

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES – GENERAL**

Case No. SACV 13-1292-DOC (JCGx)  
SACV 14-1176-DOC (JCGx)  
SACV 15-0620-DOC (FFMx)  
SACV 15-0663-DOC (JCGx)  
**SACV 15-0837-DOC (JCGx)**  
SACV 15-0840-DOC (JCGx)  
SACV 15-0841-DOC (JCGx)

Date: June 23, 2015

Title: JACOB PETERSEN v. TOWNSEND FARMS INC. et al.  
MICHAEL WALTERS, et al. v. COSTCO WHOLESALE CO., INC., et al.  
MERRI GLECKLER, et al. v. COSTCO WHOLESALE CO., INC., et al.  
ELISABETH LUETHY v. TOWNSEND FARMS, INC., et al.  
TOWNSEND FARMS, INC. v. GOKNUR GIDA MADDELERI ENERJI IMALAT  
ITHALAT IHRACAT TICARAT VE SANAYI A.S., et al.  
PURELY POMEGRANATE, INC., et al. v. FALLON TRADING COMPANY, et al.  
KATHERINE KELLY, et al. v. TOWNSEND FARMS, INC., et al.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Nancy Boehme  
Courtroom Clerk

Not Present  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:  
None Present

ATTORNEYS PRESENT FOR DEFENDANT:  
None Present

**PROCEEDINGS (IN CHAMBERS):**

**ORDER TO SHOW CAUSE WHY  
CASES SHOULD NOT BE  
CONSOLIDATED**

Before the Court are seven related cases:

- (1) Petersen, et al. v. Townsend Farms, Inc., et al., 13-1292
- (2) Walters, et al. v. Costco Wholesale Co., Inc., et al., 14-1176
- (3) Gleckler, et al. v. Costco Wholesale Co., Inc., et al., 15-0620
- (4) Luethy v. Townsend Farms, Inc., et al., 15-0663

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- (5) Townsend Farms, Inc. v. Goknur Gida Maddeleri Enerji Imalat Ithalat Ihracat Ticarat ve Sanayi A.S., et al., 15-0837
- (6) Purely Pomegranate, Inc., et al. v. Fallon Trading Company, et al., 15-0840
- (7) Kelly, et al. v. Townsend Farms, Inc., et al., 15-0841

Under Federal Rule of Civil Procedure 42(a), “If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” Fed. R. Civ. P. 42(a). “Consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.” *Enterprise Bank v. Saettelle*, 21 F.3d 233, 235 (9th Cir. 1994) (quoting *Johnson v. Manhattan Ry.*, 289 U.S. 479, 496-97 (1933)). “The district court, in exercising its broad discretion to order consolidation of actions presenting a common issue of law or fact under Rule 42(a), weighs the saving of time and effort consolidation would produce against any inconvenience, delay, or expense that it would cause,” as well as any prejudice it may cause. *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984).

Based on the Court’s review of the operative complaints in all seven cases, all of them involve the same outbreak of Hepatitis A in ten states caused by the distribution and consumption of a frozen berry and pomegranate seed mix product sold at Costco. The various claims in these cases fall into three general categories:

First, *Petersen* is a putative class action brought on behalf of individuals who incurred vaccination costs as a result of exposure to the defective product or to people who had consumed the product and become ill with Hepatitis A. The class does not include people who actually contracted Hepatitis A because of the product. *Petersen* Fourth Amended Compl. ¶ 22.

Second, *Walters*, *Gleckler*, *Luethy*, and *Kelly* are brought by individuals who allege that they contracted Hepatitis A as a result of consuming the product. *Walters* Second Amended Compl. ¶¶ 2.1-4.3; *Gleckler* Compl. ¶ 1; *Luethy* Compl. ¶¶ 37-45; *Kelly* Compl. ¶¶ 39-43.

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Third, *Townsend Farms* and *Purely Pomegranate* involve companies in the distribution chain suing other companies upstream of them in the distribution chain. *Townsend Farms* Compl. ¶ 10-16; *Purely Pomegranate* ¶ 15-27. Similarly, the third-party complaints in *Petersen* and *Walters* involve companies suing other upstream companies. *Petersen* Third-Party Compl.; *Walters* Third-Party Compl.

Each company in the distribution chain is so far represented by the same counsel in all of the cases in which they have appeared. The Court notes that the corporate defendants in the later-filed cases, *Gleckler*, *Luethy*, *Kelly*, *Townsend Farms*, and *Purely Pomegranate*, have not yet appeared (except that *Townsend Farms, Inc.* and *Purely Pomegranate, Inc.* have appeared as defendants in *Luethy*).

The plaintiffs in the Consumer Cases are represented by three sets of attorneys. The plaintiffs in *Petersen* and *Walters* are represented by Markler Clark LLP. The plaintiffs in *Gleckler* are represented by Elliott & Elliott. The plaintiffs in *Luethy* and *Kelly* are represented by the Law Offices of Ofer M. Grossman.

A litigation schedule has already been set in *Petersen* and *Walters*, the first two filed cases. The hearing on class certification in *Petersen* is scheduled for July 27, 2015. Both cases have a discovery cut-off date of March 18, 2016; a summary judgment motion cut-off date of June 13, 2016; final pretrial conference on July 18, 2016; and trial on August 14, 2016.

Given that the facts in these seven cases are closely related, the Court is inclined to adopt the dates already in place for *Petersen* and *Walters* for all of the later-filed cases.

Accordingly, the Court ORDERS as follows:

- Plaintiffs in all cases shall serve this minute order upon any defendants who have not yet appeared.
- The parties shall file a joint response to this Order to Show Cause on or before **July 27, 2015**.

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- A status conference to discuss scheduling of all cases is set for **August 3, 2015, at 8:30 a.m.**

The Clerk shall serve this minute order on the parties.

MINUTES FORM 11  
CIVIL-GEN

Initials of Deputy Clerk nkb