

# NATURE'S TOUCH ORGANIC BERRY CHERRY BLEND CLASS ACTION

## NOTICE OF SETTLEMENT APPROVAL

### 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>Claims Bar Deadline</b> - for Class Members that wish to file a claim for compensation from the Settlement Agreement. See page 5 for further details.	<b>October 3, 2019</b>

**“Recalled Frozen Fruit”** means Nature’s Touch brand Organic Berry Cherry Blend frozen fruit in 1.5 kg (3.3 lb) bags with best before dates up to and including March 15, 2018 with the universal product code 8 73668 00179 1 which was sold at Costco warehouse locations in Ontario, 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 class 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. F3, 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 ACTION?**

The Class Members are 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. F3, s. 61 and analogous legislation and common law in other provinces, where applicable; and
- (d) purchased Recalled Frozen Fruit.

### **WHAT ARE THE DETAILS ABOUT THE SETTLEMENT THAT HAS BEEN APPROVED?**

On August 21, 2018, the parties executed a settlement agreement (the “Settlement Agreement”) to resolve the litigation in its entirety. The Settlement Agreement provides for the Defendants to pay CDN \$3 million (the “Settlement Amount”) to resolve claims relating to:

1. economic loss suffered by Class Members as a result of having purchased Recalled Frozen Fruit;
2. damages in respect of the need to undergo a Hepatitis A vaccination as a result of having consumed Recalled Frozen Fruit; and
3. personal injuries suffered by Class Members as a result of having consumed Recalled Frozen Fruit and having subsequently contracted Hepatitis A as a result, and harm to their family members.

In return for the Settlement Amount, the Defendants will receive releases of liability from Class Members and the class actions will be settled (and dismissed in Ontario). The Settlement Agreement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of the Defendants who have denied, and continue to deny, the allegations made against them.

The Settlement Agreement was approved by the Ontario Superior Court of Justice and the Superior Court of Québec on December 10, 2018 (together, the “Courts”) as being fair, reasonable, and in the best interests of Class Members.

### **HOW WILL THE SETTLEMENT MONIES GET PAID OUT?**

The Courts approved a protocol for distributing the settlement funds, plus accrued interest, less court-approved legal fees and other expenses (“Plan of Allocation”). A copy of the Plan of Allocation can be viewed at [www.berryrecall.ca](http://www.berryrecall.ca).

The settlement monies will be paid to five categories of claimants:

- Category 1: Class Members who purchased Recalled Frozen Fruit and suffered an economic loss (i.e., claims for a refund of the purchase price);
- Category 2: Class Members who consumed Recalled Frozen Fruit and had to undergo a Hepatitis A vaccination as a result of consuming Recalled Frozen Fruit;
- Category 3: Class Members who consumed Recalled Frozen Fruit and contracted Hepatitis A as a result;
- Category 4: Class Members whose family members consumed Recalled Frozen Fruit and contracted Hepatitis A as a result; and
- Category 5: Canadian provincial health insurers who incurred expenses treating Class Members who consumed Recalled Frozen Fruit and contracted Hepatitis A as a result.

If there is not sufficient monies to pay all claims in full, all claims will be reduced on a proportional basis (i.e., based on the value of your claim in proportion to the value of all claims).

#### **Category 1: Economic Loss Claims**

You are eligible for settlement benefits for economic losses (i.e., refund claims) if:

- you reside in Canada; and
- you purchased Recalled Frozen Fruit and did not get a refund already.

Settlement monies payable to Class Members with economic loss claims will be distributed as follows:

- Class Members with proof of purchase who had not received a refund will receive the amount of their purchases.
- Class Members without proof of purchase who had not received a refund will receive the amount of their stated purchases, to a maximum of CDN \$25.00.

#### **Category 2: Vaccination Claims**

You are eligible for settlement benefits for vaccination if:

- you reside in Canada; and
- you consumed Recalled Frozen Fruit, and

- you had to undergo a Hepatitis A vaccination as a result of consuming Recalled Frozen Fruit.

Settlement monies payable to Class Members with vaccination claims will be distributed as follows:

- Class Members who submit a valid claim will receive an equal payment, which will depend on the total number of claims submitted but will not exceed CDN\$150.00.

### **Category 3: Personal Injury Claims**

You are eligible for settlement benefits for personal injury if:

- you reside in Canada; and
- you consumed Recalled Frozen Fruit; and
- you contracted Hepatitis A as a result.

Settlement monies payable to Class Members with bodily injuries will be distributed as follows:

- based on: (i) the level of evidence provided by the Class Member to substantiate the claims; and (ii) the severity of injuries suffered by the Class Member. See Schedule A of the Plan of Allocation for more information.

### **Category 4: Family Law Act Claims**

You are eligible for settlement benefits for personal injury if:

- you reside in Canada; and
- a member of your family is eligible for settlement benefits for personal injury (“injured family member”).

Settlement monies payable to Class Members with *Family Law Act* will be distributed as follows:

- based on: (i) the level of evidence provided by the injured family member to substantiate the claims; (ii) the severity of injuries suffered by the injured family member; and (iii) the relationship of the Class Member to the injured family member. See Schedule A of the Plan of Allocation for more information.

### **Category 5: Provincial Health Care Costs**

Canadian provincial health insurers are eligible for settlement benefits for their costs in treating Class Members with approved personal injury claims.

Settlement monies payable to provincial health insurers will be distributed as follows:

- based on the documented costs incurred by the health insurer in respect of the approved personal injury claim, up to 10% of the Class Member’s approved claim.

Further details on how settlement benefits shall be distributed can be found in the Plan of Allocation available at: [www.berryrecall.ca](http://www.berryrecall.ca)

## **WHAT IF THERE ARE SETTLEMENT FUNDS REMAINING AFTER ALL VALID CLAIMS HAVE BEEN PAID?**

If there are remaining 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.

## **HOW DO I APPLY TO RECEIVE SETTLEMENT FUNDS?**

To be eligible for settlement benefits, Class Members must file a properly completed claim form, together with the required supporting documents, no later than October 3, 2019, subject to further order of the Courts. Claims that are not made within the deadline will not be eligible for compensation.

Claims must be filed using the online claims process at [www.berryrecallclaim.ca](http://www.berryrecallclaim.ca). If you do not have internet access, but wish to file a claim, please contact the Claims Administrator at 1-866-879-4915. Class Members may be assisted by the lawyers listed below or another lawyer of their own choosing in the completion of their claim, in which case the Class Member will be responsible for any legal expenses arising from those additional individual services.

## **CLASS COUNSEL AND LEGAL FEES**

The law firms of Siskinds LLP and Siskinds Desmeules s.e.n.c.r.l. are Class Counsel:

### **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

The full contact information is available online at [www.berryrecall.ca](http://www.berryrecall.ca)

Class Members will not have to pay legal fees or disbursements out of their pocket.

The Ontario and Québec courts have approved Class Counsel legal fees in the amount of \$750,000.00, plus disbursements and applicable taxes of \$117,714.26.

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

This notice contains only a summary of the settlement agreement and Settlement Class Members are encouraged to review the complete settlement agreement, which is online at [www.berryrecall.ca](http://www.berryrecall.ca).

For information on the Nature's Touch Class Actions:

- [berryrecallclaim@crowco.ca](mailto:berryrecallclaim@crowco.ca)
- Or by telephone: 1-866-879-4915

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 related documents.

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To view this Notice in English and French, or for more information about the litigation, please visit [www.berryrecall.ca](http://www.berryrecall.ca).

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