled all mailings of notices, received all claim forms,

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

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. The Notice Company handled all re-mailings of notices that were returned by the U.S. Postal Service, received all claim forms, and administered the settlement.

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



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. The Notice Company handled all re-mailings of notices that were returned by the U.S. Postal Service, received all claim forms, and administered the settlement.

(see the related Declaration of Joseph Fisher in support of this stipulation).

The parties therefore request that the Court formally appoint The Notice Company to be the proposed Class Administrator in this case. The Notice Company has substantial experience in administering similar class actions and has served as the class settlement administrator in a wide variety of class action cases.

**B. The Proposed Notice Plan Is Sufficiently Comprehensive**

The proposed notice plan set forth in the Settlement Agreement is reasonable and sufficient. On the later of October 15, 2018, or within 10 business days after issuance of the Preliminary Approval Order (the later of such dates shall be the "Notice Commencement Date"), the Class Administrator will establish a website for this Settlement at [www.HawaiiHepA.com](http://www.HawaiiHepA.com) which will include electronic copies of the Claim Form, the Notice of Settlement for publication, the Preliminary Approval Order, and other information pertaining to the Settlement as requested by Class Counsel. The Claim Form intended to be used by the parties is attached to **Exhibit 1**, as **Attachment 1**.

Beginning on or promptly after the Notice Commencement Date, the Class

Administrator shall commence an online or social media campaign, to include Facebook, Instagram or such other social media as the Class Administrator deems appropriate, to disseminate notice of the Settlement.

Beginning on or promptly after the Notice Commencement Date, the Class Administrator shall cause the Notice of Settlement for publication to be published once a week for two consecutive weeks in the Honolulu Star-Advertiser on Oahu, Hawai'i, and Maui as a paid legal advertisement. The Notice of Settlement is attached as **Exhibit 1**, as **Attachment 3**.

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 forty-five (45) days from the Notice Commencement Date (or the next business day if such date falls on a weekend or on state or federal holiday) (the "Response Deadline").

#### **C. Request for Exclusion**

Any person who would otherwise be a member of the Class may be excluded from the Class and from the settlement set forth herein by mailing a written request for exclusion to the Class Administrator pursuant to the Preliminary Approval Order, postmarked no later than Response Deadline or as the Court may otherwise direct. The original requests for exclusion shall be filed with the Court by the Plaintiffs' counsel, and served on Defendants' counsel, at least seven (7) calendar days before the Final Approval Hearing. A member of the Class filing such a request on or before the Response Deadline shall be deemed excluded from the Settlement Class and from this Settlement with respect to all of the matters released.

Any potential member of the Class who does not file a timely written request for exclusion as provided in the preceding section shall be bound by this Settlement Agreement and all subsequent proceedings, orders, and judgments in this Lawsuit, even if that potential member

of the Class subsequently initiates litigation against Defendants relating to any of the matters released.

No Party shall encourage any potential Class Member to file a request for exclusion or encourage or provide any material assistance for any potential Class Member to file an objection to this Settlement or to file any other action, except as expressly provided herein.

**D. Objection to Settlement**

Any potential Class Member who has not filed a written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement must serve on the Plaintiffs' counsel and on counsel for Defendants, and must file with the Court, no later than the Response Deadline or as the Court may otherwise direct, a notice of intention to appear and/or object, together with copies of any papers such Potential Class Members intends to present to the Court in connection with such objection. Potential 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 potential Class Member, he or she must (i) file an appearance with the Court no later than the Response Deadline or as the Court otherwise may direct, and (ii) serve on the Plaintiffs' counsel and on counsel for Defendants a notice of the filing of the appearance. Any such potential Class Member or counsel thereto may, with notice, obtain access at the offices of Starn O'Toole Marcus & Fisher, Pacific Guardian Center, Makai Tower, 733 Bishop Street, Suite 1900, Honolulu, Hawai'i 96813, to the complaints and answers thereto, if any, filed in this litigation and any orders entered in this litigation, and to such additional pleadings as may be agreed by Defendants' counsel and the Plaintiffs' counsel at the potential Class Member's or counsel's thereto own cost and expense.. Defendants' counsel will inform the Plaintiffs' counsel promptly of any requests received by Defendants' counsel by potential Class

Members or their attorneys for access to such documents.


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


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

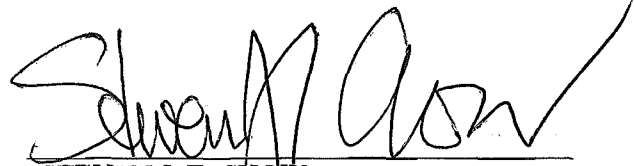
#### **VI. CONCLUSION**

For the reasons set forth above, the parties to this action request an order certifying this class action, consistent with the definitions set forth in Section III above.

The parties additionally request that the Court approve, as a preliminary matter, the proposed settlement as being fair, adequate, and reasonable, and the proposed Claim Form and Notice of Settlement to class members as reasonable and sufficient.

Dated this  day of October 2018

  
BRANDEE J.K. FARIA  
TREVOR A. BROWN  
WILLIAM D. MARLER  
Attorneys for Plaintiff STANLEY SATO,  
BRYAN K. CUELHO, and D'ANN  
RAMOS, individually and on behalf of all  
those similarly situated



---

STEVEN J. T. CHOW  
KRISITIE M. KUTAKA  
KYLEIGH F.K. NAKASONE  
Attorneys for Defendant HNK, INC. dba  
KOHA FOODS

---


STEFAN M. REINKE  
LESLIE R. KOP  
Attorneys for Defendant GENKI SUSHI  
USA, INC.

---

CALVIN E. YOUNG  
DAVID ERNST  
KEVIN H. KONO  
Attorneys for Defendant SEAPORT  
PRODUCTS CORPORATION

---

STEVEN J. T. CHOW  
KRISITIE M. KUTAKA  
KYLEIGH F.K. NAKASONE  
Attorneys for Defendant HNK, INC. dba  
KOHA FOODS



---

STEFAN M. REINKE  
LESLIE R. KOP  
Attorneys for Defendant GENKI SUSHI  
USA, INC.

---

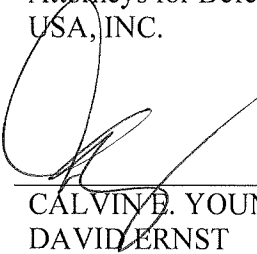
CALVIN E. YOUNG  
DAVID ERNST  
KEVIN H. KONO  
Attorneys for Defendant SEAPORT  
PRODUCTS CORPORATION

---

STEVEN J. T. CHOW  
KRISITIE M. KUTAKA  
KYLEIGH F.K. NAKASONE  
Attorneys for Defendant HNK, INC. dba  
KOHA FOODS

---

STEFAN M. REINKE  
LESLIE R. KOP  
Attorneys for Defendant GENKI SUSHI  
USA, INC.



---

CALVIN E. YOUNG  
DAVID ERNST  
KEVIN H. KONO  
Attorneys for Defendant SEAPORT  
PRODUCTS CORPORATION

# **ATTACHMENT 3**



## LEGAL NOTICE

**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 NOVEMBER 29, 2018.**

A Settlement has been reached in the lawsuit entitled *Cuehlo, et al., v. HNK, Inc., et. al.*, CIVIL NO. 17-1-HEP (JHA) pending in the Circuit Court of the First Circuit, State of Hawai'i. Visit [www.HawaiiHepA.com](http://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 or drink, specifically scallops, 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 or drink 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 fourteen 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](http://www.HawaiiHepA.com)** for a list of the thirteen Genki Sushi restaurants and a list of the Secondary Establishments.

### **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) plaintiff's attorney fees and costs.

### **How Do I Receive Payment?**

**To receive payment, you must submit a claim form by NOVEMBER 29, 2018.** 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](http://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 NOVEMBER 29, 2018.

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](http://www.HawaiiHepA.com)**.

The deadline to file objections or a notice of appearance is NOVEMBER 29, 2018.

### **When is the Final Hearing?**

The Court will hold a hearing on December 11, 2018, at XX:XX a.m/p.m 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 calling toll free 1-800-xxx-xxxx, visiting **[www.HawaiiHepA.com](http://www.HawaiiHepA.com)** or writing to Hawai'i Hep-A Administrator, c/o The Notice Company, P.O. Box 455, Hingham, MA 02043.

**PLEASE DO NOT CONTACT THE COURT**

# **ATTACHMENT 4**

CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

**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 **NOVEMBER 29, 2018**, and qualify as a Class Member.
- Please read this notice carefully. Your legal rights may be affected whether or not you act.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM BY NOVEMBER 29, 2018</b>	You must submit a claim to receive a payment from the Settlement. See Question 9 below.
<b>EXCLUDE YOURSELF BY NOVEMBER 29, 2018</b>	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.
<b>OBJECT BY NOVEMBER 29, 2018</b>	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.
<b>GO TO THE HEARING ON DECEMBER 11, 2018</b>	Ask to speak to the Court about the Settlement. See Questions 12 and 16.
<b>DO NOTHING</b>	If you do nothing, then you will not receive payment from the Settlement and you will give up any rights you currently may have to separately 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 lawsuit entitled *Cuehlo, et al., v. HNK, Inc., et. al.*, 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 no later than NOVEMBER 29, 2018. To ask to be excluded (opt out) or to object to the Settlement, you must follow the steps described in this Notice no later than NOVEMBER 29, 2018.

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.

3. **Who are the Defendants?**

The Defendants are HNK, Inc. dba Koha Foods, Genki Sushi USA, Inc., and Seaport 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 or drink 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 Lumina 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 (24) flight 118 on July 24; (25) flight 117 on July 24; (26) flight 382 on July 24; (27) flight 383 on July 24; (28) flight 396 on July 24; (29) flight 365 on July 24; (30) flight 273 on July 25; (31) flight 68 on July 25; (32) flight 65 on July 25; (33) flight 147 on July 26;; (36) flight 18 on August 10; and (37) 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: and 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) plaintiff's attorney fees and costs.

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 an additional \$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 **NOVEMBER 29, 2018**. A claim form can be obtained by downloading the form at **www.HawaiiHepA.com** or by calling **1-800-XXX-XXXX**.

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 statements, (b) documentation from a medical providers, 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 **November 29, 2018**. 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](mailto:claims@HawaiiHepA.com) or by fax to (808) xxx-xxxx.

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 **NOVEMBER 29, 2018** 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. 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 **NOVEMBER 29, 2018**. Should you decide to enter an appearance, in this litigation, however, you must still submit a claim form so that it is received by **November 29, 2018**. Failure to do so will preclude you from receiving a portion of the Settlement. Any claim received after **November 29, 2018**, 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 **November 29, 2018**. 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) (Product Liability)) 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 any policy 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 **November 29, 2018**.

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 **November 29, 2018**.

**COURT ADDRESS:**  
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  
PERKIN & FARIA, LLC  
841 Bishop St. Suite 1000  
Honolulu, HI 96813;

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

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

**DEFENDANTS' COUNSEL ADDRESSES:**

**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

**Genki Sushi USA, INC.**

**Counsel:**

Stefan M. Reinke, Esq.  
**Lyons, Brandt, Cook &  
Hiramatsu**  
Davies Pacific Center  
841 Bishop Street, Suite 1800  
Honolulu, HI 96813

**Seaport 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 **November 29, 2018**, 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. Who pays the attorneys' fees and costs?**

No attorney fees or expenses will be paid individually by Class members. Plaintiffs' counsel fees and costs will be capped at 25% of the amount paid to the entire class for general damages, or what is awarded by the Court, whatever is less, and Defendant shall pay the determined Plaintiffs' counsel fees and costs.

**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 **December 11, 2018**, at **XX:XX a.m/p.m.** The address of the Court is Ka'ahumanu Hale, 777 Punchbowl Street, Honolulu HI 96813-5093. 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 object 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 the Class Counsel and Plaintiffs' Counsel, no later than **November 29, 2018**. If you do not file an objection by **November 29, 2018**, 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](http://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.

**PLEASE DO NOT CONTACT THE COURT  
WITH INQUIRIES ABOUT THE SETTLEMENT**