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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: PACKAGED SEAFOOD
PRODUCTS ANTITRUST
LITIGATION

This filing relates to the End Payer
Plaintiff Class Action Track

Case No. 3:15-md-02670-DMS (MSB)

**ORDER GRANTING END PAYER
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENTS**

1 Pending before the Court is the End Payer Plaintiffs (“EPPs”) motion for
2 preliminary approval of settlements with Defendants StarKist Co. and its parent
3 Dongwon Industries Co., Ltd. (“DWI” and, collectively, “StarKist”) and Defendants
4 Lion Capital LLP, Lion Capital (Americas), Inc. and Big Catch Cayman LP
5 (collectively, “Lion Companies”). The total settlement fund benefits for the EPPs in
6 this matter, combined with a partial settlement already granted Court approval, is
7 \$152.2 million.¹

8 The Ninth Circuit has a “strong judicial policy that favors settlements,
9 particularly where complex class action litigation is concerned.” *In re Hyundai & Kia*
10 *Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (internal quotation omitted); *In*
11 *re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). “[T]here is [also] an
12 overriding public interest in settling and quieting litigation,” and this is “particularly
13 true in class action suits.” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.
14 1976). The Court’s approval is required for any settlement of a class action. *Carlin v.*
15 *DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1008 (E.D. Cal. 2019) (citing Fed. R. Civ.
16 P. 23(e)). There are multiple steps to the approval process. *Id.*

17 As a first step, the Court must determine whether the proposed settlements
18 warrant preliminary approval. *Id.* Preliminary approval is appropriate if the Court
19 determines that it is likely to (i) certify the settlement class and (ii) grant final approval
20 to the proposed settlements. Fed. R. Civ. P. 23(e)(1)(B). Since the Court previously
21 certified the EPP Classes, which are substantially the same as the Settlement Class
22 proposed by the parties, the first prong is readily met here. Fed. R. Civ. P.
23 23(e)(1)(B)(ii).

24 As to the second prong, the Court considers whether it is likely to approve the
25 settlements at the fairness hearing. *See* Fed. R. Civ. P. 23(e)(1)(B)(i) and (e)(2). In
26

27 ¹ On July 15, 2022, the Court granted final approval to the Partial (COSI) Settlement.
28 ECF No. 2871. Under the COSI Settlement Agreement, the Maximum Settlement
Amount was \$20 million. ECF No. 2552-3 at 8.

1 making this assessment, the Court need not conduct a full-fledged inquiry into whether
2 it would grant final approval to the Settlement. Instead, at the preliminary stage, courts
3 therefore ask merely whether the agreement “falls within the range of possible
4 approval.” *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1036 (N.D. Cal. 2016), *quoting*
5 *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1080 (N.D.Cal. 2007)); *see also*
6 *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, 895 F.3d
7 597, 610 (9th Cir. 2018).

8 In reviewing the totality of the factors discussed in detail below, the Court finds
9 that the proposed settlements are well within the range of possible approval. The
10 StarKist and Lion Companies Settlement Agreements are likely to be approved as fair,
11 adequate, and reasonable at the fairness hearing and the proposed notice plan is
12 reasonable under the circumstances. The Court GRANTS the EPPs’ Motion for
13 Preliminary approval.

14 **I. BACKGROUND**

15 The general background and history of this litigation is well-documented and
16 extensively discussed in the Court’s prior orders. ECF Nos. 2454, 2654.

17 **A. Litigation History**

18 The Court previously certified the EPP Class in this case, following a three-day
19 evidentiary hearing. ECF No. 1931 (“Class Order”) which was upheld by the Ninth
20 Circuit. *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th
21 651, 684-685 (9th Cir.), cert. denied sub nom. *StarKist Co. v. Olean Wholesale*
22 *Grocery Coop., Inc., et al.*, 143 S. Ct. 424 (2022).

23 The proposed Settlements were reached only after the parties had prepared for
24 trial in this matter. The Settling Parties attended a trial setting conference, complied
25 with all pre-trial disclosure and exchange deadlines, prepared and argued motions *in*
26 *limine* (“MIL”), filed proposed jury instructions and a pre-trial order, and attended the
27 meeting of counsel. *See* ECF Nos. 3189-3207 (MILs), 3211-3232 (MIL Oppositions),
28

1 3237-3239 (Memoranda of Facts & Contentions of Law), 3244 (MIL Hearing), and
2 3251-3255 (Proposed Jury Instructions and Objections).

3 **B. Settlement Negotiations**

4 The parties made notable attempts to settle the matter throughout the litigation.
5 EPPs have engaged in informal settlement discussions with the Settling Defendants
6 since mid-2019. Manifold Decl., ¶¶ 17, 18, 22 (including Bumble Bee). The EPPs and
7 StarKist also participated in multiple settlement conferences with Magistrate Berg on
8 October 4, 2023, April 25, 2024, May 22, May 23, 2024, and June 3, 2024. *Id.* at ¶ 20,
9 21. With the oversight and active participation of Magistrate Berg, the EPPs and
10 StarKist finally reached a settlement in principle at the end of the June 3, 2024
11 conference.

12 The EPPs and the Lion Companies also attended a joint settlement conference
13 before Magistrate Berg on August 7, 2023. *Id.* at ¶ 23. At the Lion Companies’ request,
14 the EPPs participated in a private mediation session overseen by retired United States
15 District Judge Daniel Weinstein of JAMS in San Francisco, California on June 7,
16 2024. *Id.* On June 17, 2024, with the July 16, 2024 trial date imminent, the EPPs met
17 with the Lion Companies (and their insurers and principals) in a settlement conference
18 with Magistrate Berg that culminated in the parties reaching a settlement in principle.
19 *Id.*, ¶ 24. According to Counsel, Lion Companies and its founders’ financial conditions
20 were fully evaluated by Settlement Class Counsel, as well as by Magistrate Berg. *Id.*
21 The nine-hour mediation session concluded with an agreement that the Lion
22 Companies would pay \$6 million to the EPP Consumer Classes to resolve the claims
23 against them. *Id.*

24 Based on this record, the Court finds that the proposed settlements were the result
25 of arm’s-length negotiations.

26 **II. SETTLEMENT TERMS**

27 The material terms of the Settlement Agreements² are as follows:

28 _____
² Capitalized terms are defined within the StarKist and Lion Settlement Agreements.

1 **Monetary Terms.** The key monetary terms of the StarKist Settlement are as
2 follows: (1) the settlement amount is one hundred and thirty million dollars
3 (\$130,000,000) to be paid over a period of time as set forth in the StarKist Settlement
4 Agreement (¶ 1.2); (2) under Paragraph 5.3 up to one million (\$1,000,000) from the
5 first \$32 million cash payment to be paid upon Preliminary Approval “shall be used
6 for settlement notice and administration of claims.” StarKist SA, ¶¶ 1.24, 5.3.

7 The settlement amount in the Lion Companies Settlement Agreement is six
8 million dollars (\$6,000,000). Lion Companies SA, ¶ 1.2. Up to two hundred thousand
9 dollars (\$200,000) from the first \$3 million cash payment to be paid upon Preliminary
10 Approval “shall be used for notice and administration of claims.” Lion Companies
11 SA, ¶ 1.22.

12 **Combined Total Settlement Benefits.** The \$136 million fund created by the
13 proposed settlements, along with the \$16.2 million in benefits from the COSI
14 Settlement (in total referred to as the \$152.2 million “Total Settlement Benefit”) *See*
15 StarKist SA, ¶ 1.2; Lion Companies SA, ¶ 1.22; ECF 2871 (Order re: Final Approval
16 of COSI Settlement).

17 **Settlement Class Definition.** The Settlement Class definition is substantially
18 the same as the EPP Classes certified by the Court. *See* ECF No. 1931 (Class Order);
19 StarKist SA, ¶ 1.8; Lion Companies SA ¶ 3; *see also* ECF No. 2871 (Order approving
20 the COSI Settlement).³ The only difference is that the Settlement Class excludes the
21 opt-outs so ordered by the Court and includes the three individual Illinois Plaintiffs.
22 *See* ECF Nos. 3120, 2871. The Settlement Class Counsel and Settlement Class
23 Representatives are also the same as Class Counsel and Class Representatives
24 previously appointed by the Court in the Class Order. ECF No. 1931; StarKist SA
25 ¶ 1.26; Lion Companies SA, ¶ 3. As the Court previously found, the Consumer Classes
26

27 ³ Excluded from the Class are all governmental entities, Defendants’ parent, subsidiary
28 or affiliate thereof, their officers, directors, employees, and immediate families, as
well as any federal judges or their staffs. *Id.*

1 meet the requirements of Rule 23(a) (numerosity, common questions, typicality and
2 adequacy) and the requirements of Rule 23(b)(3) (common issues predominate as to
3 antitrust violation, impact and damages, and a class action is superior to other methods
4 of adjudication), the same Settlement Class meets these requirements. ECF No. 1931
5 at 46-58; *see also* ECF No. 2871 at 6.

6 **Releases.** The proposed releases in both Settlement Agreements are
7 substantially similar and appropriately narrow to claims in this litigation. The EPPs
8 have agreed to release claims against StarKist “arising out of, resulting from, or in any
9 way related to EPPs’ purchases of Packaged Tuna, including any conduct concerning
10 the pricing, selling, discounting, marketing, manufacturing, distribution, or
11 promotion, of Packaged Tuna, during the period from June 1, 2011 to July 31, 2015.”
12 StarKist SA, ¶ 1.21 The Released Claims also include all claims that could have been
13 brought based in whole or in part on the facts, occurrences, transactions, or other
14 matters that were alleged in the Complaint. *Id.* The StarKist Settlement Agreement
15 also contains a waiver of California Civil Code § 1542. *Id.* at ¶ 8.2. Similarly, the EPPs
16 have agreed to release claims against the Lion Companies, which arise out of, result
17 from or relate to “any conduct concerning the pricing, selling, discounting,
18 manufacturing, distribution, promotion, or marketing of Packaged Tuna Products
19 during the period from June 1, 2011 to July 31, 2015 that could have been brought
20 based in whole or in part on the facts, occurrences, transactions, or other matters that
21 were alleged in the Complaint.” Lion Companies SA, ¶ 1.19.

22 **Attorneys’ Fees and Costs.** As to Settlement Class Counsel’s attorneys’ fees
23 and expenses, “the allowance or disallowance by the Court” of any application is not
24 part of the Settlement Agreement(s) and will “be considered by the Court separately”
25 as part its consideration of fairness, reasonableness, and adequacy of the settlement.
26 StarKist SA, ¶ 14.1; *see also* Lion Companies SA, ¶ 14.1. Any order relating to the
27 application for fees and expenses “shall not operate to terminate or cancel” the
28 Settlement Agreement or “delay the finality of the Judgment.” *Id.*

1 **Notice Costs.** StarKist and Lion Companies have agreed to pay \$1.2 million
2 into the Settlement Fund for the costs of notice and claims administration to be
3 dispersed within 30 days after Preliminary Approval. *See* Lion Companies SA, ¶ 1.22;
4 StarKist SA, ¶¶ 1.24, 5.3.

5 **III. THE COURT CERTIFIES THE SETTLEMENT CLASS.**

6 The Court previously certified the Consumer Classes, which are now the
7 Settlement Class in the proposed settlements, minus prior opt-outs and the addition of
8 the Illinois plaintiffs, certification of the Settlement Class is appropriate for all the
9 reasons set forth in the Class Order. *See* ECF No. 1931, upheld on appeal in *Olean*
10 *Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 684-85 (9th
11 Cir.), cert. denied sub nom. *StarKist Co. v. Olean Wholesale Grocery Coop., Inc., et*
12 *al.*, 143 S. Ct. 424 (2022). The Court also appointed Wolf Haldenstein Adler Freeman
13 & Herz LLP as Class Counsel for the EPP Class and the named plaintiffs as the Class
14 Representatives in this case and makes the same appointments on behalf of the
15 Settlement Class. *Id.*

16 **IV. THE COURT FINDS THAT THE PROPOSED SETTLEMENTS ARE**
17 **LIKELY TO BE APPROVED AT THE FAIRNESS HEARING**

18 The Court must consider whether it is likely to approve the settlements at the
19 fairness hearing. Fed. R. Civ. P. 23(e)(1)(B)(i). The Ninth Circuit has identified the
20 following factors, commonly referred to as the *Churchill Village* factors, in assessing
21 whether a class settlement is fair:

- 22 (1) the strength of the plaintiff’s case;
- 23 (2) the risk, expense, complexity, and likely duration of further litigation;
- 24 (3) the risk of maintaining class action status throughout the trial;
- 25 (4) the amount offered in settlement;
- 26 (5) the extent of discovery completed and the stage of the proceedings;
- 27 (6) the experience and views of counsel;
- 28 (7) the presence of a governmental participant; and

1 (8) the reaction of the class members to the proposed settlement.
2 *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (“*In re*
3 *Bluetooth*”) (quoting *Churchill Vill., L.L.C. v. Gen. Elec., Co.*, 361 F.3d 566, 575 (9th
4 Cir. 2004)); *Chen v. Chase Bank USA, N.A.*, No. 19-cv-01082, 2020 WL 3432644, at
5 *4 (N.D. Cal. June 23, 2020).

6 Rule 23(e)(2) also requires courts to consider whether: (1) class representatives
7 and counsel have adequately represented the class; (2) the proposal was negotiated at
8 arm’s-length; (3) the settlement provides adequate relief for the class; and (4) the
9 proposal “treats class members equitably relative to each other.” These factors are not
10 exclusive. This Court may consider any combination of factors that it deems
11 appropriate to assess the fairness of the settlement. *Bellinghausen v. Tractor Supply*
12 *Co.*, 306 F.R.D. 245, 254 (N.D. Cal. 2015) (discussing *Churchill Village* factors);
13 *Chen*, 2020 WL 3432644, at *4 (noting that “different factors may predominate in
14 different factual contexts”).

15 In reviewing the totality of the factors, the Court finds that these Settlements
16 are well within the range of possible approval.

17 **A. The *Churchill Village* Factors Favor Preliminary Approval.**

18 Under the first and second *Churchill Village* factors, this Court considers the
19 strength of plaintiffs’ case and costs and risks at trial and the delay of any appeal. *See*
20 Fed. R. Civ. P. 23(e)(2)(C)(i). The case against the Settling Defendants regarding
21 liability is strong. Notwithstanding the guilty pleas, criminal convictions, and partial
22 summary judgment, EPPs still needed to prove their damages for the entire Class
23 Period at trial and whether DWI and the Lion Companies were liable along with
24 StarKist. Proving liability and class-wide damages for the entire Class Period would
25 inevitably result in a lengthy and costly ‘battle of the experts’ at trial. Even if
26 successful at trial, with potential treble damages of over \$600 million, the Settling
27 Defendants may not have been able to sustain a verdict of that size. Indeed, Bumble
28

1 Bee already declared bankruptcy, leaving a shell from which no recovery could be
2 achieved. All these facts weigh in favor of preliminary approval.

3 As to the third factor, the risk of maintaining class certification through trial
4 favors preliminary approval. *In re Bluetooth*, 654 F.3d at 946; *Bellinghausen*, 306
5 F.R.D. at 255 (citing risk of maintaining certification “if the litigation were to
6 proceed”); *Chen v. Chase Bank USA, N.A.*, 2020 WL 3432644, at *4 (N.D. Cal. 2015)
7 (same). Class certification was widely disputed, appealed to Ninth Circuit and the
8 Supreme Court. The risk of further appeal after trial weighs in favor of approval.

9 The fourth *Churchill Village* factor, the amount obtained, also supports
10 preliminary approval. *See also* Fed. R. Civ. P. 23(e)(2)(C). The Total Settlement
11 Benefits are considered in light of the limits on potential recovery. Regression
12 modeling by the EPPs’ expert, Professor David Sunding, shows single damages equal
13 to \$224 million.⁴ Trebled, this is approximately \$672 million. Based on the maximum
14 single damages of \$224 million for the entire conspiracy period, a total settlement
15 recovery of \$152.2 million is nearly 68% of the maximum single damages and over
16 20% of the maximum treble damages. “Maximum” damages are based on several
17 assumptions: the jury believes the EPPs’ damages expert (not the Settling Defendants’
18 expert); and the jury awards full damages for all states. EPPs faced substantial risks at
19 trial. The substantial recovery here warrants preliminary approval.

20 These proposed settlements also compare favorably with other antitrust and
21 class action settlements that have received preliminary approval. In *Rodriguez v. W.*
22 *Publ’g Corp.*, 563 F. 3d 948 (9th Cir. 2009), the Court of Appeals upheld approval of
23 an antitrust settlement that was only 30% of the calculated single damages as fair,
24 reasonable, and adequate. *Id.* at 955, 957, 964. *See also In re Lithium Ion Batteries*
25 *Antitrust Litig.*, No. 4:13-md-02420-YGR (DMR), 2017 WL 1086331, at 4* (N.D.
26 Cal. Mar. 20, 2017) (Overruling objections, the Court agreed that “the settlement
27 represents 11.2% of the single damages attributable to Sony sales” and that the

28 _____
⁴ *See* Expert Merit Report of David Sunding dated Feb. 15, 2019, p. 17, Table 2.

1 possibility of the settlement being higher does not mean it was not fair and
2 reasonable.); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 14-CV-2058 JST,
3 2017 WL 565003, at *4, *6 (N.D. Cal. Feb. 13, 2017) (granting preliminary approval
4 of settlement representing 24% of single damages, and previously finding 20% of
5 single damages to be a good recovery in other cases.)

6 The fifth and sixth *Churchill Village* factors also support preliminary approval.
7 This litigation began over nine years ago and was settled on the eve of trial. Because
8 of the procedural posture of this case, EPPs were in the best position to evaluate the
9 value of the Settlements. *See Bravo v. Gale Triangle, Inc.*, No. CV 16-03347 BRO
10 (GJSx), 2017 WL 708766 at *11 (C.D. Cal. Feb. 26, 2017) (finding that extensive
11 discovery shows that counsel fully understand the case’s factual and legal issues).
12 Furthermore, EPPs are represented by Settlement Class Counsel with substantial
13 experience in litigating and evaluating antitrust class actions. Manifold Decl., ¶ 3.
14 Counsel have shown they are ready and able to try this case to verdict, but believe this
15 to be an excellent settlement under the circumstances and support its approval. *Id.* The
16 views and experience of Class Counsel also weigh in favor of approval.

17 The final two *Churchill Village* factors – the presence of a governmental
18 participant and the Class Members’ reactions – need not be considered at this time.
19 While the DOJ brought criminal charges, it did not seek restitution in any of its cases.
20 The Settlement Agreement(s) require the Defendants to serve Class Action Fairness
21 Act (“CAFA”) notices on the DOJ and any relevant states, providing them the
22 opportunity to “raise any concerns that they have during the normal course of the class
23 action settlement procedures.” *Bellinghausen*, 306 F.R.D. at 258; 28 U.S. Code § 1715
24 *et seq.*; Manifold Decl. ¶ 40; *see also Procedural Guidance for Class Action*
25 *Settlements* § 10 (CAFA compliance). Settlement Class Members will also have the
26 opportunity to object and provide feedback at the Fairness Hearing. The Court will
27 therefore defer consideration of the final two *Churchill Village* factors until the
28 Fairness Hearing.

1 **B. Rule 23(e) Factors Support Preliminary Approval**

2 As noted above, in addition to the *Churchill Village* factors, Rule 23(e)(2)
3 requires courts to consider whether (1) class representatives and counsel have
4 adequately represented the class; (2) the proposal was negotiated at arm’s length; (3)
5 the settlement provides adequate relief for the class; and (4) the proposal “treats class
6 members equitably relative to each other.”

7 First, Class Counsel was ready, able, and willing to try this case to verdict just
8 a few weeks before these substantial settlements were reached. The Courts finds that
9 the EPPs and their Class Counsel have adequately represented the Consumer Classes’
10 interest.

11 Second, based on the multiple contentious settlement negotiations overseen by
12 Magistrate Berg and other private mediators since 2019, the proposed Settlements
13 were the result of arm’s-length negotiations and not the result of collusion. Manifold
14 Decl., ¶¶ 3-8, 17-24. Courts also look at issues such as “an agreement by the defendant
15 not to contest class counsel’s attorney’s fees” or “an agreement to allow unawarded
16 attorneys’ fees to revert to the defendants.” *In re Volkswagen “Clean Diesel” Mktg.*
17 *Litig.*, 895 F.3d at 611 & n.19 (citing *In re Bluetooth*, 654 F.3d at 947); *Procedural*
18 *Guidance for Class Action Settlements*, § 1(h). These issues do not exist in the
19 proposed settlements. Such concerns are moot. *See StarKist Settlement Agreement*,
20 ¶¶ 14.1, 14.2, 14.3.

21 Third, the amount recovered (\$152.2 million Total Settlement Benefit) is more
22 than adequate based on its equivalence to nearly 68% of the maximum single damages
23 as calculated by the EPPs’ damages expert. *Id.* Considering the substantial trial costs
24 (multiple experts, IT Support, and other logistics such the EPPs’ travel expenses)
25 along with the very real risks of taking an antitrust case to verdict, long post-trial
26 appeals, and collectability issues, the proposed settlements provide adequate relief.
27 *See Fed. R. Civ. P. 23(e)(2)(C)(i).*

28 The effectiveness of distributing notice and relief to the Settlement Class

1 Members is adequate and discussed below. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). The
2 Settlement Notices and Settlement Website will provide substantial detail as to the
3 terms of the requested attorneys’ fees, costs, expenses, and service awards, including
4 the timing of payment. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii); Intrepido-Bowden Decl.,
5 Exs. A-G (various forms of settlement notice). All short form settlement notices
6 provide links to access these terms in further detail. *Id.*

7 Fourth, the Settlement Agreements treat class members equitably, providing
8 *pro rata* distribution of the Settlement Fund after deduction of any Court-ordered
9 awards. Therefore, the StarKist and Lion Companies Settlement Agreements satisfy
10 Rule 23(e).

11 Finally, according to Counsel, all agreements made “in connection with” the
12 settlement proposal have been identified. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv) and
13 (e)(3).

14 **V. THE PROPOSED NOTICE, CLAIMS AND DISTRIBUTION PLANS**
15 **ARE REASONABLE AND ADEQUATE.**

16 Counsel retained a well-respected Claims Administrator and submitted a
17 proposed Settlement Notice for the Court’s review along with a plan for providing
18 notice to Settlement Class members. *See* ECF No. 2552-6 (reciting JND’s class action
19 claims administration experience).

20 **Notice Plan.** JND prepared a comprehensive and robust settlement notice plan
21 to notify the Settlement Class. *See generally* Declaration of Gina Intrepido-Bowden
22 (“Intrepido-Bowden Decl.”). The Court previously approved JND as Claims
23 Administrator for the COSI Settlement and to disseminate the Class Notice. ECF Nos.
24 2734 and 2781. The prior experience of JND in this case promotes greater efficiency.

25 The Notice informs the Settlement Class that the EPPs will seek attorney fees
26 of up to 33% of the Settlement Fund, net of expenses, and that EPPs seek total
27 reimbursement of litigation costs and expenses of \$1,618,489.24 as follows: (i)
28 reimbursement of plaintiffs’ counsel’s reasonable costs and litigation expenses

1 incurred since May 2021 in the amount of \$1,412,110.13; and (ii) a request that
2 \$206,379.11 be distributed to COSI as a reimbursement for administration costs that
3 will be common to both the proposed settlements and the COSI Settlement.⁵ EPPs also
4 request a Service Award for the over 60 individual plaintiffs in the amount of
5 \$294,000.

6 JND will provide direct notice to Class Members who filed claims in the COSI
7 Settlement, combined with a robust four-week media campaign that is estimated to
8 reach over 70% of likely Settlement Class Members. *Id.*, ¶ 8. The FJC’s *Judges’ Class*
9 *Action Notice and Claims Process Checklist and Plain Language Guide* considers a
10 Notice Plan with a high reach (above 70%) effective. *Id.*, ¶ 7. The media campaign
11 includes an extensive digital effort, publication in *People* magazine, direct notice, an
12 interactive case website, and a 24-hour toll-free number. *Id.*, ¶¶ 14-23.

13 **Notice Form.** The Court finds that the proposed form of the settlement notice
14 complies with Fed. R. Civ. P. 23(c). *See* Intrepido-Bowden Decl., Ex. G (Settlement
15 Class Notice (Long Form)). Consistent with Rule 23(c)(2)(B), the proposed notice
16 describes “(i) the nature of the action; (ii) the definition of the [Settlement] Class
17 certified; (iii) the class claims, issues, or defenses; (iv) [a directive] that a Settlement
18 Class Member may enter an appearance through an attorney if the member so desires;
19 and (v) the binding effect of judgment on members [of the Settlement Class] under
20 Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B); Intrepido-Bowden Decl., Ex. G.

21 _____
22 ⁵ Under the COSI Settlement Agreement, the Maximum Settlement Amount was \$20
23 million. ECF No. 2552-3 at 8. Under Paragraphs 11(b) and 18, up to \$5 million could
24 be used to cover the reasonable costs of the Settlement Notice and administration of
25 the \$15 million Settlement Fund. Since the reasonable costs of Settlement Notice were
26 less than \$5 million, the difference was refunded to the COSI Defendants. *Id.* at 14
27 and 15. The Court also approved an Expense Award of \$4,155,027.67 to reimburse
28 Class litigation costs incurred as of May 2021. ECF No. 2872 at 4:17-19. The COSI
Settlement provided \$1.4 million in notice and administration benefits. COSI now
requests reimbursement for \$206,379.11 in administrative costs incurred in 2024
relating to claims administration which benefits the proposed settlements.

1 The Settlement Notice also provides the terms of any proposed award of
2 attorneys’ fees, costs, expenses, and service awards and timing, and provides an
3 opportunity for Settlement Class Members to object to either the Settlements or the
4 proposed fees, expenses, and service awards. Intrepido-Bowden Decl., Ex. G at ¶¶ 1-
5 2, 7-8. Class Counsel will publish on the Settlement Website and submit full briefing
6 supporting their request for attorneys’ fees and expenses and service awards a
7 minimum of fourteen (14) days before the Objection Deadline. This will allow
8 Settlement Class Members time to consider the motion before the objection deadline.

9 **No Further Exclusion or Opt-Out Opportunity.** The Settlement Class was
10 given two prior opportunities to request exclusion: at the Class Certification stage, and
11 as part of the COSI Settlement so no additional opportunity to opt-out is provided. *See*
12 ECF Nos. 2871, 3120. Due process only requires that class members be given a single
13 opportunity to opt out of a certified class. *Low v. Trump Univ., LLC*, 881 F.3d 1111,
14 1121 (9th Cir. 2018). The notice provides a reasonable to opportunity object to the
15 Settlement, satisfying. Fed. R. Civ. P. 23(e)(4)-(5).

16 **Claims Process.** Digital ads will include an embedded link and the print ad a
17 QR code, both of which allow Settlement Class Members to receive more information
18 about the proposed Settlements as well as complete and file an on-line Claim Form.
19 Intrepido-Bowden Decl., ¶¶ 16, 24, Ex. H (Claim Form). The same claims process
20 was approved by the Court in the COSI Settlement. ECF No. 2781. The Settlement
21 Notice documents also provide a toll-free number to contact JND with any questions.
22 *Id.* at Ex. H. According to Ms. Intrepido-Bowden, Vice President at JND Legal
23 Administration and a judicially recognized legal notice expert, claimants “generally
24 favor online claims forms” because the process is user-friendly and convenient. *Id.*,
25 ¶¶ 1-2, 25-26. Online claim processing is faster, easier, more efficient, and results in
26 fewer deficiencies. *Id.* at ¶ 25. If a Settlement Class Member is either unable or
27 unwilling to file a claim on-line, she may request a printed claim form and either return
28 it to JND via United States Mail (post-marked before the Claims Cut-off Date) or

1 create a pdf of the completed Claim Form and e-mail it to JND (before the Claims
2 Cut-off Date). *Id.*, ¶¶ 27-28. JND will then review, determine the validity of, process
3 and hold on to all Claim Forms submitted by claimants and flag issues. *Id.*, ¶ 31.

4 **Distribution Plan.** Each Authorized Claimant in the Settlement Class “shall
5 receive a *pro rata* share of the Distribution Funds as described in the Settlement Class
6 Notice.”⁶ *Id.* ¶ 29, Ex. G, ¶ 7. According to the proposed distribution plan, JND will
7 efficiently process millions of Settlement Class member claims and effectively
8 distribute monies to Authorized Claimants through the means to be elected by the
9 claimant (usually electronic). Intrepido-Bowden Decl., ¶¶ 24-45. Distribution will
10 occur after final approval of the proposed Settlements, once all appeals are exhausted
11 and all monies are collected under the Settlement Agreements, The distribution plan
12 also includes a *de minimis* claim threshold. If the total final payment of a particular
13 claim is less than \$5.00, no distribution will be made to the Authorized Claimant. *Id.*
14 ¶ 33, Ex. H, Ex. G. The proposed distribution process satisfies Federal Rule of Civil
15 Procedure 23(e) (2) (C) (ii).

16 **Costs of Notice and Claims Administration.** JND estimates that the proposed
17 Notice Plan will cost approximately \$750,000 to \$1.2 million. Manifold Decl., ¶ 40.
18 As part of Preliminary Approval, the EPPs request permission to pay up to \$1.2
19 million in reasonable invoices submitted by the Claims Administrator for the media
20 campaign in the Proposed Settlement Notice Plan prior to the Fairness Hearing. *Id.* ¶
21 39. Given its depth of reach and the need to reach tens of millions of Settlement Class
22 Members, an interim distribution of \$1.2 million for notice costs prior to the Fairness
23 Hearing is appropriate and is approved under the terms provided in the Settlement
24 Agreements. *See* StarKist SA, ¶ 5.3; Lion Companies SA, ¶ 1.22.

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28 ⁶ “Distribution Funds” refers to the Total Settlement Benefits (\$152.2 million), less
notice and administration costs, and any attorneys’ fees, cost and litigation expenses
and Service Awards awarded by the Court.

1 As to the Claims Administration, depending on the number of claims received,
2 a preliminary estimate of the costs of processing claims, running fraud analysis, and
3 dispersing the Distribution Funds is between \$2.1 and \$5.8 million. Intrepido-Bowden
4 Decl., ¶ 42. The Court deems this preliminary estimate reasonable for the Settlement
5 Notice given the total possible number of class members and claims.

6 **VI. REQUESTS FOR COSTS OF CLAIMS ADMINISTRATION,**
7 **ATTORNEYS FEES AND EXPENSES ARE REASONABLE.**

8 EPPs seek the following Attorneys' Fees, Expenses, and Service Awards for
9 the Class Representatives,

10 **Attorneys' Fees Award.** Class Counsel seeks an award of attorneys' fees not
11 to exceed one-third of the Total Settlement Fund (\$152.2 million), *net* of any expenses,
12 Service Awards, and Notice Costs. Subject to the Court's further review of Counsel's
13 motion in support of fees and expenses, proposed Attorneys' Fees in the amount of
14 one-third (33 1/3%) of the Total Settlement Fund (after netting out expenses and
15 service awards) is within the range of reasonableness. The Court finds that the analysis
16 of the settlement involved in *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD,
17 2023 WL 2396782 (N.D. Cal. Mar. 6, 2023) supports the reasonableness of this
18 request, given the late stage at which settlement was reached and the substantial
19 recovery to the Settlement Class that was achieved. Class Counsel shall publish on the
20 Settlement Website and submit full briefing supporting their request for attorneys'
21 fees and expenses a minimum of fourteen (14) days before the Objection Deadline.
22 The timing provides time for Settlement Class Members to consider this briefing
23 before the deadline. Settlement Class Counsel will not receive any payment unless the
24 Court grants the fee request.

25 **Expense Award.** The total requested Expense Award is \$1,618,489.24. The
26 requested Expense Award breaks down as follow: (i) reimbursement of plaintiffs'
27 counsel's reasonable costs and litigation expenses incurred since May 2021 in the
28 amount of \$1,412,110.13; and (ii) a request that \$206,379.11 be distributed to COSI

1 as a reimbursement for administration costs that will be common to both the proposed
2 settlements and the COSI Settlement. Manifold Decl., ¶ 43; *see also* n.5, *supra*. This
3 request by COSI is in accordance with the terms of the COSI Settlement Agreement.
4 *See* StarKist SA, ¶ 14.1 (permitting payment five days after award subject to any
5 undertaking required by the Court in the event of an appeal); Lion Companies SA, ¶
6 14.1 (same). The Court finds this request reasonable subject to final approval.

7 **Service Award to Named Plaintiffs.** The total amount requested for service
8 awards is \$294,000 which is insignificant (0.19%) in light of the substantial Total
9 Settlement Benefit (\$152.2 million). The Service Award tiers break down as follows:
10 \$3,000 (Tier 1); \$6,000 (Tier 2); and \$9,000 (Tier 3). Manifold Decl., ¶¶ 26-28
11 (detailed breakdown of tier calculation and descriptions). The requested awards are in
12 line with service awards awarded in other class actions. *See Birch v. Off. Depot, Inc.*,
13 No. 06 CV 1690 DMS (WMC), 2007 WL 9776717, at *2 (S.D. Cal. Sept. 28, 2007)
14 (awarding two named plaintiffs service awards of \$15,000 and \$10,000 respectively).
15 The Court finds the individual EPPs have played a vital role in this litigation, including
16 their willingness to appear at trial. *See* Manifold Decl., ¶ 25.

17 **VII. CONCLUSION**

18 The proposed Settlements merit preliminary approval as each is likely to be
19 finally approved after the Fairness Hearing. The Court hereby GRANTS preliminarily
20 approval of the StarKist Settlement and Lion Companies Settlement and ORDERS the
21 following:

22 (1) The Court certifies, for settlement purposes, the following Settlement
23 Class:

24 All persons and entities who reside in one of the States described in
25 paragraphs 113(b) to 113(gg) of the Fourth Consolidated Amended
26 Complaint, specifically Arizona, Arkansas, California, the District of
27 Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine, Massachusetts,
28 Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah,

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Vermont, Virginia, West Virginia, and Wisconsin, who indirectly purchased Packaged Tuna in cans or pouches smaller than forty ounces for end consumption and not for resale, produced by any Defendant or any current or former subsidiary or affiliate thereof, or any co-conspirator during the period from June 1, 2011 to July 1, 2015.

See ECF No. 1931. Excluded from the Settlement Class are the opt-outs previously so ordered by the Court, and included in the Settlement Class are the three individually named Illinois plaintiffs. *See* ECF Nos. 3120, 2871.

(2) The Court appoints Wolf Haldenstein Adler Freeman & Herz LLP as Settlement Class Counsel.

(3) The Court appoints JND as the Claims Administrator.

(4) The Court appoints the named plaintiffs in the Class Order (ECF No. 1931) as Class Representatives for settlement purposes.

(5) The Court finds the StarKist Settlement Agreement and Lion Companies Settlement Agreement have been negotiated at arm's-length.

(6) The Court finds the StarKist Settlement Agreement and Lion Companies Settlement Agreement are fair, reasonable, and adequate, and in the best interests of the Settlement Class.

(7) The Court approves the Notice content and the Notice Plan for providing notice of the StarKist Settlement Agreement and Lion Companies Settlement Agreement to members of the Settlement Class.

(8) The Court approves the use of \$1,000,000 of the StarKist Settlement and up to \$200,000 of the Lion Companies Settlement funds (\$1,200,000 total) for notice costs per the Settlement Agreements. *See* StarKist Settlement Agreement at ¶ 5.3; Lion Companies Settlement Agreement at ¶ 1.22.

(9) The Court orders StarKist and Lion Companies to provide the relevant notices as required by the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*

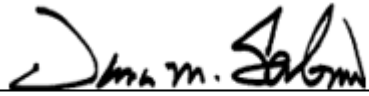
(10) Finally, the Court adopts and sets the following deadlines:

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Date	Deadline/Event
Friday August 23, 2024	Preliminary Approval Hearing
Friday, Sept. 6, 2024	Deadline to begin disseminating Settlement Class Notice
Friday, Oct. 25, 2024	Deadline for EPPs to file Motion for Attorneys' Fees and Costs
Friday, Oct. 4, 2024	Deadline to complete dissemination of Settlement Class Notice
Friday, Oct. 11, 2024	Deadline for filing affidavit attesting that Settlement Class Notice was disseminated
Friday, Nov. 8, 2024	Deadline for Settlement Class Members to object to the Settlement
Friday, Nov. 15, 2024	Deadline for EPPs to file a motion for final approval
Tuesday, Dec. 31, 2024	Deadline for Settlement Class Members to submit claims
Friday, Nov. 22, 2024, at 1:30 p.m.	Fairness Hearing

IT IS SO ORDERED.

Dated: August 23, 2024



 Hon. Dana M. Sabraw, Chief Judge
 United States District Court