

SETTLEMENT AGREEMENT
made as of June 15, 2005

BETWEEN:

ADY AYLON, Representative Plaintiff

AND:

WILD OATS MARKETS CANADA, INC.

respecting a class proceeding certified under
the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

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SECTION I – RECITALS

1.1 WHEREAS:

A. The Action has been certified as a class proceeding, and no notice has been given to the Class;

B. Ady Aylon has been appointed by the Certification Order as the Representative Plaintiff for the Class;

C. The Defendant has denied and continues to deny any wrongdoing or liability of any kind to any Class Member, and has raised numerous affirmative defences;

D. The Representative Plaintiff and Class Counsel have conducted settlement negotiations with the Defendant and Defendant's Counsel, including with the assistance of a mediator;

E. Based upon an analysis of the facts and the law applicable to the Class Members' claims, and taking into account, among other things, the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving Class Members' claims provided by this Agreement, Aylon, with the benefit of advice from Class Counsel, and Class Counsel have concluded that this Agreement provides substantial benefits to the Class and is fair, reasonable, adequate and in the best interests of the Class;

F. The Defendant similarly has concluded that, although it continues to deny any wrongdoing or liability, it is committed to maintaining positive relations with its present and former customers, and therefore wishes to resolve finally and completely the pending and potential claims of the Plaintiffs and the Class;

G. The Parties intend by this Agreement finally to resolve, terminate and conclude any and all Settled Claims under the terms of this Agreement, and further intend that the Released Persons shall receive complete releases and final peace from all such Settled Claims on behalf of the Plaintiffs and the Class; and

H. The Parties agree that all members of the Resident Sub-Class shall have the right to opt out and therefore be excluded from the Settlement as provided in this Agreement;

I. The Parties agree that all members of the Non Resident Sub-Class shall have the right to opt in and therefore be included in the Settlement as provided in this Agreement;

NOW, THEREFORE, for value received, the Parties stipulate and agree, subject to Court approval, that any and all Settled Claims shall be finally settled and resolved on the terms and conditions set forth in this Agreement:

SECTION II – DEFINITIONS

2.1 As used in this Agreement, including the Recitals and Schedules hereto, in addition to any definitions set out elsewhere in this Agreement, the following terms shall have the meanings set forth below:

- (a) **Action** means the action brought against the Defendant by the Plaintiffs under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, and filed in the Vancouver Registry of the Court under Action No. L023298 and any appeals from any decisions in that action; including the appeal of the Certification Order by the Defendant under Court of Appeal file No. CA031450;
- (b) **Agreement** or **Settlement Agreement** means this Settlement Agreement, including all schedules attached hereto, and one term is the synonym of the other;
- (c) **Approval Hearing** means the application to the Court for the Final Order, as described in Section III below;
- (d) **Award** means the Store Credits issued or cash payments made by the Claims Administrator to Qualified Claimants;
- (e) **Aylon** means the Plaintiff Ady Aylon;
- (f) **B.C.** means the province of British Columbia, and in this Agreement both terms may be used;
- (g) **Business Day** means any day except a Saturday, Sunday or other day on which commercial banks in British Columbia are authorized by law to close;
- (h) **Certification Order** means the order of the Court pronounced November 17, 2003, certifying the Action as a class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50;
- (i) **Claim Form** means a form substantially in accordance with Schedule B to this Agreement;
- (j) **Claimant** means a Settlement Class Member who submits a completed Claim Form to the Claims Administrator on or before the Deadline;
- (k) **Claims Administrator** means the person, agreed to by the Parties and appointed by the Court, to administer, manage and direct the processing and payment of Claimants' claims for compensation under this Agreement;
- (l) **Class** means all persons who (a) claim to have been infected with Hepatitis A in the months of February, March or April, 2002 as a result of handling and/or consuming Tainted Food Products, or having contact with a person who was infected with Hepatitis A as a result of handling and/or consuming the Tainted Food Products; and (b) between March 27, 2002 and April 30, 2002 (inclusive), received an Injection after handling

and/or consuming food products produced, manufactured, distributed and/or sold by the Defendant that were or might have been tainted with the Hepatitis A virus, or having contact with a person who was or might have been infected with Hepatitis A as a result of handling and/or consuming Tainted Food Products, and **Class** includes all members of each sub-class certified in the Certification Order;

(m) **Class Counsel** means the law firm of Klein Lyons, counsel to the Plaintiffs and who shall continue acting on behalf of the Class with respect to all acts required to give effect to this Agreement;

(n) **Class Counsel Fees** means the fees, disbursements, costs, taxes and any other charges of any kind, whether past, present or future, of Class Counsel in relation to the Action and this Settlement;

(o) **Class Member** means a person who is a member of the Class;

(p) **Court** means the Supreme Court of British Columbia;

(q) **Crawford** means Crawford Class Action Services, a division of Crawford Adjusters Canada Incorporated;

(r) **Deadline** means the date that is 60 days after the first publication of the Notice of Certification and Settlement or such other date that is agreed to by the Parties and approved and fixed by the Court;

(s) **Defendant** means Wild Oats Markets Canada, Inc., who carries on business as Capers Community Markets, and is sometimes referred to as “Capers”;

(t) **Defendant’s Counsel** means the law firm of McCarthy Tétrault LLP;

(u) **Defendant’s Stores** means Capers Community Markets stores in British Columbia;

(v) **Excluded Persons** means (A) all individuals who were, at the time of the incident giving rise to their claims, employed by the Defendant, (B) all Persons who, in accordance with the terms of this Agreement, have properly executed and timely submitted (and not withdrawn) an Opt Out Form to the Claims Administrator; and (C) all of the Previously Settled Individuals;

(w) **Final Order** means the final order pronounced by the Court as described in paragraph 3.1 of this Agreement;

(x) **Final Order Date** means the date on which the Final Order is pronounced;

(y) **Injection** means an injection given to a Class Member of either ISG or Vaccine;

(z) **ISG** means immune serum globulin;

- (aa) **Non-Resident Sub-Class** means, collectively, Class Members who were not resident in British Columbia on November 17, 2003 and who have signed and submitted a Claim Form to the Claims Administrator on or before the Deadline;
- (bb) **Notice of Certification and Settlement** means the form of notice substantially in the form of Schedule C
- (cc) **Notice Plan** means the plan for the dissemination of the Notice of Certification and Settlement, substantially in accordance with Schedule D;
- (dd) **Opt Out Form** means a document substantially in the form of Schedule A;
- (ee) **Out-of-Pocket Expense** means an actual out-of-pocket expense (including loss of income or business loss) incurred by a Settlement Class Member, directly as a result of the Settlement Class Member having attended for the Injection, and, in the case of a Tier 3 Claim, the Settlement Class Member having attended for medical treatment for an adverse reaction to the Injection.
- (ff) **Parties** means the Representative Plaintiff and the Defendant;
- (gg) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated organization, and any other type of legal entity, and their respective heirs, predecessors, successors, representatives and assigns;
- (hh) **Plaintiffs** means Helen Fakhri and Aylon, collectively, and **Plaintiff** means either one of them;
- (ii) **Previously Settled Individuals** means those seven (7) individuals who were confirmed to the Defendant by the VCHA as infected with Hepatitis A as a result of handling and/or consuming Tainted Food Products, with whom the Defendant settled and from whom the Defendant obtained full and final releases prior to the pronouncement of the Certification Order;
- (jj) **Qualified Claimant** means a Claimant who submits a Claim Form that is properly completed, supported with Supporting Documentation and verified by the Claimant's Solemn Declaration, and who satisfies all of the requirements for receiving an Award under this Agreement;
- (kk) **Released Persons** has the meaning given to it in paragraph 8.1;
- (ll) **Representative Plaintiff** means Aylon, who was appointed by the Court in the Certification Order as representative plaintiff for the Class;
- (mm) **Resident Sub-Class** means any Class Members who were resident in British Columbia on November 17, 2003, collectively;

(nn) **Settled Claims** means any claim, liability, right, demand, suit, matter, obligation, damage, loss or cost, action or cause of action of every nature and description, in law or in equity, that any of the Settlement Class Members has, had or may have, whether known or unknown, accrued or which may hereafter accrue, asserted or unasserted, latent or patent, that is, has been or could reasonably have been or in the future might reasonably be asserted in the Action or in any other action or proceeding in any other court or forum regardless of legal theory, and regardless of the type or amount of relief or damages claimed, against any of the Released Persons arising from or in any way related to or connected with either the public announcement in March, 2002 that the VCHA had identified a case of Hepatitis A in a foodhandler employed by the Defendant or any of the matters in issue in the Action. Without limiting the generality of the foregoing, Settled Claims shall include, with regard to the foregoing subject matter:

- (i) any claims for breach of any duty imposed by law, by contract, or otherwise;
- (ii) any claims based on negligence, breach of express or implied warranty, or breach of statutory duty;
- (iii) any claims for emotional distress or mental anguish or anxiety or loss of peace of mind or nervous shock; and
- (iv) any claims for punitive damages;

(oo) **Settlement** means the settlement described in this Agreement;

(pp) **Settlement Class** means the Class excluding the Excluded Persons;

(qq) **Settlement Class Member** means a Person who is a member of the Settlement Class;

(rr) **Settlement Date** means the date by which all of the following have occurred:
(i) the entry of the Final Order with the Court; (ii) either (a) the expiration of all allowable periods for appeal or leave to appeal of the Final Order, or (b) in the event an appeal is taken from the Final Order, final affirmation of the Final Order on appeal or remand, or final dismissal or denial of all such appeals;

(ss) **Settlement Fund** means the interest-bearing account established in accordance with the terms of paragraph 6.5 of this Agreement;

(tt) **Solemn Declaration** means a declaration by a Claimant as to the truth of the information provided in the Claimant's Claim Form, which declaration is made with the understanding that the Court has enjoined against a Claimant submitting a Claim Form which the Claimant knows contains false or incorrect information, and therefore if a Claimant submits a Claim Form knowing that it contains false or incorrect information, the Claimant may be subject to the Court's power to punish for contempt of court, and may be subject to prosecution for fraud under the Criminal Code of Canada;

(uu) ***Store Purchase Card*** means a non-refundable, non-transferable and non-refillable purchase card, bearing a unique bar-coded number, issued by the Defendant under paragraph 6.7 to a Qualified Claimant who has elected to receive it in lieu of cash, that may be used by the Qualified Claimant, for a period of 180 days after the card has been programmed for use, to access Store Credits to purchase goods sold at any of the Defendant's Stores, the retail value of which goods does not exceed, in the aggregate, the Store Credits to which the Qualified Claimant is entitled under this Agreement;

(vv) ***Store Credits*** means the credit at the Defendant's Stores that a Qualified Claimant may elect to receive rather than a cash payment under this Agreement;

(ww) ***Supporting Documentation*** means:

- (i) in relation to a Tier 1 Claim, either (a) a letter from the VCHA addressed to the Claimant enclosing a copy of the Notice of Certification and Settlement; or (b) a letter from the VCHA or another equivalent health authority or health care provider confirming that between March 27, 2002 and April 30, 2002 (inclusive), the Claimant received an Injection after handling and/or consuming food products produced, manufactured, distributed and/or sold by the Defendant that were or might have been tainted by the Hepatitis A virus or after having contact with a person who handled and/or consumed food products produced, manufactured, distributed and/or sold by the Defendant that were or might have been tainted by the Hepatitis A virus;
- (ii) in relation to a Tier 2 Claim, (a) the documentation referred to in subparagraph (i) above, and (b) a letter from a health care provider attesting to the fact that the Claimant was aware at the time of her Injection that she was pregnant or suffered from a disease of the liver;
- (iii) in relation to a Tier 3 Claim, (a) the documentation referred to in subparagraph (i) above, and (b) medical records from a health care provider showing that the Claimant obtained professional medical treatment within 24 hours after receiving the Injection as a result of an adverse reaction to the Injection, for one or more of the following symptoms: breathing irregularities, nausea, vomiting, circulatory collapse, loss of consciousness or fever;
- (iv) in relation to a Tier 4 Claim, documentary proof of the losses alleged by the Claimant to flow from the Claimant's illness AND either (i) a letter from the VCHA confirming that the Claimant is one of the individuals identified by the VCHA as a confirmed case of Hepatitis A as a result of having handled or consumed Tainted Food Products; or (ii) the following documentation:
 - A. a certified copy of a test result for the Claimant, confirming actual infection by Hepatitis A during the months of February, March or

April, 2002 , from a medical test administered to the Claimant not later than April 30, 2002; and

B. a letter from a qualified medical doctor who has reviewed the test result referred to in (A) confirming that, in the doctor's opinion, the Claimant was infected with Hepatitis A in the months of February, March or April, 2002 and that the cause of the Claimant's infection was that the Claimant handled and/or consumed Tainted Food Products or that the Claimant had contact with a person who was infected with Hepatitis A as a result of handling and/or consuming Tainted Food Products;

(v) in relation to Out-of-Pocket Expense:

A. in the case of an expense, an original receipt;

B. in the case of income loss, a letter from the Claimant's employer specifying and confirming the time during which the Claimant lost income and the total amount of income lost, net of deductions; and

C. in the case of business loss:

i) a statement from the Claimant, verified by the Claimant's Solemn Declaration, specifying the basis for claiming a business loss and the amount of the loss claimed;

ii) a financial statement prepared by a professional accountant showing the average daily net earnings of the affected business during the months of March and April, 2002; and

iii) a copy of the 2001, 2002 and 2003 income tax returns of the affected business;

(xx) **Tainted Food Products** means food products, produced, manufactured, distributed and/or sold by the Defendant in February, March or April, 2002 that were tainted with the Hepatitis A virus;

(yy) **Tier 1 Claim, Tier 2 Claim, Tier 3 Claim** and **Tier 4 Claim** mean a claim for compensation at Tier 1, Tier 2, Tier 3 or Tier 4, respectively, as described in paragraph 5.1 of this Agreement

(zz) **Vaccine** means Hepatitis A vaccine; and

(aaa) **VCHA** means the Vancouver Coastal Health Authority.

2.2 Where the context so indicates or so requires, each defined term stated in the singular includes the plural, and each defined term stated in the plural includes the singular. Where the context so indicates or requires, feminine pronouns and female references include the masculine, and masculine pronouns and male references include the feminine.

SECTION III – THE APPROVAL HEARING

3.1 Promptly after execution of this Agreement, the Parties shall advise the Court of this Agreement and shall initiate an application to the Court for the Final Order, which shall, among other things:

- (a) approve this Agreement and the Settlement, and order the Parties and all Class Members to comply with it;
- (b) approve the Deadline, and, if requested by the Parties, fix a specific date as the Deadline;
- (c) declare that any member of the Resident Sub-Class who has not opted out of the Class by submitting a properly completed Opt Out Form to the Claims Administrator on or before the Deadline is bound by the terms of this Agreement;
- (d) declare that any member of the Non-Resident Sub-Class who has opted in to the Class by submitting a Claim Form to the Claims Administrator on or before the Deadline is bound by the terms of this Agreement;
- (e) declare that this Agreement, including all Schedules, and the Settlement described herein, are reasonable, fair and in the best interest of the Class;
- (f) declare that this Agreement, including all Schedules, has the full force and effect of an Order of the Court;
- (g) attach a copy of this Agreement as an Appendix to, and incorporate it by reference into, the Final Order;
- (h) approve an amount to be paid to Class Counsel as Class Counsel Fees within ten (10) Business Days after the Settlement Date;
- (i) approve a supplementary payment of \$5,000 to Aylon, to be paid within ten (10) Business Days after the Settlement Date, as compensation for his time and effort in the prosecution of this Action and as Representative Plaintiff;
- (j) appoint Crawford as the Claims Administrator and confirm the terms of appointment;
- (k) dismiss all claims in the Action, without costs, except to the extent that a Resident Sub-Class Member timely submits an Opt Out Form in accordance with this Agreement, such dismissal to be of the same force and effect as if such order had been pronounced following a trial of the Action on the merits;

- (l) release the Released Persons from any and all Settled Claims of the Settlement Class Members;
- (m) enjoin each Settlement Class Member from submitting a Claim Form which the Settlement Class Member knows contains a false statement of fact; and
- (n) reserve the Court's continuing exclusive jurisdiction over the Parties to this Agreement and the Settlement Class Members, to supervise, construe and enforce this Agreement in accordance with its terms, for the mutual benefit of all parties.

3.2 The Parties will use their due diligence, and shall cooperate in order to secure the appropriate court orders and approvals necessary to implement and give effect to this Agreement.

SECTION IV – NOTICE TO CLASS

4.1 The Class shall be notified of final approval of the Settlement and this Agreement by the Notice of Certification and Settlement which the Defendant shall cause to be published and distributed to the Class in accordance with the Notice Plan.

4.2 The Notice of Certification and Settlement shall be published no later than 45 days after the Final Order Date.

4.3 The Defendant shall bear the cost of the publication and distribution of the Notice of Certification and Settlement as contemplated by paragraphs 1 and 2 of the Notice Plan. Class Counsel shall bear the cost of the distribution and publication of the Notice of Certification and Settlement as contemplated by paragraphs 3 and 4 of the Notice Plan.

SECTION V - SETTLEMENT COMPENSATION

5.1 A Claimant, by submitting a completed Claim Form verified by the Claimant's Solemn Declaration and supported by the requisite Supporting Documentation on or before the Deadline, is entitled to compensation in one of the following tiers:

- (a) Tier 1: either \$250 in Store Credits or \$150 in cash;
- (b) Tier 2: either \$500 in Store Credits or \$300 in cash;
- (c) Tier 3: either \$750 in Store Credits or \$450 in cash; or
- (d) Tier 4: an amount to be individually negotiated or submitted to mediation and/or binding arbitration.

5.2 Claimants claiming in Tiers 1, 2 and 3 must elect between receiving an Award in cash or an Award in Store Credits. A Claimant's election in that regard is irrevocable. A Claimant who fails to make an election in her Claim Form will be deemed to have elected cash.

5.3 In addition to the compensation referred to above, Qualified Claimants in Tiers 1, 2 or 3 will also be compensated by an Award of cash for their Out-of-Pocket Expenses, provided

that such Claimants have submitted with their Claim Form the requisite Supporting Documentation in respect of Out-of-Pocket Expenses claimed.

5.4 If a Qualified Claimant has previously received a payment from the Defendant in relation to matters alleged in the Action, the amount of such earlier payment(s) will offset dollar for dollar any Award available to such Qualified Claimant, including an Award for Out-of-Pocket Expense.

5.5 Within ten (10) Business Days after the Settlement Date, the Defendant shall pay Aylon \$5,000 as compensation for his time and effort in the prosecution of this Action and as Representative Plaintiff, in accordance with the Final Order.

SECTION VI – CLAIMS PROCESS

6.1 To qualify for compensation under this Settlement, a Settlement Class Member who wishes to make a claim must submit a completed Claim Form (verified by such Class Member's Solemn Declaration and supported by the requisite Supporting Documentation) to the Claims Administrator postmarked not later than the Deadline, or if there is no legible postmark, so that the Claim Form is received by the Claims Administrator not later than 5:00 p.m. Pacific time on the Deadline. The Claims Administrator shall reject any Claim Form not clearly post-marked on or before, or received prior to 5:00 p.m. Pacific Time on, the Deadline.

6.2 In the event that a Claimant seeks compensation at Tier 2 or Tier 3 and the Claims Administrator determines that the Supporting Documentation submitted in support of the claim is not sufficient to qualify the Claimant for compensation at Tier 2 or Tier 3 (as the case may be), but that the Claimant qualifies for compensation at Tier 1, then the Claims Administrator shall approve the Claimant for compensation at Tier 1.

6.3 Nothing in this Agreement shall be construed to prevent the Claims Administrator, in its sole discretion, from permitting a Claimant to remedy deficiencies in the Claimant's Claim Form or related documentation. If the Claims Administrator notifies a Claimant of deficiencies, those deficiencies must be remedied within fifteen (15) Business Days of the date the notice is sent to the Claimant. Failure to remedy all of the deficiencies within fifteen (15) Business Days of the date a deficiency notice is first sent to the Claimant shall result in the rejection of the claim (unless the deficiency does not pertain to the entire claim, in which case the failure to remedy it will result in the rejection of that portion of the claim to which the deficiency pertains).

6.4 All Claim Forms shall be processed by the Claims Administrator. The Claims Administrator shall report periodically to the Parties regarding its activities and progress. Such periodic reports shall address, at a minimum, the number of Claim Forms received, the status of such claims (i.e., number processed, number in process, number rejected), and, for claims that have been processed and for which information is readily available, the number and amount of Awards issued, and the number of claims that have been denied and the basis for such denial.

6.5 Within ten (10) Business Days after the Deadline, the Defendant shall deposit at least \$50,000 into the Settlement Fund, which sum shall be replenished by the Defendant with further deposits of \$25,000 within ten (10) Business Days of being notified by the Claims

Administrator that the balance of the Settlement Fund has fallen below \$5,000 in cash. If, after (1) the processing of all Claim Forms (2) the payment of all cash Awards and (3) the payment of all costs of the Claims Administrator, cash remains in the Settlement Fund, all such cash shall be remitted and paid forthwith to the Defendant.

6.6 After the initial deposit to the Settlement Fund described in paragraph 6.5 above, the Claims Administrator shall periodically pay Awards from the Settlement Fund to Qualified Claimants who elect to receive cash.

6.7 The Claims Administrator shall notify the Defendant on a weekly basis of the number and names of the Qualified Claimants who have elected to receive Store Credits and of the Qualified Claimants who have elected to receive cash. Upon receiving such notification from the Claims Administrator, the Defendant will promptly deliver to the Claims Administrator a Store Purchase Card for each Qualified Claimant who elected to receive Store Credits, along with an explanatory letter providing instructions for use of the card. The Claims Administrator will then promptly deliver the Store Purchase Card and explanatory letter to the Qualified Claimant and simultaneously notify the Defendant of the bar-coded number of the Store Purchase Card that each named Qualified Claimant was sent, as well as the amount of Store Credits to which that Qualified Claimant is entitled under this Agreement. After receipt of such notice from the Claims Administrator, and not more than five (5) Business Days after receipt of such notice, the Defendant will program into its computer system Store Credits in the appropriate amount for that Qualified Claimant's Store Purchase Card, at which time the Store Purchase Card will be deemed to be issued. Store Credits may be drawn upon in whole or in part by the Qualified Claimant upon presentation of the Store Purchase Card from time to time at any of the Defendant's Stores, for a period of 180 days from the date that the Store Purchase Card is programmed and issued.

6.8 The Claims Administrator shall administer the relief provided by this Agreement by resolving claims in a rational, responsible, cost-effective and timely manner, with the object that Awards be distributed or paid to all Qualified Claimants within 120 days of the Deadline.

6.9 The Claims Administrator shall maintain reasonably detailed records of its activities under this Agreement, including all Claim Forms, denials, and all disbursements to Qualified Claimants, until one (1) year after all claims are finally resolved and/or paid. Such records shall be made available upon request for inspection by any Party.

6.10 Any mediation or arbitration that is conducted pursuant to the Settlement will be conducted privately and confidentially using rules to be mutually agreed upon by the Claimant and the Defendant, and the results of any mediation or arbitration will also be private and confidential and will not be disclosed to any person who is not a party to the mediation or arbitration.

SECTION VII – OPT-OUT AND OPT-IN RIGHTS

7.1 A member of the Resident Sub-Class may opt out, and thereby exclude himself from the Settlement Class, by returning a completed Opt Out Form to the Claims Administrator,

postmarked not later than the Deadline, or if there is no legible postmark, so that it is received by the Claims Administrator by 5:00 p.m. Pacific time on the Deadline.

7.2 A member of the Non-Resident Sub-Class may opt in, and thereby include himself in the Settlement Class, by returning a completed Claim Form to the Claims Administrator, postmarked not later than the Deadline, or if there is no legible postmark, so that it is received by the Claims Administrator by 5:00 p.m. Pacific time on the Deadline.

7.3 Every Settlement Class Member will be bound as of the Settlement Date by the Final Order and by the releases contained in this Agreement, whether or not the Settlement Class Member submits a Claim Form or receives an Award.

7.4 Any member of the Resident Sub-Class who opts out shall (i) not be bound by any further orders or judgments entered in the Action; (ii) not be entitled to relief under this Agreement; (iii) not gain any rights by virtue of this Agreement.

7.5 Nothing in this Agreement shall constitute or be deemed to constitute a waiver by the Defendant of defences based on statutes of limitation or repose, laches, prescription period or any other limitation or prescription defence. Without limiting the generality of the foregoing, nothing in this Agreement shall constitute or be deemed to constitute a waiver in respect of:

- (a) any member of the Resident Sub-Class who opts out of the Action by submitting an Opt Out Form to the Claims Administrator on or before the Deadline;
- (b) any member of the Non-Resident Sub-Class who does not opt in to the Action by submitting a Claim Form to the Claims Administrator on or before the Deadline.

7.6 The Claims Administrator shall provide Class Counsel and Defendant's Counsel with copies of all completed Opt Out Forms on a weekly basis during the period ending on the Deadline.

SECTION VIII – RELEASES AND JURISDICTION OF THE COURTS

8.1 As of the Settlement Date, each Settlement Class Member whether or not she submits a Claim Form or otherwise receives an Award, will be deemed by this Agreement to have, and by operation of the Final Order shall have individually completely and unconditionally released, forever discharged and acquitted the Defendant and its predecessors, successors, parents, subsidiaries, affiliates and assigns, together with its past, present and future officers, directors, employees, shareholders, representatives, partners, attorneys, insurers, reinsurers, subrogees, and assigns (defined collectively as the "Released Persons") from any and all of the Settled Claims.

8.2 As of the Settlement Date, the Settlement Class Members will be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively or derivatively, asserting against any of the Released Persons any claims that relate to or constitute any of the Settled Claims.

8.3 Nothing in paragraph 8.2 bars a Tier 4 Claimant from engaging in the mediation and/or binding arbitration as described in this Agreement.

8.4 The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, Parties, Class Members and the Claims Administrator to interpret and enforce the terms, conditions and obligations under this Agreement.

SECTION IX – PROTECTION FROM THIRD PARTY CLAIMS

9.1 It is the intent of this Agreement that no Settlement Class Member shall recover, directly or indirectly, any sums from the Defendant for Settled Claims other than those sums available under this Agreement and that the Defendant shall make no payments to any third party for any amounts arising out of a Settled Claim brought by a Settlement Class Member against such third party.

9.2 In cases where there are claims or liens by a third party for payments made or services rendered to a Settlement Class Member relating to the Settled Claims including, without limitation, subrogation claims and liens of insurers (collectively “Subrogation Claims”), such Settlement Class Member shall provide the Claims Administrator with notice of such Subrogation Claims. The Claims Administrator shall pay or otherwise extinguish such Subrogation Claims from any Award payable to such Settlement Class Member (provided such Settlement Class Member is a Qualified Claimant), prior to disbursing the balance (if any) of the Award to such Settlement Class Member. If such Subrogation Claims are not extinguished or paid, and in the event that the Defendant is subjected to claims by any third party in respect of such Subrogation Claims, the Settlement Class Member on whose behalf such Subrogation Claims arose shall hold harmless, reimburse and indemnify the Defendant in the amount of any such liability to the third party.

9.3 The Parties intend that this Agreement and the Settlement will preclude any and all claims for contribution and/or indemnity against a Released Person with respect to any matter arising out of or in any way connected with the Settled Claims to the extent allowed by law. If a claim for contribution or indemnity is made against a Released Person in a proceeding commenced by a Settlement Class Member, the Settlement Class Member and the Released person shall seek an order from the Court that all claims for contribution and/or indemnity against the Released Person, however denominated (including claims for equitable contribution or partial indemnity), whether arising under the laws of British Columbia or any other province or jurisdiction, that are based on or arise from Settled Claims are barred, extinguished, discharged, satisfied and otherwise unenforceable.

9.4 In the event that a third party obtains a judgment for contribution or indemnification against a Released Person with respect to any Settled Claims, the Settlement Class Members agree to reduce their judgments against such third parties by the amount, percentage, or share of such judgment necessary to satisfy any such judgment or indemnification for the benefit of the Released Person. If, despite the provisions of this section, the Released Person makes a payment of any judgment due to a claim for contribution and/or indemnification arising out of a claim brought by a Settlement Class Member against a third party with respect to

a Settled Claim, such Settlement Class Member shall indemnify the Released Person for such amount.

SECTION X – CLASS COUNSEL FEES

10.1 Class Counsel shall seek Court approval of Class Counsel Fees of up to \$570,000.00 (inclusive of all disbursements, taxes and any other fees or charges), to be paid by the Defendant within ten (10) Business Days of the Settlement Date, which shall constitute Class Counsel's all-inclusive fee for all past and future services rendered in connection with the Action, the Appeal and this Settlement, including the finalization and implementation of the terms of this Agreement and any advice to individual Class Members.

10.2 The Defendant shall not oppose Class Counsel's application to the Court for Class Counsel Fees as provided in paragraph 10.1.

10.3 Within ten (10) Business Days after the Settlement Date, the Defendant shall pay Class Counsel Fees, in the amount approved by the Court, into an account designated by Class Counsel for such purpose.

SECTION XI – PUBLICITY

11.1 The Parties and the Settlement Class Members covenant and agree that under no circumstances will they and their legal counsel (including in particular Class Counsel and Defendant's Counsel), or any of them, seek to generate publicity about the Settlement via the media or press or otherwise (including, without limitation, by initiating contact with media representatives, calling press conferences, issuing press releases, or posting information on the Internet), save and except only as follows:

- (a) communications contemplated by the Notice Plan;
- (b) communications necessary for the Defendant to comply with its obligations under applicable securities laws; or
- (c) written communications which the Defendant, in its sole discretion, has expressly approved in writing in advance of their issuance.

11.2 The Parties and their legal counsel (including in particular Class Counsel and Defendant's Counsel) agree that if approached by members of the media to comment upon the Settlement, they will inform the inquirer of the fact that the case has been settled to the satisfaction of all parties and that the Settlement has been approved by the Court as fair, reasonable and in the best interests of the Class, and will decline to comment further, except as may be necessary to explain why the settlement is fair and reasonable (provided that no comment is made that casts the conduct of any party in a negative light, or reveals anything said by either party or their counsel during the course of settlement discussions). The Parties and their respective counsel may also respond to any inquiry from the media or press regarding the Action and this Agreement by referring the inquirer to the webpage maintained by Class Counsel referred to in paragraph 11.3 below, and any other response shall be governed by the provisions of this Section.

11.3 In order to implement the Notice Plan, Class Counsel shall have the right to maintain and update a webpage at www.kleinlyons.com which will describe the Settlement in terms to be approved by the Defendant (such approval not to be unreasonably withheld or delayed), provide a link to the Notice of Certification and Settlement and this Agreement, and provide a link to the website of the Claims Administrator, where the Claim Form and this Agreement may be posted and available to Class Members.

11.4 Nothing in this Section restricts Class Counsel from communicating with their clients, including Settlement Class Members. Nothing in this Section shall prevent the implementation of the Notice Plan as approved by the Court.

SECTION XII – NO ADMISSIONS; NO USE

12.1 This Agreement, whether or not consummated, and any proceedings taken pursuant to this Agreement, are for settlement purposes only. Neither the fact of, nor any provision contained in, this Agreement or its schedules, nor any action taken hereunder shall be construed as, offered in evidence as, received in evidence as, and/or be deemed to be evidence of a presumption, concession or an admission of any kind by any of the Parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have been, or in the future might be asserted in any litigation, court of law or equity, proceeding, arbitration, tribunal, investigation, government action, administrative forum or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any of the Parties.

12.2 Except as may be required to enforce or give effect to the Settlement and this Agreement or as may be required by law, neither Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by a Class Member which relates to or arose from the Released Claims.

SECTION XIII – DISCOVERY DOCUMENTS

13.1 Within ten (10) Business Days of the Settlement Date, Class Counsel shall certify in writing to Defendant's Counsel that Class Counsel have returned to Defendant's Counsel or permanently destroyed all documents and copies thereof produced during discovery by the Defendant.

SECTION XIV – TERMINATION OF AGREEMENT

14.1 This Agreement shall, without notice, be automatically terminated if the Final Order is not pronounced by the Court or not entered, or if the Final Order is reversed on appeal and the reversal becomes final. In the event of termination, and notwithstanding any other provision of this Agreement, (i) all Parties shall be restored to their respective positions immediately prior to the date on which this Agreement is signed by all Parties, (ii) dismissal of the Action shall be deemed null and void nunc pro tunc, and the Action shall be reinstated status quo ante; (iii) all statutes of limitation and/or repose for all claims asserted in such cases shall be deemed to have been tolled from the date of signature of this Agreement by all Parties until the date of reinstatement and reactivation, or for such longer period as the law may provide without

reference to this Agreement. In the event of termination, this Agreement shall have no further force or effect.

SECTION XV – MISCELLANEOUS PROVISIONS

15.1 The rights conferred on the Class Members by this Agreement are personal to, and may be exercised solely by, the individual Class Members who qualify for an Award under this Agreement and such rights may not be assigned, transferred, sold, conveyed, charged, encumbered, mortgaged, inherited or otherwise disposed of in any way.

15.2 This Agreement, including all schedules hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of this Agreement. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that the schedules to this Agreement may be modified by subsequent agreement of the Defendant and Class Counsel prior to dissemination to the Class.

15.3 This Agreement shall be construed under and governed by the laws of the province of British Columbia, applied without regard to laws applicable to choice of law.

15.4 This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures by facsimile shall be as effective as original signatures.

15.5 Subject to paragraph 15.1 hereof, this Agreement shall be binding upon and inure to the benefit of the Settlement Class, the Parties and their respective heirs, predecessors, administrators, successors and permitted assigns.

15.6 The headings of the sections of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

15.7 Any notice, instruction, application for Court approval or application for Court orders sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or by facsimile during normal business hours, or sent by registered or certified mail, postage paid:

(a) if to the Defendant, to the attention of Mr. Warren Milman and Ms. Elaine J. Adair, McCarthy Tétrault LLP, Barristers & Solicitors, Suite 1300, 777 Dunsmuir Street, Vancouver, B.C., V7Y 1K2, fax # 604-643-7900 or to such other individuals and addresses as the Defendant may designate in writing from time to time;

(b) if to Plaintiffs, to the attention of Mr. David Klein, Klein Lyons, Barristers & Solicitors, Suite 1100, 1333 West Broadway, Vancouver, B.C., V6H 4C1, fax # 604-874-7180 or to such other individuals and addresses as the Plaintiffs may designate in writing from time to time; and

(c) if to other recipients, as the Court may specify.

15.8 The Schedules to this Agreement are:

- (a) SCHEDULE A – Opt Out Form;
- (b) SCHEDULE B - Claim and Opt In Form;
- (c) SCHEDULE C – Notice of Certification and Settlement; and
- (d) SCHEDULE D – Notice Plan.

15.9 No waiver of any provision of this Agreement shall be binding on any Party unless consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, and no waiver of any provision of this Agreement shall constitute a continuing waiver unless expressly so provided.

15.10 The Defendant represents and warrants (i) that it has all requisite corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby; (ii) that the execution, delivery, and performance of this Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of the Defendant; and (iii) that this Agreement has been duly and validly executed and delivered by the Defendant and constitutes its legal, valid, and binding obligation.

15.11 Aylon represents and warrants that he has duly authorized his counsel of record in the Action to execute this Agreement on his behalf.

15.12 This Settlement may be referred to as the “Capers Class Action Settlement.”

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on his/ its behalf by its duly authorized officer (in the case of the Defendant) or counsel of record (in the case of the Representative Plaintiff), effective as of June 15, 2005.

ADY AYLON

By:



Klein Lyons

WILD OATS MARKETS CANADA, INC.

By:

Authorized Signatory

15.8 The Schedules to this Agreement are:

- (a) SCHEDULE A – Opt Out Form;
- (b) SCHEDULE B - Claim and Opt In Form;
- (c) SCHEDULE C – Notice of Certification and Settlement; and
- (d) SCHEDULE D – Notice Plan.

15.9 No waiver of any provision of this Agreement shall be binding on any Party unless consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, and no waiver of any provision of this Agreement shall constitute a continuing waiver unless expressly so provided.

15.10 The Defendant represents and warrants (i) that it has all requisite corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby; (ii) that the execution, delivery, and performance of this Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of the Defendant; and (iii) that this Agreement has been duly and validly executed and delivered by the Defendant and constitutes its legal, valid, and binding obligation.

15.11 Aylon represents and warrants that he has duly authorized his counsel of record in the Action to execute this Agreement on his behalf.

15.12 This Settlement may be referred to as the “Capers Class Action Settlement.”

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on his/ its behalf by its duly authorized officer (in the case of the Defendant) or counsel of record (in the case of the Representative Plaintiff), effective as of June 15, 2005.

ADY AYLON

By: _____

Klein Lyons

WILD OATS MARKETS CANADA, INC.

By: _____

Authorized Signatory

SCHEDULE A – OPT OUT FORM

NO. L023298
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HELEN FAKHRI and ADY AYLON
as Representative Plaintiffs

PLAINTIFFS

AND:

WILD OATS MARKETS CANADA, INC.
carrying on business as
CAPERS COMMUNITY MARKETS

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

OPT OUT FORM

For British Columbia Residents Only

THIS IS NOT A CLAIM FORM. Completing and returning this Opt Out Form will exclude you from receiving any compensation available under the Capers Class Action Settlement.

I, [NAME] _____

of [ADDRESS] _____

DO NOT WISH TO PARTICIPATE in this Class Action or in the Capers Class Action Settlement.

I understand that this action is brought on behalf of all persons who claim to have suffered damages as a consequence of exposure to food products produced, manufactured, distributed and/or sold by the Defendant that were or might have been tainted with the Hepatitis A virus, and that the action has been certified as a class proceeding (the “Class Action”). I also understand that the court has approved a settlement of the Class Action (the “Settlement”).

I understand that if I opt out and complete this form, I will not take part in the Class Action or the Settlement. I agree to be excluded from both the Class Action and the Settlement.

I also understand that a lawsuit must be commenced within a specified limitation period or it will be legally barred. The certification of this Class Action suspended the running of the limitation period from the time the Class Action was filed. The limitation period will resume running against me if I opt out of the Class Action. By opting out of the Class Action, I take full responsibility for obtaining legal advice about the limitation period and for taking all legal steps necessary to protect my claim.

Date

Signature of Witness

Signature

Print Name of Witness

Print Name

Address of Witness

Address

MAIL OR DELIVER NO LATER THAN _____ TO:

Hepatitis Claims Administrator
Suite 280 - 2985 Virtual Way
Vancouver, B.C.
V5M 4X7

IF YOU SEND THIS FORM BY MAIL, IT MUST BE CLEARLY POSTMARKED NO LATER THAN ●[THE DEADLINE], OR IF NOT CLEARLY POSTMARKED, RECEIVED BY THE CLAIMS ADMINISTRATOR AT THE ABOVE NOTED ADDRESS NO LATER THAN 5:00 P.M. PACIFIC TIME ON [●THE DEADLINE].

No person may opt out minors or mentally incapable persons without permission of the Court after notice to the Children's Lawyer and/or the Public Guardian or Trustee.

SCHEDULE B - CLAIM AND OPT IN FORM
Capers Class Action Settlement

Last Name	First Name	Middle Name
Address		
City	Province	Postal Code
Home Phone	Work Phone	Email

1. Did you receive an injection of either immune serum globulin or Hepatitis A vaccine between March 27, 2002 and April 30, 2002 (inclusive), after handling and/or consuming food products produced, manufactured, distributed and/or sold by Capers Community Markets that were or might have been tainted with the Hepatitis A virus, or having contact with a person who was or might have been infected with Hepatitis A as a result of handling and/or consuming any such food products?

Yes No (Check (√) only one box)

2. Do you claim to have been infected with Hepatitis A in February, March or April 2002, as a result of handling and/or consuming food products produced, manufactured, distributed and/or sold by Capers Community Markets that were or might have been tainted with the Hepatitis A virus, or having contact with a person who was infected with Hepatitis A as a result of handling and/or consuming any such food products?

Yes No (Check (√) only one box)

If you answered “No” to Questions 1 and 2, you are not eligible to participate in this class action and need do nothing further.

Levels of Compensation

3. There are four levels of compensation (or “Tiers”) under this Settlement. You can claim compensation for only one Tier, although if you make a claim at Tier 2 or Tier 3 that is unsuccessful, but you qualify for Tier 1, you will be compensated at Tier 1. Select your Tier below (check (√) only one box).

Tier 1: \$150 cash or \$250 in Store Credits for Qualified Claimants who received an Injection. If you received this Form enclosed with a letter from the Vancouver Coastal Health Authority (“VCHA”), enclose a copy of the VCHA letter as proof of your Injection. If you did not receive a letter from the VCHA, you must provide a letter from a health authority or other health care provider confirming that you received the Injection.

Tier 2: \$300 cash or \$500 in Store Credits for Qualified Claimants who received an Injection, and knew they were pregnant or suffering from a liver disease at the time. You must provide the proof necessary for Tier 1, plus a letter from a health care provider confirming that you were aware that you were pregnant or suffering from a liver disease at the time of the Injection.

Tier 3: \$450 cash or \$750 in Store Credits for Settlement Class Members who suffered an adverse reaction to the Injection and received medical attention within 24 hours of the Injection as a result of the reaction. You must provide the proof necessary for Tier 1, plus a letter from a health care provider or other medical documentation showing that you received professional medical treatment as a result of an adverse reaction to the Injection for one or more of the following symptoms: breathing irregularities, nausea, vomiting, circulatory collapse, loss of consciousness or fever.

Tier 4: This is for Settlement Class Members who answered “Yes” to Question 2. Each claim will be assessed individually and resolved by mediation or (if necessary) binding arbitration. You must provide medical records confirming your infection, its timing, symptoms and course of illness, AND provide proof of expenses and/or income or business losses you claim are attributable to your illness.

Attach documents to support your claim (check (√) each box that applies):

Letter from VCHA: If you received a letter addressed to you from the Vancouver Coastal Health Authority, notifying you of this class action, attach a copy of this letter to your claim. It proves that you received an Injection and qualifies you to make a Tier 1, 2 or 3 claim.

Other Proof of Injection: If you did not receive a letter from the Vancouver Coastal Health Authority, you must attach a letter from a health authority or other health care provider confirming that you received an Injection, if you are making a Tier 1, 2, or 3 claim.

Medical Records: Attach any additional medical documentation required above if you are making a Tier 2, 3, or 4 claim.

Other Proof (Tier 4 only): Attach documentary proof of expenses and/or income or business losses you claim are attributable to your illness.

4. You may also be entitled to a cash reimbursement for Out-of-Pocket Expense (including loss of income or business losses) incurred directly as a result of having to attend for an Injection. If you have already received a payment from Capers, it will be deducted from your claim. To make such a claim you must provide:

1. **original** receipts for out-of-pocket expenses (copies will not be accepted);
2. a letter from your employer confirming any loss of employment income;
3. a statement of business earnings for March 2002, plus business tax returns for 2001, 2002 and 2003, confirming any business loss.

I attended for my Injection on _____, 2002 and I am making a claim for the following out-of-pocket expenses, loss of employment income or business losses. **I attach an original receipt or other Supporting Documentation for each amount claimed.**

1. _____
2. _____
3. _____

5. If you selected Tiers 1, 2, or 3, you have a choice between receiving your compensation in cash or in the form of a Store Purchase Card containing Store Credits. Store Credits offer greater dollar value, but are not redeemable for cash, expire 180 days following their issuance, and may only be used to purchase products at Capers. If you fail to make an election you will be deemed to have chosen cash. **(Check (✓) only one box)**

I elect cash.

I elect Store Credits.

6. I solemnly declare that all of the information provided by me on this Claim Form is true, correct and complete, and I make this solemn declaration conscientiously believing it to be true and with the understanding that the presiding Court has ordered Settlement Class Members not to submit a Claim Form which they know contains false or incorrect information, and therefore, if I submit this Claim Form knowing that it contains false or incorrect information, I may be subject to the presiding Court's power to punish for contempt of court, and I may be subject prosecution for fraud under sections 380(1) and 381 of the Criminal Code of Canada.

Date	Print Name	Signature

A complete copy of the Settlement Agreement is available at www.kleinlyons.com (under *Fakhri et al. v. Wild Oats Markets Canada, Inc.*). In the event of conflict between the terms of the Settlement Agreement and this Form, the Settlement Agreement prevails.

Mail or Deliver this Form, with all Supporting Documentation, no later than ● to:

**Hepatitis Claims Administrator
Suite 280 - 2985 Virtual Way
Vancouver, B.C.
V5M 4X7**

SCHEDULE C – NOTICE OF CERTIFICATION AND SETTLEMENT

CAPERS CLASS ACTION SETTLEMENT

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.

NOTICE

To Class Members, who are: all persons (a) who received an injection (an “Injection”) of either immune serum globulin or Hepatitis A vaccine between March 27, 2002 and April 30, 2002 (inclusive) after handling and/or consuming food products produced and/or sold by Capers Community Markets (the “Products”) that were or might have been tainted with the Hepatitis A virus, or having contact with a person who was or might have been infected with the Hepatitis A virus after handling and/or consuming any Products; and (b) who claim to have been infected with Hepatitis A in February, March or April, 2002, as a result of handling and/or consuming the Products, or having contact with a person who was infected with Hepatitis A as a result of handling and/or consuming the Products.

PURPOSE OF THIS NOTICE

In October, 2002, an action (the “Action”) was filed in the Supreme Court of British Columbia against Wild Oats Markets Canada, Inc. (carrying on business as Capers Community Markets) (“Capers”) on behalf the Class Members. Capers has defended the Action, and has denied that any plaintiff or any Class Member is entitled to damages or any other relief. The Court has made no determination of liability.

CLASS CERTIFICATION AND SETTLEMENT APPROVAL

On November 17, 2003, the Court certified the Action as a class proceeding, and on July ●, 2005, the Court approved the settlement (the “Settlement”) set out in the Settlement Agreement.

SETTLEMENT TERMS

This is a summary only. A copy of the Settlement Agreement can be viewed at www.kleinlyons.com or obtained by contacting Class Counsel (whose contact information is set out below).

For Settlement Class Members who received an Injection, compensation is available either in cash or Store Credits that can be used for 180 days after they are issued to purchase any products sold at Capers. Depending on the circumstances of the claim, compensation is available at 3 different levels:

Tier 1: persons who received an Injection – \$250 in Store Credits (or \$150 in cash)

Tier 2: persons who, when they received their Injections, knew they were pregnant or that they were suffering from a liver disease - \$500 in Store Credits (or \$300 in cash)

Tier 3: a person who had an adverse reaction to the Injection and received medical attention as a result of the reaction - \$750 in Store Credits (\$450 in cash)

Compensation for provable out-of-pocket expenses is also available. A Settlement Class Member who claims he/she was infected with Hepatitis A will have his/her claim resolved by negotiation, mediation and/or binding arbitration. The settlement benefits are offered in full and final settlement of any and all claims against the Defendant.

In exchange for these settlement benefits, the Settlement Class Members (being B.C. Resident Class Members who do not opt out of the Settlement, and non residents of B.C. who opt in by submitting a Claim Form) will release and discharge any and all claims against the Defendant arising from or in any way related to or connected with the matters in the Action. As a result, all Settlement Class Members will be barred forever from asserting or pursuing any further claims against the Defendant.

In making the Settlement, the Defendant does not admit any wrongdoing or liability on its part. Rather, the Settlement is a compromise of disputed claims.

LEGAL COSTS AND FEES

As part of the Settlement, the Court has approved the payment by the Defendant to Class Counsel of \$570,000 for all legal fees and expenses (including taxes).

MAKING A CLAIM

To be eligible for compensation, a Settlement Class Member must submit a completed Claim Form to the Claims Administrator on or before [●THE DEADLINE] (the “Deadline”). A complete description of the deadlines and the procedures for making, processing and paying claims are set out in the Settlement Agreement.

OPTING OUT OF THE SETTLEMENT: B.C. Residents

If you were a B.C. resident on November 17, 2003 and are a member of the Class, **but do not wish to take part in the Settlement or to be bound by the terms of the Settlement Agreement**, you may opt out by completing and returning an Opt Out Form to the Claims Administrator on or **before the Deadline**.

No person may opt out minors or mentally incapable persons without permission of the Court after notice to the children’s lawyer and/or the Public Guardian or Trustee.

OPTING IN TO THE SETTLEMENT: Non-Residents of B.C.

If you were not a B.C. resident on November 17, 2003, **and you wish to take part in the Settlement and be bound by the terms of the Settlement Agreement**, you must opt in by completing and returning a Claim Form to the Claims Administrator on or **before the Deadline**. To be eligible for compensation you must also submit a completed Claim Form **before the Deadline**.

OBTAINING CLAIM FORMS OR OPT OUT FORMS

To obtain a copy of either the Claim Form or the Opt Out Form, you can contact either Class Counsel or the Claim Administrator. The addresses are below.

ADDITIONAL INFORMATION AND QUESTIONS

DO NOT CONTACT THE COURTS ABOUT THIS NOTICE OR THE ACTION. Please address questions or requests for additional information to the Claims Administrator:

Hepatitis Claims Administrator
Suite 280 - 2985 Virtual Way,
Vancouver, BC.
V5M 4X7

Phone: (toll-free): 877-507-7706
web: www.hepAsettlement.ca

Class Counsel may be contacted at:

Klein Lyons
1100-1333 West Broadway
Vancouver, B.C.
V6H 4C1

Phone: 604-874-7171
web: www.kleinlyons.com

This notice has been approved by the British Columbia Supreme Court.

SCHEDULE D - NOTICE PLAN

Class Members shall be given notice of certification and settlement of the Action in the following manner:

1. the Notice of Certification and Settlement (Schedule C), no greater than one-quarter ($\frac{1}{4}$) page, shall be published once in the following newspapers, no later than 45 days after the Final Order Date:
 - (a) National Post (national edition);
 - (b) Vancouver Province;
 - (c) Vancouver Sun; and
 - (d) Victoria Times-Colonist;
2. a copy of the Notice of Certification and Settlement will be mailed no later than 45 days after the Final Order Date, by ordinary pre-paid mail, by the Vancouver Coastal Health Authority, to those persons for whom the Vancouver Coastal Health Authority has contact information, excluding those Class Members who have contacted Class Counsel and for whom Class Counsel has a mailing address;
3. a copy of the Notice of Certification and Settlement will be mailed, either by ordinary pre-paid mail or by electronic mail, by Class Counsel to those Class Members who have contacted Class Counsel and for whom Class Counsel has a mailing address;
4. the Notice of Certification and Settlement, Settlement Agreement, Claim Form, Opt Out Form and Opt In Form will be posted on Class Counsel's web site:
www.kleinlyons.com.