

**NATURE’S TOUCH ORGANIC BERRY CHERRY BLEND CLASS ACTIONS**

**NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING**

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS**

**This notice is directed at anyone in Canada who purchased and/or consumed Recalled Frozen Fruit.**

<b>IMPORTANT DEADLINE:</b>	
<b>Opt-Out Deadline</b> – for Class Members that do not wish to be a member of the class actions. See pages 2-3 for further details.	<b>December 5<sup>th</sup>, 2018</b>

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

**WHAT IS A CLASS ACTION?**

A class action is a lawsuit filed by one person on behalf of a large group of people.

**WHAT IS THIS CLASS ACTION ABOUT?**

Class action lawsuits have been commenced in Ontario and Québec against Nature’s Touch Frozen Foods Inc. (“Nature’s Touch”) and Costco Wholesale Canada Ltd., Costco Canada Holdings, Inc., Gestion Costco Canada Inc., and Costco Western Holdings Ltd. (“Costco”) in connection with the 2016 recall of frozen berries, bearing Ontario Superior Court of Justice File No. 1085/16CP and Québec Superior Court File No. 500-06-000790-168 (the “Actions”). The recall was issued as a result of a “possible” Hepatitis A contamination.

The class actions allege that Nature’s Touch was negligent in the manufacturing and/or distribution of food products. Specifically, they allege that Nature’s Touch did not meet industry standards in the supply of food products to the public, including those for the testing and sampling of Recalled Frozen Fruit for possible Hepatitis A contamination. The class actions allege that Costco was negligent and failed to meet the industry standard in the supply of food products to the public.

The Actions seek to recover damages for all persons in Canada who: (a) consumed Recalled Frozen Fruit and subsequently contracted Hepatitis A as a result of consuming Recalled Frozen Fruit that was contaminated with Hepatitis A; (b) consumed Recalled Frozen Fruit and subsequently were immunized for Hepatitis A as a result of consuming the Recalled Frozen Fruit; (c) have a claim pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, s. 61 and analogous legislation and common law in other provinces, where applicable; and (d) purchased Recalled Frozen Fruit.

Symptoms associated with Hepatitis A may include fever, loss of appetite, stomach cramps, jaundice, dark urine and fatigue.

### **WHO IS AFFECTED BY THE CLASS ACTIONS?**

On October 3, 2018, the Ontario court certified the action as a class action for settlement purposes for all Canadian residents, except for Québec residents. In addition, on October 3, 2018, the Québec court authorized the action as a class action in the context of a settlement for Québec residents. This means that the courts have determined that these actions can proceed as class actions pending approval of the proposed settlement.

The result of the decisions rendered by both Courts is that the actions were certified on behalf of the following “Class” or “Class Members”, defined as:

All natural persons in Canada, who:

- (a) consumed Recalled Frozen Fruit , and subsequently contracted Hepatitis A as a result of consuming Recalled Frozen Fruit that was contaminated with Hepatitis A;
- (b) consumed Recalled Frozen Fruit and subsequently were immunized for Hepatitis A as a result of consuming the Recalled Frozen Fruit;
- (c) have a claim pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, s. 61 and analogous legislation and common law in other provinces, where applicable; and
- (d) purchased Recalled Frozen Fruit.

### **EXCLUDING YOURSELF FROM THE CLASS ACTIONS**

If you are a Class Member, you will be bound by the terms of the Settlement Agreement unless you Opt-Out of the Action. Class Members who do not Opt-Out will i) be entitled to submit claims in accordance with the Settlement Agreement; ii) be bound by the terms of the Settlement Agreement; and iii) will not be permitted to bring other legal proceedings in relation to the matters alleged in the Action against the Defendants, or any person released by the approved Settlement. Conversely, if you are a Class Member who Opts-Out of the Action (an “**Opt-Out Party**”), you will not be able to make a claim to receive compensation from the Settlement Funds but will maintain the right to pursue your own claim against the Defendants relating to the matters alleged in the Actions. Your right to pursue a claim in a separate proceeding will not be affected, but any limitation period (i.e. a time limit in which you must commence a claim) that was paused by the commencement of the class proceedings will resume running from the date of the Opt-Out.

If you are a Class Member and wish to Opt-Out, you must submit an election to do so, together with required supporting documentation or suitable alternative documentation (“**Opt-Out Election**”), to Class Counsel, Siskinds LLP and Siskinds Desmeules S.E.N.C.R.L.

A list of the information needed to submit a valid Opt-Out Election can be obtained from [www.berryrecall.ca](http://www.berryrecall.ca) and the website of the Claims Administrators, GCG Canada, [www.berryrecallclaim.ca](http://www.berryrecallclaim.ca).

Class Counsel must receive your Opt-Out Election no later than **5:00 pm EST on December 5<sup>th</sup>, 2018 (“Opt-Out Deadline”)**. Opt-Out Elections may be sent electronically or by mail or courier to:

Nature’s Touch Berry Class Action Opt-Out  
c/o Siskinds LLP  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

For Residents of Québec:

Nature’s Touch Berry Class Action Opt-Out  
c/o Siskinds Desmeules S.E.N.C.R.L.  
43, rue de Buade, bureau 320  
Québec, QC G1R 4A2

Email: [berryrecall@siskinds.com](mailto:berryrecall@siskinds.com)

Residents of Québec must also send the written election to Opt-Out by pre-paid mail or courier to the Québec Court for the district of Montreal at:

Grefte de la Cour supérieure du Québec  
1, rue Notre-Dame Est  
Montréal (Québec) H2Y 1B6

An Opt-Out Election that does not contain all of the required information or suitable alternative documentation will not be valid, which means that you will be part of the Actions and bound by the Settlement Agreement if approved by the Courts.

### **PROPOSED SETTLEMENT**

A settlement has been reached in the Actions. The Defendants have agreed to pay \$3,000,000.00 to resolve claims arising from the sale of Recalled Frozen Fruit.

In entering into this settlement, the Defendants do not admit any wrongdoing or liability.

Legal fees, disbursements and administrative expenses, as approved by the Courts, will be paid from the settlement amount.

### **COURT APPROVAL OF THE SETTLEMENTS**

The proposed settlement must be approved by the Ontario Superior Court of Justice and Superior Court of Québec (the “Courts”) before it can become effective. Motions to approve the settlement will be heard in Sarnia, Ontario on December 10, 2018 at 2:00 p.m. and in Montreal, Québec, on December 4, 2018 at 9:15 a.m.

At these hearings, the Courts will determine whether the settlement is fair, reasonable, and in the best interests of Class Members. The Courts will either approve the settlement as it is, or will reject it. The Courts will not modify the settlement.

## **WHO IS PAYING CLASS COUNSEL FEES?**

Class Members will not have to pay legal fees or disbursements out of their pocket. Class Counsel's fee, if approved by the Courts, will be deducted from the settlement amount.

At the settlement approval hearings, Class Counsel will request Court approval of legal fees in the amount of \$750,000.00 plus disbursements, not expected to exceed \$20,000.00, and applicable taxes.

## **WHO IS ELIGIBLE FOR SETTLEMENT BENEFITS**

You may be eligible for settlement benefits if you reside in Canada and:

- (a) consumed Recalled Frozen Fruit , and subsequently contracted Hepatitis A as a result of consuming Recalled Frozen Fruit that was contaminated with Hepatitis A;
- (b) consumed Recalled Frozen Fruit and subsequently were immunized for Hepatitis A as a result of consuming the Recalled Frozen Fruit;
- (c) have a claim pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, s. 61 and analogous legislation and common law in other provinces, where applicable; or
- (d) purchased Recalled Frozen Fruit and did not already receive a refund.

## **CLAIMING BENEFITS UNDER THE SETTLEMENT**

Once the settlement is approved by the Courts, a further notice will be published advising Class Members of settlement approval, how the settlement funds will be distributed, and the process for Class Members to apply for settlement benefits. To ensure that you receive future notices by email or direct mail, please register online at [www.berryrecall.ca](http://www.berryrecall.ca).

In the interim, you should maintain copies of any invoices, receipts, credit card statements, medical records or other documents that establish your purchase of Recalled Frozen Fruit, vaccination you received as a result of consuming Recalled Frozen Fruit, or contraction of Hepatitis A as a result of consuming Recalled Frozen Fruit.

## **PLAN OF ALLOCATION**

The Courts will be asked to approve a Plan of Allocation which sets out the way the settlement funds will be distributed to Class Members. A copy of the proposed Plan of Allocation can be viewed at [www.berryrecall.ca](http://www.berryrecall.ca).

The Plan of Allocation provides for increased compensation based on the duration of illness, and whether the illness required the Class Member to be hospitalized. Class Members will not be able to claim for both immunization and illness.

If the total value of claims exceeds the amount available for distribution, settlement benefits will be reduced on a proportional basis (i.e., based on the value of your claim in proportion to the value of all claims).

If there is less than \$50,000.00 remaining in settlement funds after all valid claims are paid, the excess attributable to Class Members residing outside Québec will be paid to Food Banks Canada, a Canadian charitable organization representing and supporting the food bank community across Canada. Food Banks Canada will use the money to fund its National Food Sharing System program. The *Act Respecting the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1 will apply to the portion of the remaining balance, if any, attributable to Québec Class Members.

## **YOU MAY OBJECT TO THE PROPOSED SETTLEMENT AND/OR TO THE PLAN OF ALLOCATION**

If you do not believe that the settlement should be approved and/or if you object to the Plan of Allocation or the amount of the fee requested by Class Counsel, you may object to the settlement, the Plan of Allocation and/or the fee request.

Class Members who wish to object must submit a written submission to Class Counsel postmarked no later than November 30, 2018. Class Counsel will forward all such submissions to the Courts. All written submissions will be considered by the Courts. If you do not submit a written submission postmarked by November 30, 2018, you may not be entitled to participate, through oral submissions or otherwise, in the approval hearings.

All Class Members are entitled, but are not required, to attend the approval hearings. If you wish to attend the approval hearings or make submissions, please contact Class Counsel for additional details.

## **WHERE CAN I ASK MORE QUESTIONS?**

For information on the Nature's Touch Class Actions or to view a copy of the proposed settlement agreement or the Plan of Allocation:

- [www.berryrecall.ca](http://www.berryrecall.ca)
- Or by telephone: 1-800-461-6166 x 2278

There is **no charge** to speak with Class Counsel to discuss the class actions, to have your questions answered, or to retrieve a copy of the Opt-Out form, or related documents.

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

**SISKINDS DESMEULES**  
**AVOCATS S.E.N.C.R.L.**  
43, rue de Buade, bureau 320  
Québec, QC G1R 4A2

Elizabeth deBoer

Mme Caroline Perrault

(800) 461-6166 x2278  
(519) 672-2121 x2278

(418) 694-2009

*This notice was authorized by the Ontario Superior Court of Justice and the Superior Court of Québec.*